



Local Government Act 1974

1974 CHAPTER 7

[^{F1}PART 3A

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED ADULT SOCIAL CARE

[^{F1}Statements etc. about investigations

Textual Amendments

F1 Pt. 3A inserted (1.10.2010) by [Health Act 2009 \(c. 21\), s. 40\(1\), Sch. 5 para. 2](#); S.I. 2010/1863, art. 2

34H Statements about investigations

- (1) A Local Commissioner must prepare a written statement in accordance with subsections (2) to (4) if the Local Commissioner—
 - (a) decides not to investigate a matter under this Part,
 - (b) decides to discontinue such an investigation, or
 - (c) completes such an investigation.
- (2) In a case falling within subsection (1)(a) or (b), the statement must set out the Local Commissioner's reasons for the decision.
- (3) In a case falling within subsection (1)(c), the statement must—
 - (a) set out the Local Commissioner's conclusions on the investigation, and
 - (b) include any recommendations the Local Commissioner considers it appropriate to make.
- (4) The recommendations the Local Commissioner may make are recommendations with respect to action which, in the Local Commissioner's opinion, the adult social care provider concerned should take—
 - (a) to remedy any injustice sustained by the person affected in consequence of the action of the provider which was the subject of the investigation, and

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- (b) to prevent injustice being caused in the future in consequence of similar action of the provider.
- (5) The Local Commissioner must send a copy of a statement prepared under this section to each of the persons concerned.
- (6) The persons concerned are—
- (a) the complainant (if any);
 - (b) the adult social care provider concerned;
 - (c) any person who is alleged in the complaint (if any) to have taken or authorised the action which was the subject of the investigation;
 - (d) any person who otherwise appears to the Local Commissioner to have taken or authorised such action.
- (7) The Local Commissioner may send a copy of a statement prepared under this section to—
- (a) the Care Quality Commission, and
 - (b) any local authority which appears to the Commissioner to have an interest in the subject matter of the statement.
- (8) The statement must identify the adult social care provider concerned unless—
- (a) the provider is an individual, or a particular individual would, in the opinion of the Local Commissioner, be likely to be identified as a result of identifying the provider, and
 - (b) the Local Commissioner considers that it is not appropriate for the individual to be identified.
- (9) The statement must not—
- (a) mention the name of any person other than the provider, or
 - (b) contain any particulars which, in the opinion of the Local Commissioner, are likely to identify any other person and can be omitted without impairing the effectiveness of the statement,
- unless, after taking into account the public interest as well as the interests of that person, the complainant (if any) and of other persons, the Local Commissioner considers it necessary to mention the name of that person or to include in the statement any such particulars.

34I Adverse findings notices

- (1) This section applies where an adult social care provider receives a statement prepared under section 34H which contains recommendations.
- (2) The adult social care provider concerned must—
- (a) consider the statement, and
 - (b) notify the Local Commissioner within the required period of the action which the provider has taken or proposes to take.
- (3) The Local Commissioner may by notice require the provider to arrange for an adverse findings notice to be published in accordance with subsections (4) and (5) if the Local Commissioner—

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- (a) does not receive the notification mentioned in subsection (2)(b) within the required period or is satisfied before the end of that period that the adult social care provider concerned has decided to take no action,
 - (b) is not satisfied with the action which the provider concerned has taken or proposes to take, or
 - (c) does not within a period of one month beginning with the end of the required period, or such longer period as the Local Commissioner may agree in writing, receive confirmation that the provider has taken action, as proposed, to the satisfaction of the Local Commissioner.
- (4) An adverse findings notice is a notice, in such form as the adult social care provider concerned and the Local Commissioner may agree, consisting of—
- (a) details of any action recommended in the statement which the provider has not taken;
 - (b) such supporting material as the Local Commissioner may require;
 - (c) if the provider so requires, an explanation of the provider's reasons for having taken no action on, or not the action recommended in, the statement.
- (5) The adverse findings notice must be published by the adult social care provider in such manner as the Local Commissioner may direct.
- (6) If the adult social care provider—
- (a) fails to arrange for the publication of the adverse findings notice in accordance with subsections (4) and (5), or
 - (b) is unable, within the period of one month beginning with the date on which the provider received the notice under subsection (3), or such longer period as the Local Commissioner may agree in writing, to agree with the Local Commissioner the form of the adverse findings notice to be published,
- the Local Commissioner must arrange for an adverse findings notice to be published in such manner as the Local Commissioner considers appropriate.
- (7) The adult social care provider concerned must reimburse the Commission on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under subsection (6).
- (8) In this section the “required period” means—
- (a) the period of one month beginning with the date on which the adult social care provider concerned received the statement, or
 - (b) such longer period as the Local Commissioner may agree in writing.

34J Publication of statements etc. by Local Commissioner

- (1) A Local Commissioner may—
- (a) publish all or part of a statement under section 34H,
 - (b) arrange for further publication of all or part of an adverse findings notice published under section 34I(3) or (6), or
 - (c) publish a summary of a matter which is the subject of a statement or adverse findings notice under section 34H or 34I,
- if, after taking into account the public interest as well as the interests of the complainant (if any) and of other persons, the Local Commissioner considers it appropriate to do so.
- (2) A Local Commissioner may—

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- (a) supply a copy of all or part of a statement, adverse findings notice or summary mentioned in subsection (1) to any person who requests it, and
 - (b) charge a reasonable fee for doing so.
- (3) Subsections (8) and (9) of section 34H apply to any part of a summary of a matter that is published, or a copy of which is supplied, under this section as they apply to a statement prepared under that section.

34K Disclosure of information

- (1) Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of or for the purposes of an investigation under this Part must not be disclosed except—
- (a) for the purposes of the investigation and of any statement, adverse findings notice or summary under section 34H, 34I or 34J,
 - (b) for the purposes of an investigation under Part 3 and of any report, statement or summary under section 30, 31 or 31B in relation to such an investigation,
 - (c) for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or the Health Service Commissioner (or both),
 - (d) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1989 [^{F2}or sections 1 to 4 or 18 of the National Security Act 2023] alleged to have been committed in respect of information obtained, by virtue of this Part, by a Local Commissioner or by a person discharging or assisting in the discharge of a function of a Local Commissioner,
 - (e) for the purposes of any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Part,
 - (f) for the purposes of an inquiry with a view to the taking of proceedings of a kind mentioned in paragraph (d) or (e), or
 - (g) for the purposes of proceedings under section 34G(10).
- (2) A Local Commissioner or a person discharging or assisting in the discharge of a function of a Local Commissioner may not be called upon to give evidence in any proceedings (other than proceedings within paragraphs (d), (e) or (g) of subsection (1)) of matters coming to his or her knowledge in the course of an investigation under this Part.
- (3) A Local Commissioner must not prepare a statement under section 34H which includes government information unless the Local Commissioner has—
- (a) obtained the written consent of an officer of the government department concerned, or
 - (b) given the department not less than one month's notice in writing of the intention to include the information in a statement.
- (4) In subsection (3) “government information” means information disclosed under section 34G(1) which—
- (a) is derived from a communication with a government department, and
 - (b) has not been made public.
- (5) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 is to be treated for the purposes of subsection (1) as obtained for the purposes of an investigation under this Part and, in relation to such

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information, the reference in paragraph (a) of that subsection to the investigation has effect as a reference to any investigation.

Textual Amendments

- F2** Words in s. 34K(1)(d) inserted (20.12.2023) by [The National Security Act 2023 \(Consequential Amendments of Primary Legislation\) Regulations 2023 \(S.I. 2023/1386\)](#), reg. 1(2), **Sch. para. 4(3)**

34L Law of defamation

- (1) For the purposes of the law of defamation the following are absolutely privileged—
- (a) the publication of any matter in communications between an adult social care provider and a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, for the purposes of this Part;
 - (b) the publication of any matter by a Local Commissioner or by any person discharging or assisting in the discharge of a function of a Local Commissioner, in communicating for the purposes of this Part with a person mentioned in subsection (2);
 - (c) the publication of any matter in preparing, making and sending a statement in accordance with section 34H;
 - (d) the publication of any matter by inclusion in an adverse findings notice published in accordance with section 34I(3), (4) and (5) or (6);
 - (e) the publication of any matter by inclusion in a statement, adverse findings notice or summary published or supplied under section 34J;
 - (f) the publication of any matter contained in a report by a Local Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 34S.
- (2) The persons mentioned in subsection (1)(b) are—
- (a) a complainant or the person affected in relation to a matter;
 - (b) the Parliamentary Commissioner, the Health Service Commissioner or any officer of either such Commissioner;
 - (c) the Care Quality Commission or any officer of that Commission;
 - (d) a local authority.]

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 33(1)(bzb) inserted by [2022 c. 30 Sch. 10 para. 2\(2\)\(a\)](#)
- s. 33(3B) inserted by [2022 c. 30 Sch. 10 para. 2\(4\)](#)
- s. 33ZA(1)(d) and word inserted by [2022 c. 30 Sch. 10 para. 3\(2\)\(b\)](#)
- s. 33ZA(3)(d) and word inserted by [2022 c. 30 Sch. 10 para. 3\(4\)\(b\)](#)
- s. 33ZB(4)(e)(f) inserted by [2022 c. 30 Sch. 10 para. 4\(b\)](#)