

# **The Assessment Manual**

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## Version control

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| 22 October 2012  | Draft version 1.1 | Following comments from ATLS in London   |
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| April 2018       | 6.3               | Inserted section 3.4 on Recording Persons Affected and Representatives   |
| July 2018        | 6.4               | Following paragraph added to section 5.0:<br><br><i>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).</i> |
| February 2019    | 6.5               | Amended section 3.10 to change the retention period for hard copy documents from 28 days (as previously stated) to 12 weeks (in line with Information Security Policy)   |
| April 2019       | 7.0               | Early Decisions – Cases forwarded for Investigation / forwarding for investigation – ECHO instruction<br><br>Additional bullet added:<br><br>If the case has been decided and reopened (other than as premature) the decision statement should be moved from the Decision folder.”   |
| June 2019        | 7.1               | Added link to Email blocking policy  |
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|                |     |   |
|----------------|-----|---|
| August 2019    | 7.4 | Amended 6.0 (early decisions – invalid complaints) to include another category for invalid complaints – where a PA who would be able to give us consent has decided not to.   |
| August 2020    | 8.0 | Wholesale review and updating;  |
| September 2020 | 8.1 | 3.5 – phone call instruction clarified<br>Added information in section 11 about What to do when complainants tell us they intend sharing information with others<br>Amended section 6 – early decisions/invalid complaints  |
| October 2020   | 8.2 | Amended Assessment Team Leader (ATL) to Assessment Manager (AM)<br><br>Added information to 3.3 about allocating out of turn<br><br>Added information to 3.5 about making sure telephone discussions with complainants do not take place while they are driving.<br><br>Added relevant link to the Guidance on Jurisdiction in 8.2 premature complaints |

## Glossary

|              |  |
|--------------|--|
| AM           | Assessment Manager                                 |
| AT           | Assessment Team                                    |
| ATC          | Assessment Team Co-ordinator                       |
| BinJ         | Body in Jurisdiction                               |
| CAU          | Complaints about us (service complaints)           |
| DIA          | Director of Intake and Assessment                  |
| ECHO         | Our case handling system                           |
| HOS          | Housing Ombudsman Service                          |
| Inj          | injustice  |
| Investigator | Applies in either AT or IU                         |
| IU           | Investigation Unit                                 |
| LGA 1974     | The Local Government Act 1974                      |
| Mal          | Maladministration                                  |
| OJ           | Out of LGSCO jurisdiction                          |
| PHSO         | Parliamentary and Health Service Ombudsman         |
| PDR          | Post Decision Review                               |
| RAs          | Reasonable adjustments under the Equality Act 2010 |

# 1 The Assessment Unit

## 1.1 Purpose

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Assessment teams:

- Assess all incoming complaints that come into Assessment against the criteria in the [Assessment Code](#).
- Where necessary, make brief, early enquiries with the complainant or the body in jurisdiction (BinJ) – usually by phone and/or email.
- Screen out all remaining premature complaints not identified by the Intake team.
- Make prompt and consistent decisions on all complaints that:
  - are out of jurisdiction;
  - can quickly be resolved; or
  - do not merit investigation.
- Identify and pass to the Investigation Unit all substantive complaints meriting investigation.
- are responsible for keeping both the PA and BinJ informed of progress until they either decide the case or forward it to Investigation. When we tell the PA their case has gone to Investigation, we also tell the BinJ if we have contacted it about the case.

## 1.2 Key characteristics of the Assessment Unit

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- The assessment phase is a distinct process focused purely on deciding which cases merit investigation, or which we can deal with swiftly at an early stage.
- It has streamlined, flexible and simple business processes to support the rapid triage of cases.
- It works to consistent, Commission-wide criteria as set out in the Assessment Code to ensure all complainants receive the same service.
- It enables the LGSCO scheme to control resource allocation more directly by ensuring we focus on those cases with the most significant injustice and public interest, while also allowing us to respond to changes in demand.
- Subject specialism continues to have a role in Assessment. However, to maximise flexibility and consistency, it sits within multi-purpose teams rather than in separate units dealing only with specialist cases.

## 1.3 Staff Roles and Team Composition

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### **The Director of Intake and Assessment (DIA)**

The Assessment process is led by the Director of Intake and Assessment.

The DIA will work closely with the Ombudsman, the Chief Executive and Director of Investigation to set strategic policy on casework, which will in turn inform procedures for filtering and assessing large volumes of incoming complaints. They will ensure operational risks are identified and managed using the Commission's Risk Management Framework.

The DIA will be accountable for the effective operation, quality, and performance of the Assessment process. They will line manage the Assessment Managers (AMs) and support them in their roles as leaders, including where needed in more complex people and performance management issues. They will also carry out any post decision reviews on AM' decisions.

The DIA will also liaise with the Intake process (through the Customer Services Manager) and the Investigation process (through the Director of Investigation) to ensure continuity.

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

### **Assessment Managers (AMs)**

The AM will drive the day-to-day operations of each Assessment team.

This is a first-line managerial post, and the AM will provide expertise, coaching and leadership to the team. They will respond to service complaints made about their own team according to our published procedure. They will also complete post-decision reviews from their partnered team on a rota basis. They will supervise team members—conducting quality monitoring, performance reviews, and dealing with day-to-day performance and managerial issues. Where more serious disciplinary or under-performance issues arise, they will be supported by the DIA.

The AM will also be an active operational member of the team directly delivering some of the case assessment activity. The AM's caseload will be self-selected from incoming work.

### **Assessment Investigators**

Each Assessment team will usually have six to nine Investigators, whose role, with the AM, will be to conduct a rapid triage of all incoming cases, make quick factual enquiries where suitable, and then close, resolve or refer cases.

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



## **Assessment Team Coordinator (ATC)**

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

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

Their work will be commissioned by the AM and Investigators through tasks set in ECHO, and on referral from Intake to a pool of ATC tasks. To ensure this happens sensibly and fairly, the AM will be responsible for overseeing that the ATC's time is used most effectively to support the decision-making process and they are not over-burdened.

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

### **1.4 Key Volumes and Metrics**

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

The assessment procedure is flexible enough to adjust to changes in demand and workflow over time. There are no prescribed limits on the number of cases the teams will either decide early or forward to Investigation. Each case will be assessed on its own merits against the Code, and the LGSCO will assign resources accordingly.

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

## 1.5 Outputs from Assessment Unit

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A range of outcomes is possible for complaints following assessment. These are:

|                                    |  |
|------------------------------------|--|
| Premature:                         | local resolution procedures yet to be exhausted and potential prospect of the complaint being resolved by the BinJ |
| Early Decision not to investigate: | Invalid, not enough information, OJ, insufficient mal or inj, no worthwhile outcome                                |
| Forward to investigation:          | case merits further consideration and / or formal investigation  |
| Complaint resolved in Assessment:  | BinJ offers/takes action to remedy inj   |

## 2 Assessment Policy

### 2.1 Aims

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The aim of Assessment is to decide:

***“Should we start an investigation into this complaint?”***

Assessment Investigators will make any checks for reasonable adjustments, capacity and consent which have not yet been done. They will then assess cases using the Assessment Code.

There are two stages to considering cases in Assessment – the Jurisdictional Stage and the Discretionary Stage. Each stage contains various tests / questions.

Not all cases will need to be considered at each stage, and not all tests / questions will apply to every complaint we assess.

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

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This looks at the legal restrictions on what we can do. We can only consider complaints against bodies in jurisdiction (BinJ) and about subjects the Ombudsman is not prohibited by law from considering. [Guidance on Jurisdiction \[see www.lgo.org.uk/information-centre/staff-guidance\]](http://www.lgo.org.uk/information-centre/staff-guidance) contains more information about the authorities and actions we can investigate. If we are not prevented by law from considering a complaint, there are four basic jurisdictional requirements a complaint should normally fulfil if it is to be considered for investigation:

- **The complaint is made by a member of the public or by a suitable person or representative on their behalf** – The Ombudsman cannot consider complaints made by councillors about their roles as council members. Complaints made ‘on behalf of’ members of the public may be made by a wide range of people or organisations, but only with their consent. Where someone lacks capacity to complain in their own right, the Ombudsman must consider whether their representative is a suitable person to represent their best interests. See the [Guidance on Jurisdiction \[see www.lgo.org.uk/information-centre/staff-guidance\]](http://www.lgo.org.uk/information-centre/staff-guidance) and our [Guidance note on consent](#) [available to Ombudsman staff on the intranet] for more information
- **Local complaints procedures should be exhausted** – Most BinJ’s operate a two or three stage complaints procedure. The Ombudsman normally expects complainants to be able to demonstrate they have exhausted such procedures before using our service. Even in cases where the complaint is “urgent” local resolution is preferable.
- **The complaint should have been made in time** – The law expects complaints to be made to the Ombudsman within a year of someone becoming aware of the events complained of unless there are exceptional reasons for the delay. The

[Guidance on Jurisdiction](http://www.lgo.org.uk/information-centre/staff-guidance) [see [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)] contains more information on this.

- **Where there is an alternative means of redress, the Ombudsman normally expects people to use it, unless it is unreasonable to do so.** There is a wide range of alternative means of redress available to people wishing to appeal against certain decisions they feel are unfair. For example – motorists may appeal against parking tickets, and homeowners can appeal against the refusal of planning permission. [Our Guidance on Jurisdiction](http://www.lgo.org.uk/information-centre/staff-guidance) [see [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)] contains further examples.

If a complaint does not pass the Jurisdictional Stage we will close the case and will not consider the Stage Two discretionary tests.

### **2.3 Assessment Process Stage Two: The Discretionary Stage**

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The discretionary stage is based on four inter-related tests.

- In some cases, the combined impact of the tests will be considered when deciding whether we will investigate. In other situations, the significance of one particular test may be enough to make a decision.
- **The Injustice Test** – This assesses the level of personal injustice the complainant claims to have been caused as a direct result of the actions or inactions of the BinJ.

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

We will not normally investigate a complaint unless there is evidence that the complainant has suffered a significant personal injustice as a direct result of the actions or inactions of the BinJ.

This means we will normally only investigate a complaint where:

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

We will not normally investigate a complaint where:

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

**The Fault Test** – This assesses the scale and nature of the alleged fault and whether it is directly linked to the claimed injustice’.

Fault, service failure, and maladministration are broad concepts and cover a wide range of action or inaction by a BinJ. See the Guidance of Jurisdiction: Service failure [see [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)]. We will be more likely to investigate a complaint where:

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

We will be less likely to investigate a complaint where:

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

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

**We will only normally investigate a complaint where we can achieve a worthwhile remedy.** We will be less likely to investigate a complaint where:

- in our view the BinJ's response to the complaint already represents a reasonable and proportionate outcome;
- we are unlikely to achieve a significantly different outcome or remedy;
- there is no achievable or realistic remedy, or no prospect we will achieve the remedy the complainant seeks;
- the claimed loss is disproportionate to the effects the Ombudsman could reasonably hold the BinJ responsible for (for example, consequential losses from a missed journey as a result of a temporary bus stop closure);
- the claimed loss is large and would be more appropriately addressed through action in the civil courts (for example, large commercial or business losses arising from an alleged failure by a public body or claims for punitive damages arising from an allegation of negligence).

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

We are more likely to investigate a complaint where:

- the complaint relates to an issue of significant public interest or to an issue of current concern to the Ombudsman;
- the complaint relates to the abuse of power by a public body against a service user (for example, where a council behaves in an arbitrary or unjustifiable manner over the sale of land or the exercise of a covenant. In these situations, the Ombudsman has an important role in addressing the unequal balance of power between the service user and the state, and in highlighting the higher standards expected of public bodies when exercising their administrative or commercial powers);
- a complainant's vulnerability or specific circumstances warrant the Ombudsman's involvement.

## 2.4 Exercising Discretion

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Once the Investigator has exercised discretion to start an investigation, this decision cannot be reversed except in very limited circumstances as set out in the [Investigation Manual](#) [see [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)]

## 3 Business Processes

### 3.1 Inputs from the Intake Team

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Intake will forward cases to Assessment. All new cases are sent to the Assessment Team Unallocated list. For further details about the Intake Team's handling of viable enquires see the Intake Manual.

### 3.2 Embedded Investigator rota

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

### 3.3 Allocations and Validation

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AMs are responsible for ensuring complaints forwarded from Intake are allocated in a timely and consistent manner, while playing to the strengths of the Assessment teams, and helping to meet the 20 working day target.

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

When allocating work, staff should prioritise any cases forwarded from Intake which are five working days old, or older. Where no unallocated cases are five working days old, staff may choose to allocate themselves complaints made about their specialist subject areas. Otherwise we should allocate the oldest cases before those received later.

By exception, we may decide to allocate cases out of turn where there is an element of urgency as a result of:

- the circumstances of the person affected or
- where someone has already experienced significant delay which may compromise our ability to
  - investigate the complaint or
  - provide a suitable remedy.

Some examples might include:

- A child who is out of school with no offer of alternative provision.
- Street homelessness where a local authority has refused to assist or accept an application for support.
- An imminent threat of eviction from a Care Home.
- Credible and serious ongoing concerns of threat to health or safety (note, it is open to staff to make safeguarding referrals to relevant authorities at any time).
- The PA having a terminal illness



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

#### **Allocation – ECHO instruction:**

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

### **3.4 Recording Persons Affected and Representatives**

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

- If there is a representative, information on consents should be recorded in the Notes and Analysis document.
- Where the REP has not provided clear evidence that the PA has consented, the consent form should be sent to the REP for completion.
- When we have resolved any consent issues, update the ECHO Contact Details screen to indicate 'Yes' or 'No'.

Where Intake receives clear information about the PA's and REP's claimed injustice, they will record the PA's and REP's contact details according to the scenarios below. Assessment Teams should check to ensure the PA and REP have been registered correctly, particularly if they receive further information that was not available to Intake.

#### **Where the complainant is acting solely as the representative of the PA (and makes no claim of personal injustice for themselves):**

- The complainant could be a professional REP (e.g. advocate, solicitor, LPA) or someone less formal (e.g. a family member, friend or neighbour)
- We need to ensure the PA has given their consent for the REP to complain on their behalf if they have capacity to give consent

- If the PA lacks capacity to consent to a complaint being made on their behalf, we need to decide whether the REP is suitable
- Consent needs to be kept under review throughout the life of the complaint – the PA may withdraw consent for the REP to act on their behalf or evidence may come to light to suggest the REP may no longer be suitable
- There should be a separate record for the REP and PA in ECHO contact details screen
- We need to ensure we have correctly recorded who we should correspond with

**The complainant is acting solely to represent unspecified others and makes no claim of personal injustice for themselves (e.g. whistleblowing):**

- The complainant should be recorded as the PA. Please refer to our guidance note on Whistleblowing for more information.

**The complainants are jointly affected by the subject of the complaint:**

- Both individuals should be recorded as Joint PA in the ECHO contact details screen
- For example, two people are jointly complaining about loss of amenity from a neighbouring extension – both are complaining about the same issue and are claiming the same/similar injustice

**Where an individual complains on behalf of another person and themselves:**

- If their injustice relates to the complaint made on behalf of the PA, we should register them as Joint PA and REP in ECHO contact details
- We need to ensure we have correctly recorded who we should correspond with
- In such cases, we should use one case reference number. This is better customer service for the PA and BinJ who are likely to have dealt with all related issues as one complaint
- We need to ensure the PA has given their consent for a complaint to be made on their behalf if they are able to give it.
- If the PA cannot consent to a complaint being made on their behalf, we need to decide whether the REP is suitable
- Consent and suitability of REP need to be kept under review throughout the life of the complaint – the PA may withdraw consent for the REP to act on their behalf or evidence may come to light to suggest the REP may no longer be suitable

If the complainant claims an injustice in relation to an entirely different matter, we should register them as PA on that issue under a separate reference number and register them as REP for the complaint made on behalf of the other PA.

### Example 1:

A daughter complains on behalf of her mother about the standard of her mother's home care. She is also unhappy about the support she receives as carer for her mother. We should register the daughter as REP for her mother and satisfy consent and REP's suitability. We should also register the daughter as joint PA because her concerns about her support as carer are closely connected to the complaint about her mother's care package.

### Example 2:

A son complains on behalf of his father about missed bin collections. He also complains about the council's failure to deal with anti-social behaviour from his (the son's) neighbour.

The two matters are entirely separate. The son should be registered as REP for the complaint about missed bin collections. We will need to satisfy consent and REP's suitability. We should register the complaint about anti-social behaviour under a separate reference number and register the son as PA.

## 3.5 Initial Telephone Calls

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### Phone call – ECHO Instruction

- Record your initial and all subsequent phone calls (or reasons for not making an initial call) in the Notes and Analysis document. To record confidential information given in a phone call, mark it in red as instructed in the Notes and Analysis guidance note [available to Ombudsman staff on the intranet], or create a separate note (**Create document > Write a note**) and put it into the Do Not Disclose folder.

Initial contact by telephone is not a mandatory requirement of the assessment process. However, it is expected that Investigators will try to contact complainants unless the complaint already contains sufficient information to enable a sound decision to be made. If the Investigator decides it is not necessary, they should record the reason in Notes and Analysis (use auto-text 'tel' +F3).

Initial telephone calls can be a helpful way of introducing ourselves and talking people through the Assessment process, as well as giving them an opportunity to ask questions, or reframe their complaint having been informed of any jurisdictional issues. While some complainants may be receptive to discussing our initial view of a case, this is usually better communicated in a draft decision.

Following a recommendation from our external reviewer and based on the Highway Code which makes clear it is not acceptable, we should ensure telephone discussions with complainants do not take place while they are driving vehicles. Even using hands-free equipment is likely to distract attention and it is far safer not to use any type of telephone when driving or riding. So, we should not be party to telephone discussions in those conditions, regardless of our personal view on the matter. Most telephone conversations we are likely to have (both casework and non-casework) require concentration by both parties. We should therefore end calls where we believe the person is driving or riding, and politely ask the caller to call back when convenient and safe to do so. Where a caller persists, we should feel confident to bring the call to an end as this is our decision to make.

### 3.6 Enquiries

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Enquiries made at Assessment differ from those made at Investigation. When there is sufficient information to proceed to a draft decision, Investigators should consider whether a telephone conversation would be helpful.

- The Assessment team will do most of its business on the phone and by email, to gather the right information from the BinJ and the PA promptly, and to manage expectations properly.
- To make sound, confident decisions at this early stage in the process, it will be necessary in most cases for Investigators to engage directly with the complainant to test their understanding of the complaint and form a balanced view.
- Language used in Assessment enquiries will be carefully phrased to manage complainant expectations and not give the impression we are conducting an Investigation. (For example: “I am calling to discuss whether your complaint is something we can look at”.)
- Where a complaint does not contain enough information for an Assessment decision, the team will make quick enquiries of the PA and/or BinJ by phone or email to establish the facts or request relevant documents. A final complaint response from the BinJ will almost always be needed to confirm whether the complaint is premature.
- Response times for enquiries should be as short as reasonably possible. We will not be expecting either side to generate new information at this point in the process. Rather, we will ask for information they already have. It is therefore realistic to expect rapid responses to Assessment enquiries and far shorter timescales than we would expect at Investigation; three working days is suitable, unless the BinJ can explain why it needs longer
- Where the information is not provided by the BinJ, we will try to obtain it by other means. As a last resort we will make a judgement based only on the facts provided by the PA. This may result in the complaint being passed for Investigation, where it later transpires this would not have been merited.

- Where the information is not provided by the complainant within the specified timescale, the complaint will normally be closed with a holding decision.
- Enquiries should be tightly focused on establishing the key facts necessary to make an Assessment decision and should be a general information-gathering exercise. Exceptions to this may be where we are asking for documents about a local appeal procedure, such as a school admission or a blue badge appeal.

### 3.7 Next steps

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#### Body in Jurisdiction needs changing

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

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

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

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

## Sub Category needs adding or amending

- Click on **Category** then **Sub category**
- To change, click on **Delete**, then select new sub category
- To add, click **New**, put in the ranking and select the sub category you want
- If you want to change the ranking, **Delete** what's there first
- The sub-category should also be checked because it is sometimes recorded incorrectly. If you need to change the sub-category, please Edit and use the dropdown menu.
- Take special care with ASC subcategories where a contracted provider is involved – 'Provider obo council...' rather than 'Council...'

## Urgent flag header needs changing

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

## We need to record when a child is involved for

A complaint from someone who is:

- younger than 18 years
- aged between 18 and 25 years where there appears to be a vulnerability (such as disability)

will be marked as a complaint from a child or young person. This is often identified by Intake and there will be a flag at the top of Echo saying 'child involved'.

## If you need to add or remove 'child involved'

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

We should use the 'child involved' flag where there is a Rep who is not a parent/guardian, such as a professional advocate.

### 3.8 Notes and Analysis

---

In every case Notes and Analysis is the key record. Every significant step taken by Intake and Assessment should be recorded here. The time, date and key points of all telephone calls should be recorded.. Investigators should also record all action taken and their key thoughts about the complaint – this must include the jurisdictional issues and discretion exercised, summary of complaint and view of the BinJ as known at that stage. Investigators must record their name against each entry.

If an Investigator is passing a complaint to Investigation, but is unsure about some jurisdictional issues, they should record what the uncertainty is and record that that decision reason is still open to the investigator in Investigation. For example, in Assessment it may not be known if it would be reasonable for a complainant to use an alternative remedy. Or, the Assessment Investigator, may record that the Investigation investigator can decide how far back in time to go in their investigation of a complaint.

There is a separate [guidance note](#) [available to Ombudsman staff on the intranet] for using Notes and Analysis which contains more detailed guidance.

### 3.9 Assessment Workflow screens

---

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

- the Holding Decisions screen (for premature/insufficient information decisions)
- or
- the Early Decision screen (for all other assessment decisions, including decisions to pass a complaint to the investigation team).

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

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

### 3.10 Requesting and Scanning Documents

---

When Intake receive correspondence, they scan all key documents into the relevant Echo case file and name them. Intake will keep the hard copies for 12 weeks before returning or destroying them. Intake may forward large bundles of documents to the relevant office.

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

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

Sometimes a complainant may send us recordings of conversations or telephone calls with council officers, care home workers etc who were not aware they were 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, we should return it to the complainant and remove it from the ECHO record. In the interests of fairness, any recordings we are considering should be disclosed to the BinJ 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 BinJ.

Put confidential material in the DO NOT DISCLOSE virtual folder and name as Do Not Disclose.

If you hold hard copy documents while assessing a case, make a note in Notes and Analysis. Update Notes & Analysis with the date when the hard copy documents have been returned or destroyed.

If you have information that cannot be uploaded into Echo, for example, a video, store it in the casework section on the K drive. You must name the K drive folder with the case reference number, the initials of the Investigator and why the information is being stored outside Echo. Make a note of when to remove the data from the K drive. Information should not be stored on the K drive for longer than necessary.

Hard copy documents must be stored in a locked cupboard when not being used. All staff are responsible for complying with information security and retention and disposal of casework requirements as set out in the [Information Security Policy](http://www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt) [see <http://www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt>] and [Retention and disposal of casework records policy](http://www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt) [see <http://www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt>]

### 3.11 Draft Decisions

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Draft Decisions (DD) have a clear role in:

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

They are particularly valuable in Assessment as they may represent the complainant's only opportunity to challenge a decision they may find hard to accept. DDs will be particularly important in situations where Assessors are making a decision on limited evidence and have not been able to speak to the complainant on the phone to test their understanding of the complaint.



The language used in the DD should be authoritative, with firm findings. But, the summary and draft decision sections should be more tentative as indicated by the template, making it clear that the DD is based on current information and may change.

There may be some decisions made at Assessment where it is not necessary to issue a DD for example, where:

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

Where DDs are appropriate, they will:

- be sent to the complainant only. We do not send the Assessment DD to the BinJ,
- be sent as an attachment to an email with a response time of usually five working days, or
- by first class post if there is no email address, with a response time of ten working days. Due to the security arrangements in the Coventry office allow at least three extra working days for any DD reply to be scanned onto Echo.
- Remember to apply any Reasonable Adjustments that the complainant has requested.

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

We will consider any request to extend the time for the response to a DD deadline following these principles:

- The complainant must provide good reasons for needing longer to reply
- When the complainant says they need much longer to reply then consider making a holding decision.
- When a complainant makes a late reply, we will consider it and respond by letter. We will re-open the complaint only if the late reply shows there are grounds to pass the complaint to investigation.

### **ECHO instruction for creating a DD in Assessment**

- In Assessment do not use the DD screen. Instead, record the issue of the dd as an Assessment Activity – Other – and note in the comments field. This will generate the task for the reply. We should also note in N&A when we issue the dd.
- **DD** template is found under **Create documents, Write a letter, Assessment.**

- Create the **DD cover** letters from the same place.
- Put them into the Evidence/Investigation folder.
- If you fill in the box marked **Reply date**, a task will be generated to remind you when a response is due. Alternatively, set yourself a task in the usual way.

### 3.12 Statement of Reasons (SORs)

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We write a SOR for all substantive decisions not to initiate an investigation, usually having already written a DD and considered any reply.

An Assessment decision statement will be clearly distinguishable from an Investigation statement - it will make it clear that we have not started an investigation.

We will publish Assessment decisions on our website. This will give a full and balanced picture of the work we do – presenting a fair picture of the performance of BinJ's and helping to create realistic expectations for other complainants.

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

## 4 Early Decisions – Outside Jurisdiction

### 4.1 Outside Jurisdiction with no discretion

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

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

Part 3A decisions:

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

#### \* For Schedule 5.4 and 5A.4 closures:

- Write the final decision and send it **only** to the complainant;
- Mark the file as ‘not for publication’;
- Tell the complainant we will not publish the final decision, and that we have not sent our decision, details of the complaint, or the complainant’s personal details to the BinJ;
- Send a decision letter to the BinJ telling it 1) we received a complaint about a personnel matter; 2) we are not investigating it; 3) we do not disclose details of these complaints; and 4) we are telling them so their complaint numbers tally with ours. Remember to remove the PA details from the email to the BinJ covering the decision letter.

(Note that it is the *closure reason* that determines our approach, not the complaint’s category or sub-category.)

There are two exceptions to this policy:

- If the complainant is not a former or current council employee but complains about a personnel issue (e.g. a member of the public complaining about the appointment of a Chief Executive), there is no personnel relationship between the complainant and the BinJ that we might compromise. In such circumstances, treat it as a normal complaint. Publish the final decision and tell the BinJ about the complaint and complainant in the usual way. Explain in Notes and Analysis why you have taken this approach.
- If the complaint is about a care provider under Part 3A, do not tell the BinJ about the complaint at all, as it is likely the complainant would be identified.

#### 4.2 Outside Jurisdiction – Discretion not exercised

---

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

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

Part 3A decisions:

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

## ECHO instruction - OJ Early Decisions

Covers Decision, Publication and Closure

- Go to the ***Workflow, Assessment, Early Decision*** screen
- Select the ***Decision group*** and then ***Decision date*** and ***Decision detail***
- Click **Save**
- File the final decision in the **Statement for Publication** folder (one document only)
- Complete or delete all case **Tasks**
- Click **Close Case** button
- The 20-day target will be automatically cleared when the case is closed or forwarded

## 5 Early Discretionary Decisions

Cases passing the jurisdictional tests in the Assessment Code must then be assessed using the four discretionary tests:

- Injustice
- Fault
- Remedy
- Public interest

In some cases, the combined effect of two or more of these tests will give us reason to investigate. In other situations, the weight of one test may be enough to justify an investigation.

We make findings on the balance of probability ('more likely than not'). Neither the complainant nor the BinJ has to prove something 'beyond reasonable doubt'. We do not have to be 'certain' of something to make a finding on it. We should not use tests of 'wholly', 'utterly' or 'Wednesbury' unreasonableness. We should not describe our findings on the BinJ's actions using reasonableness, but by using 'fault' where we identify it.

Assessment team staff apply the Assessment Code to the facts of each case. Complaints are not scored, weighted or rated using a numerical formula.

### 5.1 Cases not forwarded for Investigation

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Decisions in this category are the most sensitive, complex and contentious part of the Assessment teams' work. They demand most of the unit's time. They require highly skilled jurisdictional and discretionary decision-making and excellent customer focus.

Cases of this type will almost always require a telephone or email exchange to test our understanding of the complaint, as well as a draft decision.

We take responsibility for our decisions, and can disagree with a complainant who considers their case merits investigation. But it is important we hear and understand complainants and properly explain our decisions.

#### **Withdrawn complaints**

If a complainant asks to withdraw their complaint, and the assessment is at a very early stage (e.g. after an initial discussion), we can close the complaint by letter. We do not need to create a full decision statement.

At any later stage, in most cases it would be unfair to the BinJ and not in the public interest if we discontinued a case simply because the complainant did not agree with the likely outcome. Once a case has moved from the very early stage, we should issue a final decision in the normal way, even if the complainant has asked to withdraw it.

If you decide a complainant has legitimately withdrawn their case, you need to consider whether to tell the BinJ anything more than the complaint category and that the complainant withdrew their complaint. You should consider this in cases where:

- a complainant asks to withdraw when they find out the law prevents us from investigating;
- once we explain to a complainant that we must tell the BinJ their name and address, and our decision, they decide to withdraw.

In such cases, the letter should not contain any information about the complainant. In all cases where we issue a letter to close a withdrawn complaint, mark the case as 'not for publication'.

### **Whistle-blower complaints**

If the complaint is from a whistle-blower, it is unlikely we will be the best body to act on their issues with their employer. We should refer them to their own organisation's whistleblowing policy or, if they cannot go to their employer, to any other appropriate person or body. Please refer to [our guidance note](#) [available to Ombudsman staff on the intranet] for more information. The decision not to investigate is discretionary, unless it is clear Schedule 5.4 applies.

### **Cases resolvable with minimal BinJ contact**

There will be a small number of complaints we can resolve in Assessment without the need to start an investigation. These will generally be complaints needing a single call to the BinJ. Some examples are:

- a BinJ has not provided a previously agreed remedy;
- the BinJ clearly owes a rebate to the complainant;
- the BinJ has not followed the proper process in enforcing a PCN.

Where our involvement has secured a remedy, we should use the "Not investigated - injustice remedied during LGO consideration" decision and put full details in the ECHO 'Remedies' screen. Choose the remedy types which apply from the drop-down list.

Where a BinJ has offered a remedy during its own complaint process, and we are not investigating because we consider the offer is fair and proportionate, we use the "Not investigated - injustice remedied during BinJ complaint processes" decision reason. In the ECHO Remedies Screen, use "Satisfactory BinJ remedy already offered" from the drop-down list. This allows us to separate complaints where there has been fault which the BinJ remedied before the complaint came to us from complaints where our later involvement achieved the remedy.

We should continue to use the “No worthwhile outcome achievable by investigation” decision reason if a BinJ has not accepted fault, and we are not investigating because we cannot achieve anything for the complainant.

The decision reason for complaints not forwarded for investigation is: ‘Not investigated’, followed by the relevant reason:

|  |
|--|
| Not investigated                                   |
| not warranted by alleged mal/service failure       |
| not warranted by alleged injustice                 |
| injustice remedied during BinJ complaint processes |
| injustice remedied during LGO consideration        |
| no worthwhile outcome achievable by investigation  |
| at request of complainant                          |
| other agency better placed                         |
| other reason not to investigate                    |

### ECHO instruction – Discretionary Out Early Decisions

Covers Decision, Publication and Closure

- Go to the ***Workflow, Assessment, Early Decision screen***
- Select the ***Decision group*** and then ***Decision date*** and ***Decision detail***
- Click ***Save***
- File the final decision in the **Statement for Publication** folder (one document only)
- File the final decision cover letters in the **Decision** folder
- Complete or delete all case **Tasks**
- Click ***Close Case*** complaint
- The 20-day target will be automatically cleared when the case is closed or forwarded

### Post-Decision Reviews (PDRs)

Direct people to the internal review procedure where it is clear they dispute the decision. You may provide clarification in reply to post-decision contact, but you should respond to clear challenges in line with the [PDR and Service Complaints Manual](http://www.lgo.org.uk/information-centre/staff-guidance) [see [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)]



## 6 Early Decisions – Invalid Complaints

Invalid complaints fall into three categories those:

- where a body is not in jurisdiction;
- where the complaint has previously been considered and decided; and
- where a PA has not given written consent and the representative is not considered suitable.

For the first two we write to the PA/Rep to explain why we are closing the case. We neither notify the BinJ nor issue a SoR.

If we do not have written consent, we close complaints with an early decision:

*'Invalid: Consent - section 26A(1)(b)'* by letter.

If a PA cannot give us written consent and we decide a representative is 'unsuitable', we close as 'OJ discretion not exercised'; 's26A Not a suitable person or representative' and issue an SoR.

If a PA has given us consent for the Rep to act, but other factors in the case lead us to decide the Rep is not suitable, we close using our general discretion under s24A(6) 'Other reason not to investigate' and issue an SoR.

### Invalid Complaints – ECHO instruction

We do not publish decisions on invalid complaints. Below explains what to do if a complaint is invalid.

- These are closed on the **Early Decision screen** in Assessment
- Complete **Decision date**
- In the **Decision** drop down, click on **Invalid/Forwarded Decision** or Not in jurisdiction (OJ) & discretion not exercised
- Select the **Decision detail** from the dropdown menu
- Click **Save** and **Close case**
- Complete or delete all ECHO tasks
- No other screens need to be completed
- You do not need to send a letter to the BinJ

## 7 Early Decisions – Cases forwarded for Investigation

All cases forwarded for investigation will be in jurisdiction. The 'Notes and Analysis' screen will explain why we should start an Investigation, and any discretionary decisions made at that stage (e.g. 12 month discretion). Assessment staff should be explicit about any jurisdictional discretions they have exercised i.e. "26(b) discretion exercised". They also have the option of not making a decision, but noting "26(b) discretion to be kept under review".

This need not be a detailed analysis and is not intended to be a 'screening' note: but it should be sufficient to make sure the Investigation team receiving the complaint is:

- clear about any formal decisions the investigator has made; and
- can understand why the case has been passed for investigation.
- We should not forward cases to IU which we could decide in AT with an extra document, answer to a single question, or where the discretionary tests are not met. Once a case is with IU, there is significantly more work involved in deciding it properly, and we should avoid thinking marginal cases represent a 'quick win' for IU. We should decide cases in the appropriate LGSCO phase even if that means missing our published time target on occasion.
- If we make enquiries in Assessment, this will have notified the BinJ of the complaint. So we will need to tell the BinJ either by post or email if we forward the case onto Investigation.

We must tell the complainant if we decide to investigate their complaint and record it in Notes and Analysis.

***Trial period from August 2020*** - *If we have been able to decide to forward the case to IU without any extra information, we should ask the BinJ to send key documents such as:*

- *full copies of complaints and responses*
- *Copies of Officer/Committee report for planning application (or link to the relevant website)*
- *Planning or Environmental Health Enforcement policy and record of any enforcement visits*
- *For Children Act statutory complaints procedure the Stage 2 IO and IP reports and Stage 3 panel meeting documents*
- *Any Education Health and Care plans*
- *Adult Social Care Assessments (inc Financial where relevant), Care and support plans, and case notes*
- *Homelessness and/or housing applications, decisions and review requests and decisions*

*Investigators can include the request in their email telling the BinJ about forwarding the case, or ask an ATC to do so. We should NOT chase responses, however, and simply put any documents received onto the case file.*

### **Forwarding for investigation – ECHO instruction**

- Go to the **Workflow, Assessment, Early Decision screen**
- Select **Decision** of 'Invalid/Forwarded Decisions' from drop down list
- Enter **Decision date** and select 'Forwarded to investigation unit' in **Decision detail**
- Save the screen
- Click on '**Decision to investigate**' to forward the case
- The case is then assigned to the correct Investigation team for the geographical area and appears on the **IU Unallocated Cases** screen
- If BinJ is aware of the complaint as a result of enquiries, email them to tell them it has been passed to investigation, and also tell the PA
- If we have decided to forward the case without extra information but still need some key documents, either include the request in the BinJ email or task an ATC to do so [*three month trial from August 2020*]
- Set a **task** for the TC in the IU using the 'contact PA' task template
- Delete or complete all other Assessment tasks
- If the case has been decided and reopened (other than as premature) move the decision statement from the decision folder

## 8 Holding Decisions

### 8.1 Where there is insufficient information to proceed

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

Where the information is not provided by the BinJ, we will make every effort to obtain it. As a last resort, we will make a judgement based on the facts provided by the person affected – this may result in the complaint being passed for Investigation. Where BinJs either delay or fail to respond to enquiries, we may consider recording this in the Public Value Remedy/BinJ information screen.

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

#### Insufficient Information – ECHO instruction

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

The Assessor must record clear information in the 'Notes and Analysis' screen about the status of the complaint and the information they needed to make an Assessment decision. This record is required so Intake staff can deal appropriately with the case if further information is received.

### 8.2 Premature Complaints

#### Role of the Assessment Team Co-ordinator (ATC)

Intake will continue to decide the majority of premature complaints where the decision can be made safely using the information submitted by the complainant, during an outbound phone call with them, or from a prompt BinJ reply to an enquiry.

In cases where the BinJ does not reply to Intake quickly, or the BinJ complaints procedure appears not to be working, the ATC will determine prematurity.

All Assessment staff have delegation to make 'premature decisions', but only ATCs are currently authorised to do so. Other Assessment staff may only make premature

decisions if they have been authorised by their AM. Assessment Investigators will task ATCs if they decide something is premature.

An Investigator or AM will need to consider whether early referral to LGSCO is justified, and whether to exercise discretion and ignore prematurity, for example where the matters in the complaint are OJ or where the BinJ has conducted an appeal or review process. Investigators can make a 26(5)(b) decision that it is not reasonable for the complainant to bring the matter to the attention of the BinJ. Please see the Guidance on Jurisdiction for more on when this might be appropriate.

[see [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)]

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

The ATC will record the decision on ECHO and send the complainant and BinJ letters informing them of this outcome. This letter to the complainant will:

- explain we have forwarded their complaint to the BinJ;
- advise the complainant firmly that we will not remain involved in their complaint; and
- explain they should not contact LGSCO until they have completed all stages of the BinJ's complaints process.

### **Resubmission of premature complaints**

Where a complainant subsequently exhausts the BinJ's complaints process and wishes to re-submit their complaint to LGSCO, they may do so by contacting either Intake or the ATC. If Intake have not seen the final response, they will task the ATC to make further checks with the BinJ before resubmitting the complaint.

Where a premature complaint is re-submitted, the original complaint number will be re-activated if it was closed within the last twelve months and has not been File Managed. This will be clear from the FM date in the banner at the top of the case.

If a complainant comes back to us more than 12 months after we have issued a premature or holding decision on a case, **we should not reactivate the original case**. File management will either have taken place already on the original case or will be imminent. We must therefore set up a new case. Any resubmission documents placed on the original case should be moved to the new case. If notes and analysis has been recreated on the old case, we should manually delete it.

**In all resubmitted cases we should ensure we send the complainant the data privacy notice and relevant letter.**

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

### Premature Complaints – ECHO instruction

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

### Resubmitted Complaints – ECHO instruction

- Intake/Assessment add any new information to the case, noting where in **Notes and analysis document providing case is less than twelve months old and has not been file managed**. If resubmission is more than twelve months from the original prem or holding decision, open a new case.
- If using the original case number, go to the **Case Actions, Reopen case screen** to set the case **Reopen date** to today and the **Reopen reason** to '**Re-submitted complaint**'.
- On the **Workflow, Assessment, Holding decision screen** enter a **Reopen date** of today and reason of '**Resubmitted**'.
- Save the **Holding decision screen**. This resets Date received for case, 20 day target and removes AT allocation details.
- Case appears on **AT unallocated screen** again, for Assessment to process

Where a complaint has been resubmitted but subsequently turns out to still be premature, then TCs should:

- remove the reopened date and reason on the holding screen; and
- make a note in Notes and Analysis with the first premature date and the reopened date.

Anyone else picking up the file will then understand what has happened.

## 9 Joint Working with PHSO and HOS

### Intake

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

Where a complaint appears to be a matter for the LGSCO, it will be referred to Assessment.

### Assessment

If not already identified by Intake, Investigators are responsible for identifying cases containing issues for PHSO or HOS and which may therefore be suitable for joint working. For PHSO, these will mostly be cases where there are closely linked health and social care issues. For HOS, these will be cases where there has been or should have been some interaction between the landlord and one or more local authority services.

As examples, recent PHSO cases have included:

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

Relevant HOS cases could include:

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

Potential joint working cases which appear to contain both a health and local authority element will be assessed in accordance with the instructions in the [Joint Working Manual](#) [available to Ombudsman staff on the intranet]. The remainder must be assessed in the same way as all other cases, to determine whether they should be passed on for Investigation by LGSCO.

### HOS Cases

Where an HOS case is not passed for Investigation but there may be some issues for the HOS, Assessment staff should make this clear in the letter of closure to the complainant. If the complainant is judged to be vulnerable we can pass the information directly to HOS, providing the complainant gives us their consent. Separate guidance

about [consent](#) [available to Ombudsman staff on the intranet] is on the intranet and the consent form is on ECHO.

There are no direct referrals from HOS to LGSCO. HOS will signpost potential complainants to us. Where HOS considers a case they are dealing with may be suitable for joint working, they will consult the nominated Assistant Ombudsman.



## 10 Dealing with contact on closed files

### 10.1 New complaints

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

Initially, Investigators should accept phone calls from complainants, but the resulting volume of work will need to be monitored with a view to adopting a different approach if necessary.

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

### 10.2 Challenges and service complaints

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PDR challenges and Service complaints will be dealt with in accordance with the [Post Decision Review and Service Complaint Manual](#) [see [www.lgo.org.uk/information-centre/staff-guidance](http://www.lgo.org.uk/information-centre/staff-guidance)]. Legal challenges (PAPs and JRs) will be processed in accordance with the [Legal Manual](#) [available to Ombudsman staff on the intranet].

#### **Advice on dealing with requests to speak to a line manager**

- Investigators have the Ombudsman's delegated authority to decide complaints and must take ownership and responsibility for their actions in dealing with them. They may decide to seek advice from their manager, but otherwise the manager is likely to be unfamiliar with the case and will not be the person deciding it, or any challenge to the decision. But managers are responsible for dealing with 'complaints about us' where the staff member has been unable to resolve the matter.
- During a telephone call, a complainant or someone from a BinJ may ask to speak to your manager. This could be because the caller is dissatisfied with your behaviour and wishes to complain about it, or 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, try to be as patient, polite and helpful as possible. If you cannot satisfy the caller, and they insist on speaking with your manager, this guidance sets out what you should do.
- If the manager is in the office and clearly available, you may put the caller on hold and ask the manager whether he/she wishes to take the call. The manager will either take the call or ask you to take/give a message.

- If the manager is out of the office, not clearly available, or declines to take the call, you may explain this to the caller. You should advise the caller you will pass on the request to the manager and give the manager's name. You should also give their 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 them to a particular course of action. So, rather than saying "I will get the manager to call you back within 2 hours", you should say "I will pass on your message that you would like to be called back within 2 hours".
- You should make a record of the call in ECHO. You should then task the manager, using that day's date as the target date, and starting the description as 'CALL BACK REQUEST.....'
- Once the task is set, it is for the manager to act promptly, and certainly within 24 hours, to decide whether to return the call. If the manager decides not to return the call he/she should either send the caller an email to explain the response, or write a letter if there is no email address. They should 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.

### **10.3 Documents added to cases after file management**

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If we receive contact on a case more than twelve months after the decision, file management will already have taken place. It will not be triggered again, regardless of any 'Other contact' record we create.

We must therefore ensure we either:

- delete any extra documents added to or created on the case immediately after dealing with the contact; or
- set a task for four months from the date of the contact to delete any documents then.

## 11 Openness and Confidentiality

Our organisational values include treating people with openness and honesty, and respecting their privacy. These values reflect our legal obligations and society's expectations. Generally, complainants have rights to see information we hold about them. But there are also limits on what we can and should provide to them and 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](http://www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt) [see <http://www.lgo.org.uk/information-centre/internal-policies/health-safety-info-mgt>]

Our starting points are:

- We should share with both parties to the complaint the information we rely on to make our decision. If requested, we will normally provide the complete complaint file to the complainant.
- We should be specific about what information we want. We should actively discourage all parties from providing unnecessary information.
- We should only keep relevant information. We should not keep information we will not use in decision making.
- Personal data about third parties must not be passed on to complainants. We should ask the BinJ to identify any such information, but it is the Investigator's responsibility to check that we comply with the law.
- Our normal practice is to provide a copy of the complaint to the BinJ. We tell complainants 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 during or for the purposes of an assessment except for the purposes of that assessment or report.
- Sometimes information is provided to us in confidence, or in error, or we otherwise consider it should not be passed on. If in all the circumstances it would not be in the public interest to disclose information we should not do so. If in doubt, Investigators should discuss with an AM before disclosing.
- All ECHO documents we would not pass on (including legal advice) should include DO NOT DISCLOSE in their title and be kept in the folder of the same name.
- Information should not be withheld merely because its disclosure would be embarrassing to us or any other party.
- If you are unable to pass on information, you should explain why.

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

The BinJ may sometimes be reluctant to provide us with information. We have wide powers to require information, but BinJs (other than adult social care providers under Part 3A) may serve notice under s32(3) of the Act that we should not share information with anyone else including the complainant, but only if they consider it “would be contrary to the public interest”. This may prevent us passing on the specified document or information. We must record any notices served in ECHO. However, the Secretary of State may overrule such a notice. (See the LGA 1974) We should not normally invite the serving of a notice. The DIA should be notified of any notice served.

### **What to do when complainants tell us they intend sharing information with others**

We tell complainants the law says we must investigate in private and they should not discuss or share information we send about the case, including our draft decision with the press or through social media. Despite this, sometimes complainants tell us they intend to share information we have provided as part of our enquiries, or we may become aware they have already done so, for example by sharing our draft decision on social media.

Section 32 (2) of the LGA 1974 says information should only be disclosed for the purposes of our report or statement of reasons. The courts have previously confirmed this bar applies to recipients of information from the Ombudsman, as well as the Ombudsman himself. *R (Kay) v Health Service Commissioner [2008] EWHC 2063 (Admin)* considered this in relation to the PHSO. [Paragraphs 59-60 of that decision](#) confirm the complainant has to maintain confidentiality.

The judge in that case found “information disclosed to the ombudsman in the course of or the purpose of the litigation [investigation?] shall not be disclosed except for the purposes of the investigation and any report to be made in respect of it. In my judgment that applies to those receiving the information from the Commission [PHSO] itself... It would be an absurd position if the ombudsman was restricted as to the situations in which she could disclose the material, only for the material to be used by others for reasons outside the ambit of the ombudsman’s investigation and report.”

Where complainants say they intend to share information despite this advice, or we find they have done so, we should remind them of this restriction and ask them to comply, advising them of potential risks, (including when relevant of them being at risk from libel action by a third party). We can decide to require specific undertakings before we share further information or documents. Advice should be sought in such circumstances from an Assessment Team Leader/ Assistant Ombudsman as appropriate.

## 12 Accessibility

The LGSCO is committed to ensuring its service is accessible and easy to use for anyone who wants to complain about a local public service. We will carefully consider all service users' requested means of communication and make reasonable adjustments (RAs) to ensure ease of access. This will be done in accordance with the [Reasonable Adjustments guidance](#) [available to Ombudsman staff on the intranet].

All caseworkers are responsible for checking for RAs, ensuring we confirm them in writing using email or letter templates, adapted as necessary, and consistently carrying them out. There is space in the N&A document to record and update RAs. There is also an autotext (type RAs and press F3) which will insert the standard text for confirming RAs into any other letter if it is not already there.

When creating or requesting new cases for an existing complainant, we also need to ensure information about RAs is transferred, reviewed, and updated as necessary.

## 13 Quality Framework

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

Quality Monitoring will inform performance management and the appraisal cycle. It will be conducted in accordance with the [Quality and Standards Manual](#) [available to Ombudsman staff on the intranet].

## 14 The welfare of staff and inappropriate and disruptive behaviour

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

For further details about what to do if you experience unreasonable conduct or behaviour, see the instructions in:

- [Guidance on managing challenging complainant behaviour](#) (including LGO Alerts) [available to Ombudsman staff on the intranet]
- [Email blocking policy](#) [available to Ombudsman staff on the intranet]

## 15 Safeguarding and complainant welfare

Safeguarding concerns may arise at any stage of the Assessment process and may not have been evident to staff in Intake. All staff must be aware of safeguarding protocols and make referrals to the local authority safeguarding lead in all appropriate cases.

[Guidance on safeguarding](#) is available on the intranet for Ombudsman staff.

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