

# **Investigation Manual**

**January 2018**

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## 1. Introduction

The Local Government and Social Care 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. In doing so we must demonstrate our independence and ensure the Nolan 7 principles of public life are at the heart of our work. The principles are:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The function of Investigation is to consider every case referred from Assessment in an objective and proportionate manner. 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. 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 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 including the Manuals can be found on the [available to Ombudsman staff].

## 2. Roles within the Investigation team

Generic job descriptions for all staff can be found here [available to Ombudsman staff on the intranet]. Broad functions within Investigation are:

### 2.1. Assistant Ombudsman

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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

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

Investigators have the Ombudsman's delegated authority to decide complaints and must take ownership and responsibility for their actions in dealing with them. They 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 accountability. We expect high levels of performance in terms of both quality and quantity.

Investigators are generally expected to be self servicing.

### 2.3. Team Co-ordinators

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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, including keeping in touch with the parties; have a role in allocations; and will send the acknowledgement to the complainant 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. They may also be asked to make ['Team Co-ordinator enquiries'](#).

## 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 making 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. New complaints received outside the Intake process

New complaints and resubmissions may arrive in the Assessment and Investigation Teams. Below is a list of possible scenarios. If the Assessment or Investigation teams receive:

- A call direct to investigator because they had previously investigated a separate complaint.

The investigator will ask caller to contact Intake directly on 0300 061 0614.

- An email direct to investigator because they had previously investigated another complaint.

The email will be responded to asking the caller to contact Intake directly on 0300 061 0614 or to visit the website.

- New correspondence is attached to an ECHO record that it is considered to be a new premature complaint or a resubmission.

A task will be set on the current record for both the ITLs with an explanation of what is required, including identification of any documentation relating to the new complaint. The ITLs will either deal with the complaint or delegate accordingly.

- A new complaint that the investigator identifies needs to be raised and immediately allocated.

The Team Coordinator will create the new case and arrange for allocation.

Team Coordinators will discuss anything out of the ordinary with the ITLs or the CSM.

## 5. Inputs from Assessment

Cases passed through to Investigation will have a brief entry on ECHO in Notes and Analysis, which explains:

- 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).

The PA is notified when complaints are passed through to Investigation. If the BinJ has been contacted, they too will be notified.

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.

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

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

## 6. Team Co-ordinator enquiries

Particularly when there are difficulties allocating cases in Investigation promptly, on single issue cases Assessment may have drafted a statement of complaint and identified enquiries to be made by the Investigation Team Co-ordinator. The Team Co-ordinator should liaise with the Assistant Ombudsman if an allocation may nevertheless be possible relatively swiftly. When Team Co-ordinator enquiries are made:

- the relevant template letter should be used;
- KIT and chasing letters should be sent as appropriate;
- the case should be allocated to an investigator on receipt of the response.

## 7. Allocations

### 7.1. General allocation principles

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- 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 [available to Ombudsman staff on the intranet].)

- 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 Director of Investigations' name, 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, but this may be reduced if allocation was not possible fairly promptly after receipt by Intake. The Assistant Ombudsman should provide guidance). The ['Fact Sheet G2: How the Ombudsman will investigate your complaint'](#) will also be sent.
- 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.
- In the Team Co-ordinator's absence, the Assistant Ombudsman must ensure alternative arrangements for allocating complaints and notifying complainants without undue delay.

## 7.2. Allocations during “business as usual”

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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.

### 7.3. Allocations in exceptional circumstances

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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 Director of Investigation 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.

## 8. Record keeping and ECHO

All staff are responsible for complaint information security (see the Information Security Policy [available to Ombudsman staff on the intranet]).

### 8.1. ECHO is the primary record

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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. We should return original material if requested or it has obvious value as a record or otherwise for the sender.
- Intake transfer all casework documentation onto ECHO on receipt in the office, including CDs and other media (checked for viruses) where possible. The originals will be kept 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 without agreement from the Assistant Ombudsman. If a miss-scan is suspected, Intake will check the ECHO record against the



archive and re-scan as necessary. Any continuing problems should be discussed with the Assistant Ombudsman.

- Where the material cannot be saved in ECHO (e.g. large plans), Intake place a note in Notes & 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.
- When dealing with multiple complaints or BinJs, care needs to be taken to ensure relevant material is copied to all 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.
- Material which is received encrypted must be saved in ECHO in unencrypted form. Passwords for encrypted material from BinJs are kept here [available to Ombudsman 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 & 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, including to note initial and other telephone calls, and external information (legislation, guidance, policies, etc) used to reach a decision. It should also be used to record developing thinking, if this is not otherwise clear.
- Notes and Analysis, together with significant correspondence such as enquiry letters, 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.

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

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The DO NOT DISCLOSE virtual folder warns staff not to pass on information stored in the folder without considering the Data Protection Act and other responsibilities (see the Policy on Access to Information [available to Ombudsman 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 [[available to Ombudsman staff on the intranet] is described in the Information Security Policy.

- 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 s32(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 Ombudsman 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.

### 8.3. 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 Notes & Analysis.
- When, exceptionally, casework material held electronically is taken off site, an encrypted laptop must be used. USB sticks must not be used. (See the Information Security Policy [available to Ombudsman staff on the intranet]).
- When, exceptionally, hard copy files are taken off site they must be kept secure and logged in and out of the office using the Document Tracking screen in ECHO. A line manager’s permission must be obtained before removing paper casework material containing **sensitive casework information** (see the Information Security Policy [available to Ombudsman staff on the intranet]). Originals must not be removed from the office.

## 9. 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 Ombudsman staff on the intranet].
- Guidance on offensive remarks, included in Managing unreasonable complainant conduct [available to Ombudsman staff on the intranet].

## 10. 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 is available [available to Ombudsman 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 Ombudsman staff on the intranet]).

## 11. 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 Reasonable adjustments: help for complainants with different needs [available to Ombudsman staff on the intranet]

Any reasonable adjustments required must be applied throughout the life of the complaint, unless a positive decision is taken that the adjustment is no longer necessary. The Investigator must take advice from their Assistant Ombudsman before any such decision. Any reasonable adjustment must also be applied consistently. A requirement for large print, for example, would apply not only to our letters but to any accompanying documentation.

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

## 12. 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 question of consent if issues of concern arise during their investigation.

## 13. Joint working with PHSO

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

## 14. Joint working with the Housing Ombudsman

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

### 14.1. Cases passed through from Assessment

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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.

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

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In some cases it may emerge that the actions of a social landlord have some relevance to our own investigation. Where it seems that a 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.

### 14.3. Cases that are referred to LGSCO from the Housing Ombudsman

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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.

## 15. Contact and the management of expectations

### 15.1. Contact with complainants

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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. If this is unsuccessful, the Investigator must respond to a

subsequent request to talk. 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. However, if a message is left or an email or letter sent and no response is received relatively promptly, the investigator may then move the case forward. Contact details should be checked if possible, to ensure we are not misdirecting our communications.

If no telephone contact is made at an early stage, the reasons for this must be recorded in Notes and Analysis.

In contact with the complainant 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 Reasonable adjustments: help for complainants with different needs [available to Ombudsman staff on the intranet]).
- check address, email and phone number if these are not clear from existing correspondence the complainant has provided (see guidance on the intranet)
- discuss whether encryption of emails is necessary/appropriate
- discuss contact arrangements (preferred means, availability, etc)
- explain your role
- 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
- invite relevant evidence from the complainant
- manage the complainant's expectations, and
- explain what will happen next.

Investigators should record the substance (and subsequent calls) 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
- the complainant has recently been abusive to our staff.

## **15.2. Referring complaints upwards**

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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.](#)) We will accept oral complaints if necessary and as a reasonable adjustment.

### 15.3. Contact from MPs

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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.

### 15.4. Keeping in touch

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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 and includes any period before substantive work commences.

## 16. Telephone calls

### 16.1. Covert recording

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Sometimes a complainant may send us recordings of telephone calls or conversations 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.

We should not terminate a call merely because the complainant is or says they are recording it.

### 16.2. Difficult telephone calls

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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. There is a facility to record telephone calls [available to Ombudsman staff on the intranet]. Staff may wish to use this to record such calls.

## 17. Openness and confidentiality

### 17.1. Guiding principles

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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 Policy on access to information [available to Ombudsman 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.

## **17.2. S32(3) notices**

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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 s32(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.

S32(3) notices may not be served electronically. If you receive an electronic s32(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 s32(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.

S32(3) notices can only be served 'in the public interest'. Any s32(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 s32(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 s32(3) Notice. (See the [LG Act 1974](#).)

## 18. Legal research

Guidance on how to access and conduct searches using Lexis Nexis is contained in the following folder [available to Ombudsman staff].

## 19. 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 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 contact details for our legal advisers, or the Director of Investigation's, Director of Assessment's, Chief Executive's or Ombudsman's direct contact details, to members of the public. The Chief Executive is not normally involved in casework.

### 19.1. Assistant Ombudsman, Director of Investigation and Ombudsman's advice

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

The Assistant Ombudsman will seek the prompt input of the Director of Investigation and/or Ombudsman direct on all cases:

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

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

The target response time is normally 10 working days, though this is reduced as part of the reports process. (See the Reports and Adverse Findings Notice Manual [available to Ombudsman staff on the intranet]) If necessary, responses should be chased direct (for Assistant Ombudsmen) or through the Executive Assistant.

### 19.2. Legal advice

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Please see the Legal Manual [available to Ombudsman 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. This requires the completion of a written request.



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 an investigation, and so on.

### 19.3. Specialist External Advice

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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) is available in ECHO.

Expert advice cannot replace the Ombudsman's judgement but can be taken into account.

## 20. Enquiries of the BinJ

- There is no such thing as an 'informal' enquiry in Investigation.
- We should always address our letters to the Chief Executive, as the appropriate representative of the Binj. The letter can be emailed to the Link Officer. (See ECHO User Guide – available on the intranet for Ombudsman staff.)
- 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.

## 21. 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.

## 22. 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, 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.

## 23. 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 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. On rare occasions, fieldwork will be the most effective way of getting information. If undertaking fieldwork, Investigators must follow the instructions on health and safety [available to Ombudsman staff on the intranet].

## 23.1. Examining files

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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 if necessary 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.

## 23.2. Interviews

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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. We must be wary of the motives, memory and reliability of those we interview. We should not normally rely on interviews to decide how a Committee or Appeal Panel (for example) may have voted if there had been no fault in a case.

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.

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

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Please see guidance on safe working [available to Ombudsman 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.

### **23.4. Round table discussions**

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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.

## **24. Witness Summons**

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.

A witness summons goes out in the Assistant Ombudsman's name. Reasonable expenses have to be offered. There is a template letter in ECHO. For service electronically, the party must have previously indicated in writing that they are willing to accept service by email. (An email which is sent later than 4.30pm is deemed to be served on the next business day.) If wanting to serve a summons by email, the LGSCO should first ascertain that the Council is willing to accept service by those means. In practice, however, a summons should normally be posted.

Any special requirements (eg photo ID for access to 2MS) should be added to the template letter.

The power to certify an offence to the High Court rests with the Ombudsman and the Chief Executive.

## **25. Evidence and its weight**

All the evidence we have considered in coming to our findings must be recorded in ECHO.

The weight to be given to any evidence is a matter of judgment. A statement that something has happened is evidence and should be treated as such. But documentary and contemporaneous evidence may be given greater weight than unsupported statements. The circumstances

surrounding the evidence, for example the independence of a witness or the reasons why something may be claimed, or its likelihood, should also be taken into account.

Some evidence may be uncontentious and can be treated as fact without any further corroboration, but a Binj should generally be expected to provide documentation to back up substantive contentious claims, and we should ask to see such evidence, unredacted. The PA may also be expected to provide documentary evidence they may reasonably hold or could reasonably provide, even if this may be sensitive, eg bank statements showing payments made.

## 26. Jurisdiction and decision making

Assessment will normally 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.

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

## 27. Withdrawn complaints

We have an explicit statutory discretion to decide whether to continue or discontinue or complete an investigation.

If a complainant wishes to withdraw their complaint, and our consideration of it is at a very early stage (ie, before we have made enquiries in Investigation), we can close the complaint by sending a letter, rather than have to create a full decision statement. We expect this to be an unusual and exceptional event. 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'.

At a late stage (eg after a draft decision) 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 a decision in the normal way.

An exceptional situation might be where, for example, the complainant alleges they are too ill to properly participate in the investigation. If we accept that may be the case, we should consider discontinuing. If a draft decision has already been sent, we should say what our draft decision had been and that we are discontinuing because the complainant says they are too ill to participate further. There may be circumstances when there are outstanding issues which merit investigation (or the complainant would like us to continue without their direct involvement), when we should consider continuing the investigation or using our 26D powers while noting their withdrawal.

## **28. Draft decisions**

All investigations (except complaints withdrawn at a very early stage) will have a draft decision sent to the BinJ and any others involved, and to the complainant.

The draft decision is a fundamental step in ensuring that we make just and fair decisions. Its purpose is to test the evidence that we are relying upon with both parties in an even-handed way and to give an opportunity for the BinJ and PA to comment on our thinking before a final decision is made. To be meaningful, the draft decision should be written when we have gathered enough evidence to come to a sound conclusion on the complaint. It should not generally be used as a vehicle to test one party's evidence with the other before the investigation has been finished. Draft decisions will therefore usually be prepared after contact and enquiries have been made with both parties. The test is that we have gathered sufficient information and all key lines of inquiry have been completed.

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. The accompanying letter to the BinJ and any others involved must provide a clear invitation to comment, and we must carefully consider any comments or further information received before coming to any final decision.

In the exceptional circumstances where 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.

A new draft decision should be issued if the final decision outcome would change substantively (eg, from maladministration to no maladministration, injustice to no injustice, complete to discontinue, no remedy to remedy).

### **28.1. Language of the draft decision**

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The language used in the draft decision should generally be authoritative, with firm findings. The summary and draft decision sections, however, should be more tentative, making clear that the views expressed are based on current information. This makes more transparent any changes to our decision in the light of responses to the draft: the draft decision is not a done deal. They will need to be updated for the final decision.

## 28.2. Timing

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The normal principle is that draft 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. The investigator should consider whether the PA has any particular needs that might be supported by extending the time limit as a reasonable adjustment.

If you produce a new draft decision, the same principles apply.

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.

## 28.3. Contents

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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](#). 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.

## 29. Remedies

The [Guidance on remedies](#) must be considered where maladministration causing injustice is identified. All remedies should be SMART (specific, measurable, achievable, relevant and time

bound). For Part 3A cases, an Adverse Findings Notice can only be issued after failing to comply with a recommendation within “the period specified”.

The Team Co-ordinator should be set a task to chase the implementation of any remedy with the BinJ by entering a date on the Public Value and Remedies screen.

### 29.1. Public interest report recommendations

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When we issue a public interest report, the BinJ has three months to consider it (or such longer period as is agreed) and to notify us of the action they have taken or propose to take (LGA 1974, s31(2)). Unless it is clear the BinJ is willing to implement our recommendations within a shorter period, it should therefore be given at least three months to act.

## 30. Delegation

- The Director of Intake and Assessment and Director of Investigation have delegated authority to make decisions on all complaints including those decided as reports.
- 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 Ombudsman staff on the intranet].

## 31. 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. The decision, together with the covering letter, must demonstrate we have considered key points made in response to the draft decision as well as matters raised previously.

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 & Analysis.

Where we decide to complete a Part 3A case:

- If we want to make recommendations, or have made recommendations which have not been accepted or implemented, we issue a statement with recommendations (recorded in the SOCR section in ECHO). This can lead to an [adverse findings notice](#) if we are then not satisfied with the care provider's actions.
- If we do not want to make recommendations, or they have been accepted and implemented to our satisfaction, we issue a statement of our conclusions.

## 32. Providing information and decisions to the CQC/Ofsted and others

We cannot generally disclose information obtained in the course of or for the purposes of an investigation, by virtue of s32(2) and s34K of the 1974 Act, unless it is for the purposes of an investigation or the complaint is being investigated jointly with PHSO (i.e. PHSO is not treated as a third party in these circumstances), and in limited other circumstances. In particular, we have information sharing agreements with the CQC and Ofsted.

We share information with the CQC where we determine there has been a potential breach of a Fundamental Standard. (LGO Alerts flow chart is Appendix 3 of the [CQC/LGO Information Sharing Agreement](#)). In these cases the Investigator should state within the decision that we have notified CQC. Within the decision screen for a Part 3A case there is an option to click CQC if they have been notified. The letter is available in ECHO.

Any upheld complaint (including maladministration but no injustice) about children services or education (with the exception of admission appeals) should be referred to Ofsted. The procedure for doing this can be found via this link [available to Ombudsman staff on the intranet].

We may be asked by the Police or other public bodies to share information, for example as part of a related investigation or an inquiry that they are conducting. You should refer to the Casework Guidance Statement on Information requests from third parties [available to Ombudsman staff on the intranet].

## 33. Public interest reports and Adverse Findings Notices

The Ombudsman would like to see more public interest 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 public interest 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 public interest 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 public interest report to allay those concerns.

All Investigators and Assistant Ombudsmen should take proactive steps to identify potential reports and report issues. See the Reports and Adverse Findings Notice Manual here [available to Ombudsman staff on the intranet].

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

See the flowchart for the reports process, with timescales on the Page resources tab of the Reports and Adverse Findings Manual [available to Ombudsman staff on the intranet].

- When potential reports are identified, the Investigator/Assistant Ombudsman should set out on the "Report Proposal" form or in Notes and Analysis the reasons for reporting and the Assistant Ombudsman should set a task for 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 if necessary 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.

## 34. 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 should be completed if a comment about the BinJ's performance is warranted. 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'.

## 35. Post Decision Reviews (PDRs) and Service Complaints (CAUs)

Post decision reviews and service complaints (PDRs and CAUs) are addressed in our leaflets [Your complaint, our decision](#) and [Customer service complaints procedure](#).

- Complaints should normally be put in writing and made within one month of the decision or the action complained of. If the investigator considers it raises new information, a manager will decide whether to accept any 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.

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

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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 judgement in the course of an investigation, or a draft decision, 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.

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

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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.
- Where we receive a service complaint which in reality is comment on a draft decision on a complaint, we should tell the complainant that their comments have been passed to the investigator to consider as part of the draft decision response.

- Service complaints in the course of an investigation will be addressed by the relevant line manager.

### 35.3. Dealing with requests to speak to a line manager

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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 there may be a request 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.

## 36. Legal challenges

### 36.1. Judicial Review

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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 Director of Investigation and may involve the Ombudsman. If the Assistant Ombudsman is absent, it should be referred to another Assistant Ombudsman or the Director of Investigation. Do not delay.

Responses will usually be sent by the Director of Investigation 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 Director of Investigation, 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.

## **36.2. Allegations of us breaching the Human Rights Act 1998**

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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.

## **37. Targets and performance**

### **37.1. Quality and Standards**

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

### **37.2. Contact**

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- 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.

### **37.3. Advice**

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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.

### **37.4. Allocations and decisions**

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- Teams will be provided with a 'basket of work' to deliver from the Business Plan. This will be broken down amongst Investigators.
- On average, productivity for teams needs to be 75 decisions per FTE investigator per year. Individual targets may vary.
- Categories of complaint will not be given additional weighting, but in setting targets Assistant Ombudsmen can recognise that some individual complaints are more complex than others.
- On average, each Investigator needs to take two new complaints each week.
- We aim to have decided in Assessment or to allocate to an investigator in Investigation 80% of all complaints within 20 working days of receipt 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.

### **37.5. Challenges and service complaints**

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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?

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An 'LGO Alert' warns about those who may represent a serious risk to the safety of our staff, or require some form of special handling, especially if this information needs to be kept after the ECHO complaint file is destroyed, and legal involvement. The alert appears in **red** at the top of the opening screen, with the whole entry shown on the case summary screen.

When we have a complaint, there is a specified and lawful purpose for recording and processing data. However, we must be careful to record only factual information which is relevant. 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.

### A.1.2 Possible Health and Safety Alerts

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We may consider a person to be potentially violent 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 could be another person involved with the complaint or a member of the complainant's immediate family. 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." In ECHO, this is called a "**Possible Health and Safety**" alert.

### A.1.3 Special Handling Alerts

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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, and warns others who may come into contact, eg Intake staff who may be alerted to seek guidance before registering a new complaint. It will also be appropriate where special instructions to staff may be necessary, e.g. the complainant should only speak to a specific member of staff or correspond in writing, or where a complainant has been abusive, and they do not modify their behaviour when asked to do so. Abusive behaviour includes making remarks which are racist or sexist, personal and offensive, shouting, swearing or making threats. An alert may also be used where someone has threatened self harm (see 'Managing unreasonable complainant conduct' [available to Ombudsman staff on the intranet]). An alert for legal involvement should only be completed if there is an active JR application, not a threat or seeking legal advice. In ECHO, this is called a "**Special Handling**" alert.

### A.1.4 Legal involvement

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Where our legal advisers have an ongoing involvement, an LGO alert ('legal involvement') will be created and linked to the specific case. It does not need to be linked to any other cases the complainant may have, unless relevant to the legal involvement. It is not necessary to create an alert where one-off legal advice or comments on a report are being provided. There is guidance in the Legal Manual [available to Ombudsman staff on the intranet].

## A.1.5 Considering possible LGO Alerts

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If another complaint by the complainant has an alert recorded an alert must be added to any new case or the original alert must be deleted.

Information which might warrant an alert should be recorded in Notes and Analysis by the person who receives it, including the date of receipt and the source. This includes new data as a result of contacts during the course of, or following, an investigation.

Any decision to record (or amend) an alert must be taken by a manager (Intake Team Leader, Assessment Team Leader, Assistant Ombudsman, Customer Services Manager, Directors or the Chief Executive) and will depend on the seriousness of the information.

The benefits of recording an LGO Alert are:

- The information 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.

The manager should normally write to the subject of the alert, explaining why it has been recorded, the information source (unless it comes from another body), 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 and others 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. We must have cogent reasons for any decision not to inform the person concerned and these must be recorded.

## A.1.6 Home visits

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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 safe working [available to Ombudsman staff on the intranet] before making such a visit.

## A.1.7 Recording information in ECHO

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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.

### A.1.8 All alerts must be linked to a case record

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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.

### A.1.9 Review and deletion

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

- 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 (including on other cases)?
- 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. The reason to maintain the alert should be recorded. Only when an alert is deleted should the 'Alert review date: Actual' field be completed.

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.

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 LGSCO 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 34(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.