

# **Assessment Manual**

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## 1 The Assessment Unit

### 1.1 Purpose

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Assessment teams:

- Assess all incoming complaints that come into Assessment.
- Where necessary, make brief, initial enquiries with the complainant or the body in jurisdiction (BinJ) – usually by phone and/or email.
- Screen out all remaining premature complaints not identified by the Intake team.
- Make prompt and consistent decisions on all complaints that are either out of jurisdiction, that can be quickly resolved, or that do not merit formal investigation. This will be done by assessing each complaint against the criteria contained in the [Assessment Code](#).
- As soon as possible, identify and pass to Investigation teams all substantive complaints that merit formal investigation, or that it has not been possible to determine within the ‘assessment time frame’.
- Assessment staff are responsible for keeping both the PA and BinJ informed of progress until such time as it is either decided or forwarded to Investigation. When forwarding we let the PA know their case has gone to Investigation as well as the BinJ, if enquiries have been made.

### 1.2 Key characteristics of the Assessment Unit

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- The assessment phase is a distinct process focussed purely on deciding which cases merit the commencement of an investigation or which can be dealt with swiftly at an early stage.
- It has streamlined, flexible and simple business processes to support the rapid triage of cases.
- It operates to consistent, Commission-wide criteria as set out in the Assessment Code to ensure all complainants receive the same level of service.
- It enables the LGO scheme to more directly control resource allocation by ensuring we focus on those cases with the most significant injustice and public interest, while also allowing us to respond to changes in demand.
- Specialisms continue to have a role in the Assessment unit. However, to maximise flexibility and consistency, they are integrated within multi-purpose teams rather than sitting in separate units dealing exclusively with specialist cases.

## 1.3 Staff Roles and Team Composition

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### **The Head of Assessment (HofA)**

The Assessment process is managed and led by the Head of Assessment.

The HofA will work closely with the Ombudsman, the Chief Executive and Executive Director to translate strategic policy on casework into a practical process for filtering and assessing large volumes of incoming complaints. They will ensure operational risks are identified and managed via the Commission's Risk Management Framework.

The HofA will be accountable for the effective operation, quality and performance of the Assessment process. They will line manage the five Assessment Team Leaders (ATLs), and support them in their roles as first-line managers, intervening where needed in more complex people and performance management issues. They will also carry out any post decision reviews on ATLs' decisions.

The HofA will also liaise with the Intake process (through the Customer Services Manager) and the Investigation process (through the Assistant Ombudsmen) to ensure continuity with upstream and downstream business activities.

They will also have a key role in liaising with the Head of Policy and Communications to ensure that the Assessment unit contributes to wider public value goals, principally through identifying emerging complaint trends and patterns.

### **Assessment Team Leaders (ATLs)**

The day-to-day operations of each of the five Assessment teams will be driven by an ATL.

This is a first-line managerial post, responsible for leading a small Assessment team. The ATL will provide expertise, coaching and leadership to the team. They will respond to service complaints made about their own team and escalate to the HofA as appropriate. They will also complete post-decision reviews from their partnered team on a rota basis. They will supervise staff in their team – conducting quality monitoring, performance reviews, and dealing with day-to-day performance and managerial issues. Where more serious disciplinary or under-performance issues arise, they will be supported by the HofA.

The ATL will also be an active operational member of the team directly delivering a significant share of the case assessment activity. The ATL's caseload will be self selected from incoming work.

### **Assessors**

Each sub team will be comprised of a small number of Investigators, whose role, with the ATL, will be to conduct a rapid triage of all incoming cases, make quick factual enquiries where appropriate, and then close, resolve or refer cases.

These are generic Investigator posts with the same job description as their counterparts in the Investigation phase. This enables interchange and rotation of staff between both parts of the business.

### **Team Coordinator (TC)**

The TC will actively contribute to processing and resolving incoming cases.

Their work will include researching and gathering background information to enable Assessment decisions to be made, making quick enquiries of complainants and bodies in jurisdiction, and making decisions on premature complaints. They will have delegated authority to make decisions on premature cases in their own right.

Their work will be commissioned by the ATL and Investigators in the team through tasks set in ECHO. To ensure that this is done sensibly and fairly, the ATL will be responsible for monitoring that the TC's time is used most effectively to support the decision-making process and that they are not over-burdened.

The TC will help to coordinate the work of the team as a whole and will ensure efficient administrative and business systems.

## **1.4 Key Volumes and Metrics**

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Five Assessment teams located across three offices are responsible for assessing all incoming work.

The assessment process is flexible enough to adjust to changes in demand and workflow over time. There are no prescribed limits on either the number of cases to be decided early by Assessment, or forwarded to Investigation. Each case will be assessed on its own merits against the Code, and the LGO will allocate requisite resources accordingly.

All cases in the Assessment phase are expected to be closed or referred on promptly. Of those cases accepted for investigation, 80% should be forwarded 15 working days from receipt by Intake. The remaining cases should be decided within 20 working days.

## 1.5 Outputs from Assessment Unit

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A variety of outcomes are possible for complaints following assessment. These are illustrated below:



## 2 Assessment Policy

### 2.1 Assessment Phase Objective

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To achieve the levels of throughput required there will be **a clear focus on the key facts needed for a decision**, coupled with streamlined and flexible business processes.

The objective of the assessment process is to make a quick and clear decision on every incoming complaint to determine:

## “Should we initiate an investigation into this complaint?”

Having validated the complaint and made the requisite checks for reasonable adjustments, capacity and consent, each case should then be assessed using the Assessment Code.

### 2.2 Assessment Code Stage One: The Jurisdictional Stage

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This looks at the legal restrictions on what we can do. Complaints to the LGO must be made against bodies in jurisdiction and about subject matters the Ombudsman is not precluded from considering by law. This means we will first consider all the jurisdictional outs, both absolute and discretionary.

There are then four basic jurisdictional requirements a complaint should normally fulfil if it is to be considered for Investigation:

- **The complaint is made by a member of the public or by a suitable person or representative on their behalf** – The Ombudsman cannot consider complaints made by councillors about their role as members of a council. Complaints made ‘on behalf of’ members of the public may be made by a wide range of people or organisations but only with their consent. Where someone lacks capacity to complain in their own right, the Ombudsman must consider whether their representative is a suitable person to represent their best interests. The Guidance on Jurisdiction contains more information on this. [See [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)]
- **Local complaints procedures should be exhausted** – Most local authorities and service providers operate a two or three stage complaints procedure. They do so as a means of putting things right for people quickly and efficiently when things go wrong. The Ombudsman would normally expect someone to be able to demonstrate they had exhausted such procedures before using the LGO service. Even in cases where the complainant is in “urgent” need of services they will in most instances be better met by the service provider rather than the Ombudsman.
- **The complaint should have been made in time** – The Ombudsman would normally expect a complaint to be made to her within a year of someone becoming aware of the events complained of, unless there were exceptional reasons for the delay. The Guidance on Jurisdiction contains more information on this. [See [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)] Also note the *Casework Policy Statement – Historical allegations and the '12 month rule'* [Available to LGO staff on the LGO intranet]
- **Where an alternative means of redress exists, the Ombudsman would normally expect someone to use that remedy unless – in the particular circumstances of the case – it is unreasonable to expect them to do so** – There are a wide range of alternative means of redress available to people wishing to appeal against certain decisions they feel are unfair. For example – motorists may appeal against parking tickets, and home owners who want to extend their homes can appeal against refusal of planning permission. Where such an

alternative right of redress is available and it is reasonable in all the circumstances for the complainant to use it, we would normally expect them to do so. Our Guidance on Jurisdiction contains further examples. [See [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)]

If a complaint does not pass Stage One, the Jurisdiction Stage of assessment, it will be closed at this point and the Stage Two discretionary tests *will not* be considered.

### 2.3 Assessment Code Stage Two: The Discretionary Stage

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This deals with the choices that we make about the complaints we will investigate. [See [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance) for the Guidance of Jurisdiction: Ombudsman's discretion.] The discretionary stage is based on four inter-related tests:

- **The Injustice Test** – This assesses the level of personal injustice the service user claims to have been caused as a direct result of the actions or inactions of the service provider.

The Injustice test is *the most important factor* in our assessment decision.

We will not normally investigate a complaint unless there is good reason to believe that the service user has suffered a *significant personal injustice* as a direct result of the actions or inactions of the service provider.

This means that we **will** normally only investigate a complaint where:

- The service user has suffered serious loss, harm, or distress as a direct result of faults or failures by the service provider, or
- There are continuous and ongoing instances of a lower level injustice that remain unresolved over a long period of time.

We **will not** normally investigate a complaint where:

- The alleged loss or injustice is not a serious or significant matter.
- Where the complainant is using their enquiry as a vehicle to raise a wider political or community campaign. In these cases their concerns may be better addressed to their local councillor rather than the Ombudsman.
- Where the complainant is not the person primarily affected and is complaining about a secondary impact on them, rather than acting on behalf of the person directly affected.
- Where the complainant has suffered significant personal injustice, distress and loss, but those events cannot be shown to be directly attributable to the actions or omissions of the service provider.

- **The Fault Test** – This assesses the scale and nature of the fault, the service failure, or the maladministration that is alleged to have occurred and whether it is directly linked to the injustice claimed.

Fault, service failure, and maladministration are broad concepts and cover a wide range of action or inaction by a public body or a care provider. [See [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance) for the Guidance of Jurisdiction: Service failure.]

We will be **more likely to investigate** a complaint where:

- The type and scale of the fault amounts to a particularly serious or substantial failure to meet normally expected standards of public service.
- There is ongoing systemic failure in a service provider's policies or procedures where the LGO's intervention may result in a wider public benefit.
- The service provider is directly responsible for the action that has caused the alleged maladministration.

We **will be less likely to investigate** a complaint where:

- There is not enough evidence of administrative fault or service failure.
- There is no practical prospect of the LGO being able to investigate the allegations. (For example, where the complaint depends on the uncorroborated word of one person against another.)
- The complaint is simply an expression of discontent about an unpopular or contentious decision which has been made without fault.
- The fault being complained about is more appropriately addressed by another body. For example, an allegation of repeated failures in care standards in a residential care home could be referred to the Care Quality Commission.
- The link between the claimed injustice and the actions or omissions of the body complained about is weak or unclear.
- The service provider only has a secondary role in the relationship between two external parties.
- Most of the complaint is not appropriate for investigation, and only smaller, marginal issues remain. So, for example, we will not usually investigate a failure by a council to adhere to its complaints procedure if the complaint itself is outside jurisdiction.

- **The Remedy Test** – This assesses how likely it is the LGO will be able to achieve a meaningful outcome to the complaint.

**We will only normally investigate a complaint where a worthwhile remedy is achievable.** We will be less likely to investigate a complaint where:

- In our view the service provider's response to the complaint already represents a reasonable and proportionate outcome.
- We are unlikely to achieve a significantly different outcome or remedy.
- There is no achievable or realistic remedy, or no prospect that we will achieve the remedy that the complainant seeks.
- The claimed loss is disproportionate to the reasonable expectations of what the service provider could be held accountable for. (For example, consequential losses from a missed journey as a result of a temporary bus stop closure).
- The claimed loss is large and would be more appropriately addressed through action in the civil courts. (For example, large commercial or business losses arising from an alleged failure by a public body or claims for punitive damages arising from an allegation of negligence).

- **The Public Interest Test** – This assesses the level of wider public interest arising from the individual case.

We are more likely to investigate a complaint where:

- The complaint relates to an issue of significant public interest or to an issue of current concern to the Ombudsman.
- The complaint relates to the abuse of power by a public body against a service user. This may arise, for example, where a council behaves in an arbitrary and unreasonable manner over the sale of land or the exercise of a covenant. In these situations the Ombudsman has an important role in addressing the unequal balance of power between the service user and the state, and in highlighting the higher standards expected of public bodies when exercising their administrative or commercial powers.
- Where the 'vulnerability' or particular circumstances of the complainant indicate the Ombudsman's intervention would be merited.

## 2.4 Exercising Discretion

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Once the Assessor has exercised discretion to commence an Investigation, this cannot be reversed except in very limited circumstances as set out in the Investigation Manual. [Find this manual at [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance).]

## **3 Business Processes**

### **3.1 Inputs from the Intake Team**

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Intake will forward cases to the Assessment teams. All new cases are sent to one Assessment Team unallocated list. For further details about the Intake Team's handling of viable enquires see the Intake Manual (viable enquiries) [Find this manual at [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)].

### **3.2 Embedded Assessor rota**

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The relationship between Assessment and Intake will be supported by an 'Embedded Assessor' rota, which will ensure that one member of the Assessment unit is available each day to answer queries and provide guidance to the Intake team.

### **3.3 Allocations and Validation**

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ATLs are responsible for ensuring complaints forwarded from Intake are allocated in a timely and consistent manner which plays to the strengths of the Assessment teams, and facilitates the meeting of the 20 working day target.

Assessment team members use the AT 'Unallocated Screen' in ECHO to allocate themselves cases. They may delegate this task to a TC if they so wish.

When allocating work staff should prioritise any cases forwarded from Intake which are five working days old, or older. Where no unallocated cases are five working days old, staff may choose to allocate themselves complaints made about either their priority area local authorities or their specialist subject areas.

The Assessment team member taking a case will allocate it to themselves and attempt to complete the assessment phase within the 20 day target from the date received.

## Allocation – ECHO instruction:

- A delegated TC runs a daily report on unallocated cases and distributes to all five teams.
- Assessment team members select cases according to the agreed allocation criteria within each team. This recognises that different Assessment team members have different subject knowledge expertise.
- Unallocated lists can be viewed on **Office Overview**, go to **AT Unallocated Cases**
- When the case is opened on the **allocation screen**, your name should already be completed with the default of today's date. You need to **add** your Team.
- Click **Save**.
- This sets first AT allocation date for the case.
- Any change of Investigator (in Assessment team) must be done on the Properties screen (under Case Actions).

## Where a representative is acting on behalf of the person affected (Consents)

- If there is a representative, information on consents should be recorded in the Notes and Analysis document.
- Where there are any concerns about the extent to which the PA has consented or the suitability of the representative, the consent form should be sent to the REP for completion.

## 3.4 Enquiries

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Enquiries made at Assessment differ from those made at Investigation.

- Although there is no compulsory initial phone call it is expected that Assessors will try to contact complainants as part of the assessment process, unless the complaint already contains sufficient information to enable a sound decision to be made. Care should be taken not to duplicate a phone call made by Intake.
- The Assessment team will do most of their business on the phone and by email in order to achieve the pace required to gather the right information from the BinJ and the complainant, and to manage expectations properly.
- In order to make sound, confident decisions this early in the process, and based on limited documentary evidence, it will be essential in most cases for Assessors to engage directly with the complainant to test their understanding of the complaint and form a balanced view. This is an important factor to ensure and demonstrate fairness while preventing early assessment decisions from being unduly influenced by the BinJ's explanation.
- Language used in Assessment enquiries will be carefully phrased to manage complainant expectations and not give the impression we are conducting an

Investigation. (For example: “I am calling to discuss whether your complaint is something we are able to look at”.)

- Where a complaint is submitted that does not contain enough information for an Assessment decision, the team will make quick enquiries of the complainant and/or BinJ by phone or email to establish the facts or to request relevant documents. A final response from the BinJ will almost always be needed to confirm any information given regarding prematurity.
- Deadlines for enquiries should be as short as reasonably possible – ideally by direct exchange of information in real time, or within a fixed period measured in a few days.
- We will not be expecting either side to generate new information at this point in the process – simply to provide and confirm what they already have – it is therefore realistic to expect rapid responses to Assessment enquiries and far shorter timescales than we would expect at Investigation.
- Where the information is not provided by the BinJ, we will try to obtain it by all possible means. As a last resort we will make a judgement based only on the facts provided by the person affected which may result in the complaint being passed for Investigation, where it later transpires it was not merited.
- Where the information is not provided by the complainant within the specified timescale the complaint will normally be closed as awaiting information.
- Enquiries should be tightly focussed on establishing the key facts necessary to make an Assessment decision, and should not begin a general information gathering exercise. Exceptions to this may be where we are asking for the documentation in respect of a local appeal procedure such as school admission, or blue badge appeals.

### 3.5 Initial Telephone Calls

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#### Phone call – ECHO Instruction

- Record your initial and all subsequent phone calls (or reasons for not making an initial call) in the Notes and Analysis document. You can make an additional record in the **Phone Call Screen** but this is not compulsory except to record confidential information given in a phone call. This phone call record then needs to be put into the Do Not Disclose folder.

Initial contact by telephone is not a mandatory requirement of the assessment process. However, it is expected that Assessors will try to contact complainants as part of the Assessment process unless the complaint already contains sufficient information to enable a sound decision to be made.

Initial telephone calls can be a helpful way of introducing ourselves and talking people through the Assessment process, as well as giving them an opportunity to ask any questions or reframe their complaint having been informed of some of the constraints of our enabling legislation. Care should be taken not to give the impression of cross examining people on complex issues, such as maladministration or injustice. While

some complainants may be receptive to discussing an Assessor's initial view of a case, this is usually better communicated in a draft decision, where time allows.

A number of amendments may be needed to the ECHO record following a telephone call (see below).

### 3.6 Next steps

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#### Body in Jurisdiction needs changing

- Go to ***B in J***, then ***B in J*** on the drop down menu
- Click ***Delete***
- Type the name of the BinJ you want in the ***Organisation*** box and click return.
- Select the one you want.
- If your BinJ is not on the list, leave it blank and contact Intake Team Leaders to get it added using the New Authority Form.

#### Adding the Location in part 3A, part 3, and education admission cases

The ECHO database of ASC providers from CQC is split between RCP Providers (i.e. head office, parent, or owner) and RCP Location (ie individual care home or agency locations).

- In part 3A cases, the BinJ in ECHO should be the RCP Provider
- Use the Location screen (found in the BinJ drop-down menu) to record the RCP Location in ECHO for part 3A cases.
- The Location screen is also to be used to record an RCP Location in Part 3 ASC cases where the BinJ is a council which has commissioned care from an external provider in the CQC database.
- The Location screen is also to be used to record the name of the school where the BinJ is a council.

#### Sub Category needs adding or amending

- Click on ***Category*** then ***Sub category***
- To change, click on ***Delete***, then select new sub category
- To add, click ***New***, put in the ranking and select the sub category you want
- If you want to change the ranking, ***Delete*** what's there first

## Urgent header needs changing

- Go to **Initial Information**
- Select **Complaint**
- Click **Edit** and change the selection

## We need to record that a child is involved

- If you need to change the 'Child Involved' header (it should only be used for CYP complaints or if a child is somehow involved in a non children's services complaint), you find it in **Initial information**
- Select **Contact**
- Click **Edit** and change the selection

## 3.7 Notes and Analysis

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In every case the ECHO Notes and Analysis document is the key record. Every significant step in the receipt and assessment of the case should be recorded here. Each entry should contain the date and details of the case handler. When Assessment staff open the document, it will already contain some notes made by Intake:

Open **Notes and Analysis** document and write the assessor's name and today's date. Further information as needed.

The Notes and Analysis sheet should then be used as the primary record of work done and any decisions made on the complaint. Make sure you enter the date and time of each new telephone call and file note. Please also record a note of any discretions exercised in Assessment and the reason why. Please note that if unsure, it is acceptable to suggest one or more areas of discretion are kept under review, if forwarding a case to Investigation.

## 3.8 Assessment Workflow screens

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As well as the ATAllocation screen, you must complete and save the Assessment screen and either

- the Holding Decisions screen (for premature/insufficient information decisions)

or

- the Early Decision screen (for all other assessment decisions).

Sections 4-9 describe the ECHO processes for these screens in more detail.

The Jurisdiction screen is still there but is not mandatory. Even if you decide to use it, all jurisdictional issues and exercise of discretion must be noted in the Notes and Analysis document.

### 3.9 Requesting and Scanning Documents

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Where Intake have received correspondence they will scan all key documents. These documents will be attached to the relevant ECHO record, properly named and referenced. Intake will keep the hard copies for a period of 28 days before either returning or destroying. In some cases, where the document is very large, the hard copy papers will be forwarded to the relevant office.

At the Assessment stage, the Assessor should only ask for a limited number of specific documents – and wherever possible these documents should be requested in electronic format.

Complainants should be discouraged from sending unsolicited documents. Assessors should make it clear that we will not generally return correspondence and that no original or valuable documents should be sent to us unless specifically requested.

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.

Confidential material must be marked as DO NOT DISCLOSE in the document name and placed in the relevant virtual folder.

If you are holding hard copy documents while assessing the case, make a note of this in the Notes and Analysis document. Update the document with a note of the date when the hard copy documents have been returned or destroyed.

All staff are responsible for complying with information security and retention and disposal of casework requirements as set out in the Information Manual.[This can be found at [www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt.](http://www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt.)]

### 3.10 Draft Decisions

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'Draft Decision' (DD) statements are an extremely valuable part of the assessment process and have a clear role in:

- testing our understanding of the complaint and the evidence we have taken into account; and
- giving the complainant an opportunity to comment on a complex or difficult matter, particularly where it is anticipated they may have additional information to submit or legitimate challenges to make to our reasoning.

They are particularly valuable in Assessment as they may represent the complainant's only opportunity to challenge a decision it is foreseeable they may find hard to accept.

DDs will be particularly important in situations where Assessors are making a decision on limited evidence, and have not been able to speak to the complainant on the phone to test their understanding of the complaint.

However, there may be some decisions made at Assessment where it has not been necessary to issue a draft. These may include situations where:

- we have thoroughly tested and understood the evidence with the complainant through telephone or email enquiries
- we have explained the likely decision by phone or email and have given the complainant adequate opportunity to inform us about additional evidence or to present any legitimate challenge
- we are making a straightforward, non-discretionary jurisdictional decision that is not open to debate, or
- we are exercising a clear-cut discretionary judgement that clearly falls within the LGO's published 'Assessment Code' and we have good reason for not offering the complainant a chance to comment.

Where DDs are appropriate they will:

- be sent to the complainant only (as these are decisions not to investigate the complaint, so will not be routinely notified to the BinJ during the Assessment process),
- be sent as an attachment to an email with a response time of usually five working days, or
- by first class post if no email address is available, with a response time of usually ten working days.

While this may push the response beyond our target decision date, customer service and fairness should take priority.

We will consider any request to extend the deadline for a response to a DD, beyond our own deadline for case closure, on its merits, following these principles:

- we won't agree any request to extend the deadline beyond our closure date unless the PA presents good reasons for not being able to reply in time.
- our position should be that we will aim to decide the complaint on time, letting people know what date that will be, but saying we will read any DD response sent late, but may not take action unless it materially changes the decision. Reference to this should be included in the decision cover letter.

## ECHO instruction for creating a DD in Assessment

- Assessment do not use the DD screen.
- **DD** template is found under **Create documents, Write a letter, Assessment**.
- Create the **DD cover** letters from the same place.
- Put them into the Decision folder.
- If you fill in the box marked **Reply date**, a task will be generated to remind you when a response is due. Alternatively, set yourself a task in the usual way.

### 3.11 Statement of Reasons (SORs)

SORs will be produced for all substantive decisions not to initiate an Investigation. The format of the statement will be tailored for the Assessment stage to provide a brief and focussed explanation of our decision; the reason for it, and the relevant factors taken into account. In many cases this is likely to be a single side and will use agreed auto-texts to explain frequently used decision reasons/jurisdiction.

An Assessment statement will be clearly distinguishable from an Investigation statement - it will make it clear no Investigation has taken place.

Assessment statements will be published where appropriate and made available in a searchable format on the web. This will give a full and balanced picture of the work that we do – presenting a fair picture of the performance of BinJs and helping to create realistic expectations for service users.

All SORs will comply with the mandatory requirements and minimum standards as set out in the Statement of Reasons Manual. [Find this manual at [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)].

## 4 Early Decisions – Outside Jurisdiction

### 4.1 Outside Jurisdiction – No discretion

These should be closed using one of the following decision reasons:

Not in jurisdiction (OJ) & no discretion
s26(1) Not an admin function of authority
s26(7) all or most
s27(1) not by member of the public
sch 5.1 court proceedings
sch 5.2 police authority & crime
sch 5.3 commercial & contractual
sch 5.4 personnel *
sch 5.5 internal man schools
sch 5.5A/5.5B Social housing landlord
sch 5.6 New Town not housing
sch 5.7/5.8 UDC/HCA not planning

\* NB: For Schedule 5.4 closures:

- the SOR is produced but **not** published and **only** sent to the complainant;
- the complainant is told that the SOR is not published and we have not sent it, or details of the complaint to the Body in Jurisdiction;
- the name and address of the complainant, the copy of the complaint and the SOR are **not** disclosed to the Body in Jurisdiction which is sent a decision letter telling it we have received a complaint about a personnel matter; we are not investigating it; we do not disclose details of such complaints; and we are notifying them for statistical purposes only.

Note that it is the *closure reason* that determines the action we take, not the category or sub-category of the complaint.

There are 2 exceptions to this policy:

- If the complainant is neither a former or current council employee but is complaining about a personnel issue, such as a member of the public complaining about the appointment of a Chief Executive, then there is no danger of compromising the relationship between the complainant and the Body in Jurisdiction. In those circumstances it may be appropriate to treat this as a normal complaint – publishing the SOR and notifying the Body in Jurisdiction in the usual way. In such cases the Investigator must make it clear in Notes and Analysis why they have taken this decision.
- If the complaint is made against a care provider under Part 3A, no notification is sent to the Body in Jurisdiction of a complaint being made, as there is a high likelihood of the complainant being identified.

#### Part 3A decisions

Not in jurisdiction (OJ) & no discretion
function OJ (not a regulated social care activity)
provider OJ (not adult social care provider under s34A(3) definition).
s5A.2 Could be investigated by PHSO
s5A.3 Court proceedings
s5A.4 Personnel

## 4.2 Outside Jurisdiction – Discretion not exercised

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These should be closed using one of the following decision reasons:

Not in jurisdiction (OJ) & discretion not exercised
26B(2) not made in 12 months
26(6)(a) tribunal ICO FOIA only
26(6)(a) tribunal SENDIST
26(6)(a) tribunal HB
26(6)(a) tribunal TPT/PATAS
26(6)(a) tribunal IAP
26(6)(a) tribunal other
26(6)(b) appeal to minister
26(6)(c) court remedy
26A Not a suitable person or representative

Part 3A

Not in jurisdiction (OJ) & discretion not exercised
s34D(1)(b) complaint not made within 12 months
S34C Not a suitable person or representative
Action complained of occurred exclusively before 1/10/2010 (before start of service).

### **ECHO instruction - OJ Early Decisions**

Covers Decision, Publication and Closure

- Go to the ***Workflow, Assessment, Early Decision*** screen
- Select the ***Decision group*** and then ***Decision date*** and ***Decision detail***
- Click ***Save***
- Assign the SOR to the Publication folder (one document only)
- Ensure all ***Tasks*** are completed/deleted
- Click ***Close Case*** button
- The 20 day target will be automatically cleared when the case is closed or forwarded

## 5 Early Discretionary Decisions

All cases which pass the jurisdictional test as set out in the Assessment Code will then be assessed against the four discretionary tests:

- Injustice
- Fault
- Remedy
- Public Interest

In some cases the combined impact of all of these different tests will be considered when deciding whether we will investigate. In other situations the significance of one particular test may be enough to determine what action is appropriate.

Assessment team staff will conduct this balancing exercise by applying the Assessment Code to the unique facts of each case. Complaints are not scored, weighted or rated according to any numerical formula.

### 5.1 Cases not forwarded for Investigation including those which are withdrawn

Decisions in this category will be the most sensitive, complex and contentious part of the work of the Assessment team. They will demand most of the unit's time and will require highly skilled jurisdictional and discretionary decision-making together with excellent customer focus. While we retain ownership of our decisions, and have the right to disagree with a complainant about the extent to which we feel their case does or does not merit investigation, it is important that people feel they have been heard and understood, and that we have properly explained our decision making.

Cases of this type will almost always necessitate a telephone or email exchange to test our understanding of the complaint, as well as a draft decision. If a complainant wishes to withdraw their complaint, and our consideration of it is at a very early stage (i.e. following an initial discussion), we can close the complaint by sending a letter, rather than have to create a full decision statement. At any later stage, in most cases it would be against the public interest and unfair on the BinJ if we decided to discontinue simply because the complainant doesn't agree with the likely outcome. We should therefore issue the final decision in the normal way.

When drafting your letter having decided it is reasonable to treat a case as having been legitimately withdrawn, you will 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'.

Care should be taken to direct people to the internal review procedures where it is clear that they dispute the decision. While it is acceptable to provide points of clarification in response to post decision contact, staff should respond to clear challenges appropriately in accordance with the [Find this manual at [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)].

The decision reason for these complaints will be: ‘Not investigated’ – followed by the relevant reason.

Not investigated
not warranted by alleged mal/service failure
not warranted by alleged injustice
injustice remedied
no worthwhile outcome achievable by investigation
at request of complainant
other agency better placed
other reason not to investigate

There will be a small number of complaints that can be resolved at the Assessment stage without the need to commence an Investigation. These will generally be complaints which can be resolved through a single call to the BinJ – for example where a previous promise to provide an agreed remedy has not been fulfilled, or a rebate is clearly owed/a PCN not properly enforced etc. Where we have initiated and negotiated the remedy, we should use the “Not investigated - injustice remedied” decision, and provide full details of the negotiated settlement using the Remedies Screen in ECHO. Please note you may use any one or multiple remedy types from the drop down list.

Where the BinJ has offered a remedy at a local resolution stage, and we are not initiating an investigation as we consider the offer to be fair and proportionate, we can also use the “Not investigated – injustice remedied” decision reason. When completing the Remedies Screen in ECHO the correct entry from the drop down list would then be “Satisfactory BinJ remedy already offered”. This will enable us to differentiate between those complaints where there has been maladministration, but it has been remedied before the complainant came to us, from those where we have intervened to achieve a remedy/additional remedy.

Please note we should continue to use “No worthwhile outcome achievable by investigation” where a BinJ has not accepted fault, and we are declining an investigation on the basis we simply cannot achieve anything for the complainant.

Care should be taken when using “Not investigated – at request of complainant”. We are obliged to inform BinJs of complaints made about them, and our decisions. This should ordinarily be done by producing a SOR which we later go on to publish. However, there will be circumstances where a complainant may legitimately withdraw their complaint and it would be inappropriate to inform the BinJ of any information other than the category and the fact an investigation was not investigated at the request of a complainant. These might include cases such as personnel complaints, 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. It is legitimate in those circumstances to conclude the matter by covering letter, and not produce a SOR or pass on the complainant's details.

### **ECHO instruction – Discretionary Out Early Decisions**

Covers Decision, Publication and Closure

- Go to the ***Workflow, Assessment, Early Decision screen***
- Select the ***Decision group*** and then ***Decision date*** and ***Decision detail***
- Click ***Save***
- Assign the SOR to the Publication folder (one document only)
- Ensure all ***Tasks*** are completed/deleted
- Click ***Close Case*** complaint
- The 20 day target will be automatically cleared when the case is closed or forwarded

## **6 Early Decisions – Invalid Complaints**

Invalid complaints fall into two categories:

- those in respect of a body not in jurisdiction;
- where the complaint has previously been considered and decided.

We close complaints with an 'unsuitable' representative as OJ (s 26A)

### **Invalid Complaints – ECHO instruction**

Covers Decision and Closure, not Publication as not published.

- These are closed on the ***Early Decision screen*** in Assessment
- Complete ***Decision date***
- In the ***Decision*** drop down, click on ***Invalid/Forwarded Decision***
- Select the ***Decision detail*** from the drop down menu
- Click ***Save*** and ***Close case***
- Ensure all ***Tasks*** are completed/deleted
- No other screens need to be completed
- You need to send a ***General letter*** to the PA explain why it's closed: this can be done at any time, even after closure
- You do not need to send a letter to the body in jurisdiction

## 7 Early Decisions – Cases forwarded for Investigation

All cases forwarded for investigation will contain an explanation in the 'Notes and Analysis' screen to explain why an Investigation should be commenced, and any discretionary decisions that have been made at that stage (eg 12 month discretion). Assessment staff should be explicit about any jurisdictional discretions they have exercised ie "26(b) discretion exercised". They also have the option of not making a decision by noting "26(b) discretion to be kept under review".

This need not be a detailed analysis and is not intended to be a 'screening' note: but should be sufficient to ensure that the Investigation team receiving the complaint are clear about any formal decisions that have been made and understand why the case has been passed through for Investigation.

If, during Assessment, the BinJ has been made aware of the complaint as a result of enquiries, and we then forward to Investigation, we are required to send an email to the BinJ to let it know.

The complainant must be informed that a decision has been taken to investigate the complaint. If this is done by phone make an entry in Notes & Analysis to this effect.

### Forwarding for investigation – ECHO instruction

- Go to the **Workflow, Assessment, Early Decision screen**
- Select **Decision** of 'Invalid/Forwarded Decisions' from drop down list
- Enter **Decision date** and select 'Forwarded to investigation unit'; in **Decision detail**
- Save the screen
- Click on '**Decision to investigate**' to forward the case
- The case then is assigned to the correct Investigation team for the geographical area and appears on the **IU Unallocated Cases** screen
- If BinJ is aware of the complaint as a result of informal enquiries then email them to inform them it has been passed to investigation and inform PA
- Set a **task** for the TC in the IU using the 'contact PA' task template
- Make sure all Assessment tasks have been completed/deleted.
- If tasking a TC in the IU to make preallocation enquiries, follow these instructions.

## 8 Decisions where a complaint contains insufficient information or is premature

### 8.1 Where there is insufficient information to proceed

Where a complaint does not contain enough information for an Assessment decision, the team will be expected to make quick enquiries of the complainant and/or BinJ by phone or email to establish the facts or to request relevant documents.

Where the information is not provided by the BinJ, we will make every effort to obtain it. As a last resort, we will make a judgement based on the facts provided by the person

affected – this may result in the complaint being passed for Investigation. In circumstances where BinJs either delay or fail to respond to enquiries we may consider making an entry in the Public Value Remedy/BinJ information screen to this effect.

Where the information is not provided by the complainant within the specified timescale the complaint will be closed as ‘Insufficient information to proceed and PA advised’.

### Insufficient Information – ECHO instruction

- Go to ***Holding Decision screen in Assessment***
- Select ***Decision of ‘Insufficient information to proceed and PA advised’***
- Enter ***Decision date***
- Click ***Save*** and ***Close Case***
- Ensure all ***Tasks*** are completed/deleted
- Create a ***General*** letter in ***Create Documents*** and write a brief note of explanation to the PA
- There is no need to write to the BinJ (unless you have made enquiries)

The Assessor must ensure that they record clear information in the ‘Notes and Analysis’ screen about the status of the complaint and the information that was needed in order to make an Assessment decision. This is required so that staff in the Intake Unit can deal appropriately with the case if further information is supplied.

## 8.2 Premature Complaints

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Intake will continue to decide the majority of premature complaints where the decision can be made safely based on the information either submitted by the complainant or during an outbound phone call with them. In all other cases where brief enquires with the PA and BinJ are needed, the Assessment team will determine prematurity.

Although all Assessment staff have delegation to make ‘premature decisions’, only TCs are currently authorised to do so, unless at management discretion, authorised by the ATLS.

They will need to consider whether early referral is justified, and whether discretion to ignore prematurity should be used. Assessors can make a 26(5)(b) decision that it is not reasonable for the complainant to bring the matter to the attention of the BinJ.

The decision will be recorded on ECHO and the complainant and BinJ will be sent a letter informing them of this outcome. This letter will explain that the complaint has been forwarded to the BinJ. It will also advise the complainant firmly that we will not remain involved in their complaint; and that they should not contact LGO until they have completed all stages of the BinJ’s complaints process.

Where a complainant subsequently exhausts the BinJ’s complaints process and wishes to re-submit their complaint to LGO, they should do so by making fresh contact with Intake, not by going direct to the Assessment team. This will be made clear in the

premature decision letter. If however they do come back to the Assessment team, we may elect to reopen it as a resubmission rather than sending it via Intake.

If Intake have not seen the final response then they will task the Assessment TC to make some further checks of the BinJ before any resubmission takes place.

Where a premature complaint is re-submitted the original complaint number will be re-activated. The date for calculating the Assessment decision task will be taken from the date forwarded. See ECHO instructions on how to reopen below.

Re-submitted complaints can be subsequently picked up by any member of the Assessment team – they will not have to be dealt with by the original team member.

For a complaint which may be premature, the Assessor should task the TC to make the necessary checks, and either close as premature, using the Notes and Analysis screen to inform the letter, or pass the case back to the Assessor if it is not. If the TC is closing as premature they need to put the case in their name by changing ownership in **Case Actions, Properties**.

## Premature Complaints – ECHO instruction

- The case will be allocated within the Assessment teams
- To close a premature complaint in **Assessment**, go to **Workflow, Assessment, Holding Decisions**
- Set **Premature to Yes**
- Enter **Date of complaint to BinJ** if known and complete **Target date** if wanted (no task created)
- Enter **Decision** of '**Premature decision – advised**' or '**Premature decision – referred to BinJ**' and **Decision date**
- Click **Save**
- Send decision/referral letters to BinJ and PA
- Click **Close Case**
- Ensure all **Tasks** are completed/deleted

## Resubmitted Complaints – ECHO instruction

- Intake/Assessment add any new information to the case, noting where in **Notes and analysis document**
- Go to the **Case Actions, Reopen case screen** to set the case **Reopen date** to today and the **Reopen reason** to '**Re-submitted complaint**'.
- On the **Workflow, Assessment, Holding decision screen** enter a **Reopen date** of today and reason of '**Resubmitted**'.
- Save the **Holding decision screen**. This resets Date received for case, 20 day target and removes AT allocation details.
- Case appears on **AT unallocated screen** again for Assessment to process

Where a complaint has been resubmitted but subsequently turns out to still be premature, then TCs should remove the reopened date and reason on the holding screen, and make a note in Notes and analysis with the first premature date and the reopened date, so that anyone else picking up the file will understand what has gone on with it.

## 9 Joint Working with PHSO and HOS

### Intake

Where a complaint appears to be primarily about health and/or parliamentary bodies within the remit of PHSO, or about social landlord matters within the remit of HOS, staff in the Intake team will signpost complainants direct to PHSO or HOS.

Where a complaint appears to be a matter which may be dealt with by LGO, it will be referred on to Assessment.

## **Assessment**

Investigators in Assessment will be responsible for identifying cases which contain elements which could be handled with PHSO or HOS, and may therefore be suitable for joint working. For PHSO, these will primarily be cases where there are closely linked health and social care issues. For HOS, these will be cases where there has been or should have been some interaction between the landlord and one or more local authority services.

As an example, recent PHSO cases have included:

- delayed discharge of a man from hospital which related to disputes about suitability of residential care;
- poor care given to an elderly woman with dementia in a care home admitted for NHS acute care on several occasions;
- alleged delay in diagnosis of autism, lack of access to specialist services and possible child protection issues;
- failure to provide health/social aftercare services to a young man who had previously been detained in hospital (s117 of the Mental Health Act).

Relevant HOS cases could include:

- where in reaching a decision on a tenancy management issue, the landlord relied on information obtained from the local authority eg: adult social care, environmental health, housing benefit
- where there appears to have been poor liaison or cooperation between the landlord and the local authority.

Potential joint working cases which appear to contain both a health and local authority element will be assessed in accordance with the instruction contained in the Joint Working Manual. The remainder must be assessed in the same way as all other cases to determine whether they should be passed on for Investigation by LGO.

## **HOS Cases**

Where an HOS case is not passed on for Investigation but there may be some issues that could be referred to HOS, staff in Assessment should make this clear in the letter of closure to the complainant. If the complainant is judged to be vulnerable, then we can assist in passing information directly to HOS, providing that the complainant gives their consent for us to do so.

There will be no direct referrals from HSO to LGO. Potential complainants will be signposted to LGO. Where HOS considers that a case they are dealing with may be suitable for joint working, they will liaise initially with the nominated Assistant Ombudsman.

## 10 Dealing with contact on closed files

### 10.1 New complaints

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Decisions not to investigate complaints can generate a significant amount of post-decision communication.

Initially Assessors will accept phone calls from complainants, but the volume of work generated as a result will need to be monitored with a view to adopting a different working position if necessary.

When the correspondence is identified as a new complaint and needs to be passed back to Intake, a task should be set from the existing case for both Intake Team Leaders. The task should clearly state that a new complaint needs to be registered. The Investigator should also make a note in Notes and Analysis confirming that the piece of post they have reviewed is a new complaint and they should also identify the document(s) that should be copied across to the new record. The Intake Team Leaders will then allocate the work to an adviser.

### 10.2 Challenges and service complaints

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- PDR challenges and Service complaints will be dealt with in accordance with the instructions contained in the Post Decision Review and Service Complaint Manual. Legal challenges (PAPs and JRs) will be processed in accordance with the instructions contained in the Legal Manual. [Manuals available to LGO staff on the LGO intranet]

#### **Advice on 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, this guidance sets out what you should do.
- 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 2 hours", you should say "I will pass on your message that you would like to be called back within 2 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.

## 11 Openness and Confidentiality

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.[This can be found at [www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt.](http://www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt.)]

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.
- 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 assessment except for the purposes of that assessment or report.
- Sometimes information is provided to us in confidence, or in error, or we otherwise consider it should not be passed on. If in all the circumstances it would not be in the public interest to disclose information we should not do so. If in doubt, Investigators should discuss with HofA 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.

### **S.32(3) notices**

The BinJ may sometimes be reluctant to provide us with information. We have wide powers to require information, but BinJs (other than adult social care providers under Part 3A) may serve notice under s32(3) of the Act. This may prevent us communicating the specified document or information. Record any notices served in ECHO. The Secretary of State may overrule such a notice. (See the [LG Act 1974](#)) We should not normally invite the serving of a notice. The HofA should be notified of any notice served.

## **12 Accessibility**

The LGO is committed to ensuring its service is accessible and easy to use for all those people who wish to raise a complaint about a local public service. We will give careful consideration on each and every case to service users preferred means of communication and any reasonable adjustments we need to make to ensure ease of access. This will be done in accordance with the Help for Complainants Guidance [Available to LGO staff on the LGO intranet].

## **13 Quality Framework**

The Assessment team will operate in accordance with the Commission's Quality Framework. ATLS are responsible for monitoring the quality of their team members' work both in terms of decision making, accurate record keeping and analysis. They will do this by routinely sampling a proportion of cases handled by each of their staff, as well as providing feedback and completing the Quality Monitoring record in ECHO on decisions they review. ATLS will raise any performance concerns with the relevant individual and use appropriate management intervention and support strategies where necessary.

Quality Monitoring will inform performance management and feed into the appraisal cycle. It will be conducted in accordance with the Quality and Standards Manual [Available to LGO staff on the LGO intranet].

## 14 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.

For further details about what to do if faced with unreasonable conduct or behaviour, see instructions as set out in:

- Instructions on health and safety [available to LGO staff on intranet]
- LGO Alerts (included in Investigation Manual) [Find this manual at [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)].
- [Guidance on managing unreasonable complainant behaviour](#) [*Managing unreasonable complainant conduct* available to LGO staff on LGO intranet.]

## 15 Safeguarding and complainant welfare

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