

## Summary: Intervention & Options

Department /Agency: Department of Health	Title: Impact Assessment of independent consideration of complaints about non-LA adult social care	
Stage: Implementation	Version: 1	Date: 4 December 2008
Related Publications:		

Available to view or download at:

<http://www.>

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What is the problem under consideration? Why is government intervention necessary?

People who arrange or fund their own social care services do not have access to independent consideration of their complaints if not satisfied locally. These are usually people in particularly vulnerable circumstances for whom the complaints procedure is difficult. Government intervention is necessary to remedy this and also to facilitate improved complaints handling generally. There are unique features in the way social care is funded and arranged which mean that self-funding is integral to the overall delivery of care to many users.

What are the policy objectives and the intended effects?

The intention is to allow people who arrange and fund their own adult social care (or those acting on their behalf) to have their complaints about the services that they receive considered independently if these are not resolved locally. Achieving this will create a level playing field in terms of independent consideration for both privately and publicly funded service users, and people receiving Direct Payments to purchase care.

What policy options have been considered? Please justify any preferred option.

- 1) No action;
  - 2) Implement independent consideration of complaints by service users purchasing their own care, by extending the remit of the Local Government Ombudsman (LGO) to deal with these;
  - 3) Equip the new regulator, CQC to undertake investigations of self-funder complaints;
  - 4) Create a new independent body and equip it to undertake investigations of self-funder complaints.
- Option 2) is the most cost effective solution and builds on the existing role of the LGO.

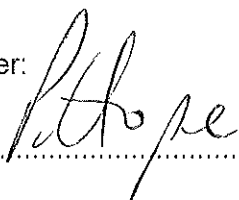
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Achievement of the identified benefits will be monitored from the launch of the policy (in 2010). It is anticipated that a review will be conducted after implementation on 1 April 2013.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:



Date:

16/12/08

## Summary: Analysis & Evidence

**Policy Option: 2) self funder complaints**

**Description: Extend the remit of the Local Government Ombudsman to provide independent consideration of complaints by self-funders**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' - one –off costs to the LGO of developing policy and set-up costs - ongoing costs for LGO in extended role
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	<b>£ 0.5m-0.8m</b>	1	
	<b>Average Annual Cost (excluding one-off)</b>		
	<b>£ 1.3m-1.45m</b>	<b>Total Cost (PV)</b>	<b>£</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None identified			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' - ongoing costs for independent sector care providers in delivering a higher standard of complaints handling (negative benefit)
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ nil</b>		
	<b>Average Annual Benefit (excluding one-off)</b>		
	<b>£ minus 0.6m-0.8m</b>	<b>Total Benefit (PV)</b>	<b>£</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' General improvement in complaints handling is expected. The value to users of improved complaints handling, and of consequential service improvement is expected to be sufficient to justify the administrative and compliance costs involved			

**Key Assumptions/Sensitivities/Risks** There will be around 800 to 1000 complaints referred to the LGO each year. Each will carry a cost of around £1500 to the LGO and around £800 to the service provider.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ 11.6m - £13.2m</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 12.4m</b>
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What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			1 April 2010	
Which organisation(s) will enforce the policy?			-	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ ---	
What is the value of changes in greenhouse gas emissions?			£ negligible	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>			(Increase - Decrease)	
Increase of	£	Decrease of	£	<b>Net Impact</b>
				<b>£</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Background

1. Currently, people whose care is commissioned or funded by local authorities have access to the statutory social services complaints procedure. This is governed by regulations made under Section 114 of the Health and Social Care (Community Health and Standards) Act 2003. This involves recourse to the Local Government Ombudsman (LGO) if the local authority does not satisfy the complainant. The statutory procedure covers services provided, for example, by a care home where those services are delivered under arrangements made by the local authority, even if the care home resident is paying charges. However, it does not cover services provided under private arrangements made either entirely independently or with the advice of the local authority, nor does it cover services provided to people using a direct payment from a local authority to pay for their own care, if the local authority is not involved in arranging this care.
2. Regulations made under the Care Standards Act 2000 require care homes and other regulated adult social care providers to have procedures in place for handling complaints but there is no provision for independent consideration of complaints and no recourse to the Ombudsman. People whose care is funded or arranged by their local authority may also use this procedure (as well as the statutory local authority procedure) but it has no independent stage and no recourse to the Ombudsman.
3. The Government believes it is wrong that people whose care is not provided or arranged by a local authority have no recourse to independent resolution of complaints. Social care services, unlike health services, have developed under a funding model under which a sizeable proportion of service users pay their own way. People arranging and funding their own adult social care now comprise about 35 percent of adult social care service users – in excess of 300,000 people (this figure is unlikely to remain static, as in the short term it might be affected by the credit crunch, and in the long term by the outcome of the review of care and support). The development of direct payments also means that there will continue to be an increasing number of people who purchase their own care service or who utilise individual budgets, and they are excluded from the statutory local authority complaints procedure in respect of the services they purchase.
4. Financing of public social care is drawn from central government grants and revenue from local council taxes. As these are finite resources, all services provided to local communities by social care departments are subjects to assessments of needs and financial assessments, based on individuals' resources. A significant element of private funding is therefore integral to both the organisation and funding of social care. This is a key distinction from the NHS, where all services are free to patients at point of use. Some service users may begin paying for their residential care, for example, until they reach the threshold for funding and then have their care funded by their local authority. Other users may have part of their care packages funded through public money and pay for some services themselves; some may begin as publicly funded users of services and then become self-funders when their financial circumstances change.
5. Adult social care users often form a vulnerable social group as they are adults in need of assistance. The types of assistance that they require are diverse, including care for sensory and physical disability and age related conditions. A number of adult service users have complex multiple needs. Taking action to pursue a complaint against a service provider is likely to be very challenging for such individuals (especially for those in residential care settings).

## Policy Objectives

6. The policy aim is to give people who arrange or fund their own adult social care access to independent resolution of their complaints, and to create a comparable right of access to independent consideration regardless of whether the service user's care is arranged or funded privately or publicly. A secondary objective is to improve the handling of complaints at the local level among private providers.

## Options

7. The following options have been identified:

- 1) No action

- 2) Preferred option: extend the remit of the LGO to carry out the independent consideration of complaints by service users whose care is not provided or arranged by a local authority.

- 3) Equip the Regulator CQC to undertake investigations of complaints by service users whose care is not provided or arranged by a local authority

- 4) Create a new independent body and equip it to undertake investigations of complaints by service users whose care is not provided or arranged by a local authority

### Option 1: No action

8. This would mean that service users whose care is not provided or arranged by a local authority would continue to have no recourse to independent consideration of their complaints. These service users would continue to be restricted to the local complaints arrangements provided by care providers. Until April 2010 these are set out in regulations under section 22 of Care Standards Act 2000, and after that will come within registration requirements monitored and enforced by the Care Quality Commission (CQC).
9. Service users whose care is not provided or arranged by a local authority would not have recourse to an independent body once they receive a response from their provider as the current social care regulator (CSCI) and the future regulator (CQC) cannot consider an individual complaint and produce a finding for or against it. Currently, these complaints lie outside the jurisdiction of any Ombudsman. The only avenue open if a service user was dissatisfied with local handling of their complaint would be to take the matter through the Courts. This is undesirable for people who are vulnerable and may be confused. Also if many of the complaints can be resolved by improved handling at the local level or by independent consideration, then legal action is disproportionate and financially excessive.

**Option 2 – preferred option:** extend the remit of the LGO to include the independent consideration of complaints by service users whose care is not provided or arranged by a local authority

## Benefits

10. There is a significant benefit in giving the new role to a body that already has a related function. The LGO currently deals with complaints by adult social care service users whose care is commissioned or provided by LAs. Complaints are referred to the LGO if the complainant remains dissatisfied with local handling of their complaint under the statutory local authority procedure. Therefore the proposed new role sits logically with the LGO's existing duties in respect of publicly funded services, and the Ombudsman's staff would have the advantage of already understanding the types of issues that arise in adult social care. This makes this option more cost effective than options 3 and 4.
11. Under this option there is an expectation that providers will have an incentive to improve not only their complaints handling but their service generally, as a result of the knowledge that an external

body, the LGO, has the authority to intervene in any complaint. Even the less effective providers can be expected ultimately (not necessarily straight away) to reduce time spent on complaints handling, as a result of improved local resolution, organisational learning and more efficient services.

12. It is not possible to quantify the extent to which a better standard of service would reduce the overall local complaints workload, and there is no available data on the number of complaints received locally by adult social care providers. For people whose care is not provided or arranged by a local authority, more efficient complaints handling by private providers should lead to a greater number of complaints than at present being resolved locally, although we recognise that more may actually be originated. It will benefit both local authority and non local authority users alike if providers not only handle complaints better, but act on them to improve services. Service users will have greater confidence in the services that they purchase, knowing that they can approach the LGO for assistance, if necessary. This will also help provide a comprehensive investigative response for service users who may have both LA and non-LA services that they wish to complain about.
13. Local authorities will benefit from shared intelligence from Ombudsman investigations into privately provided services. These services will often be provided by providers from whom councils are purchasing services, since providers tend to have both publicly and privately funded service users. It can be expected that LAs will be able to use LGO information to help them make better, more informed commissioning decisions.
14. Similarly, the new regulator, the Care Quality Commission, will benefit from additional information from complaints by non-LA service users and from individual LGO investigations. This in turn has a knock-on effect benefiting service users, by potentially enhancing regulation of providers and allowing CQC more effectively to identify, and tackle, poorly performing or unsafe services.

## Costs

### Central Government

15. We are unable to provide a detailed assessment of these costs, but estimates are as follows: (a) set-up costs for the LGO in 2009/10 are in the region of £500k to £770k; (b) full year running costs from 2010/11 are about £1.3m to £1.45m per annum.

### Service providers

16. Effective providers should find that their existing complaints handling will be of sufficient standard to meet the new requirements of this policy. The majority of providers should therefore not face significant instances of complaints being referred to the LGO, or experience significant cost burdens. The proposals do, however, have a potential impact on providers who are offering a poor service and where service users make a correspondingly higher number of complaints.
17. The LGO will not be the only lever on less effective providers, since there will probably be an incentive from increased regulatory scrutiny by CQC (though the details are not known at this stage). Providers will incur a cost if they have to respond more fully to complainants in general than they do now. How much time providers will need to spend in responding to complainants more fully will vary depending on the number and nature of complaints, and how they currently deal with these. We are unable to quantify how much extra effort those providers would need to make. A rough estimate suggests that about a quarter of providers (using the number currently regulated by CSCI means that this equates to some 6,000 organisations) would need to improve complaints handling to some extent.
18. The cost of having a case investigated by the LGO is likely to fall more on the less effective providers (about 6,000 of them, as set out above), who will need to spend additional time and effort in participating in an investigation compared to the current situation. The basis for calculating these costs is as follows:

#### **Cost calculation**

- DH and the LGO have estimated that the LGO will need to consider 800 to 1000

additional cases per annum

- each LGO investigation would require a provider to spend on average –
  - 10 hours in manager time to provide information to the LGO
  - 10 hours in staff interviews, locating and providing files and facilitating visits by LGO investigators
- Average manager time (at £35000 per year) = £32.20 per hour x 10 = £322
- Average administrator time (at £15000 per year) = £14.30 per hour x 10 = £143
- Total per case = £322 + £143 = £465
- For 900 LGO investigations, this is 900 x £465 = £418,500 per annum.

19. Once the LGO makes recommendations, the providers will need to take time to respond to these, which may include putting changes in place to management structures, revising policies and procedures and then confirming these actions to their service users. The time taken will vary depending on the LGO's findings, but we anticipate an average will again be ten working hours at the management grade.

**Cost calculation**

- Average manager time (at £35000 per year) = £32.20 per hour x 10 = £322
- For 900 LGO investigations, this is 900 x £322 = £289,800 per annum.

20. The total cost burden for providers of participating in LGO investigations and responding to subsequent LGO recommendations comes to

**Cost calculation**

Participating in LGO investigations £418,500  
Responding to LGO recommendations £289,800  
Total = £708,300

21. Thus we estimate that there is an administrative burden, the overall cost of which is around **£700,000 per annum**, which if spread among roughly 6,000 providers equates to an average cost in the region of some **£1,100** per provider, or slightly less than **£800** per complaint. It is not necessarily the case that the providers who are affected will absorb all these costs: there is a possibility that providers will, depending on the state of the care market, be able to pass on their additional costs to commissioners – probably mainly to people funding their own care.

22. An additional cost is incurred by providers who have to expend resources to improve services in order to rectify problems or to avoid complaints. This is a compliance burden, and is additional to the administrative burden involved in a higher standard of complaints handling. Where a complaint reveals a serious quality problem not otherwise detected, the resources involved in rectification would be likely far to exceed 10 hours. Similarly, an LGO finding could mean that multiple providers need to make changes to improve their practices. However, it is difficult to estimate these costs, and part or all of such costs may also be attributable to different incentives, for example the regulatory regime of the Care Quality Commission, whose registration requirements will include complaints handling, or the contracting requirements of local authorities.

23. It should be added that the ombudsman is not expected to use his powers to seek service improvement where the gain to residents will not justify the burden imposed, or to oblige a provider to make improvements that go beyond those which are required under the CQC regime for registration purposes.

**Option 3: Equip the regulator, CQC, to undertake investigations of complaints by service users whose care is not provided or arranged by a local authority**

**Benefits**

24. The benefits of this option would be that the regulator has oversight of the relevant social care regulated services that may be complained about. However, the policy does not include private health care and therefore there would be an inconsistency within CQC, as the Commission will regulate both adult social care and health providers. The role of considering individual complaints and reaching findings on them does not sit well with the regulator and is likely to present challenges to CQC's role, which is intended to focus on strategic or systemic assessment and regulation of service provision and a proportionate, risk-based approach to regulatory activity. For these reasons it has been clearly stated by Ministers during the passage of the Health and Social Care Act 2008 that this is an inappropriate role for CQC.

**Costs**

25. The costs are likely to be similar to asking the LGO to take on this role. In addition, there may be further additional costs for CQC, in comparison to the LGO, since the LGO is already appropriately equipped and delivering a complaints role, and employs staff to carry out this function. CQC will not be similarly equipped and will need to develop the necessary internal staff infrastructure to be able to meet this requirement. Costs for providers would be broadly comparable to option 2, with an unquantifiable potential reduction where CQC is carrying out a service inspection (which it would have undertaken anyway) to coincide with the investigation of a complaint.

**Option 4: Create a new independent body and equip it to undertake investigations of complaints by service users whose care is not provided or arranged by a local authority**

**Benefits**

26. The benefits of this option would be that a specially created body could be established and organised solely to deliver this function. Its staff, constitution and purpose would be entirely structured around delivering independent handling of non local authority services complaints. However, this body would need to function without the current expertise and knowledge management in existence in the Local Government Ombudsman's office. It will not have the existing credibility that the LGO enjoys and will not have the economies of scale and efficiencies of a bespoke complaints investigation infrastructure.

**Costs**

27. The costs are likely to be considerably higher than any other option. Set up costs and running costs would be far higher than adding this function to the Ombudsman's existing structure, and disproportionate to the expected workload.

## Enforcement (preferred option)

28. There is no proposal for a formal system of enforcement. Provisions relating to publicising LGO recommendations would provide a significant incentive to providers to comply with recommendations. Private social care providers operate within a highly responsive and competitive market and will wish to avoid the disadvantage of being known not to have complied with a recommendation. There will also be an important role for the Care Quality Commission (CQC) as the regulator of service providers. The relationship between the LGO and CQC is important, and all LGO recommendations will be communicated to CQC by the LGO, as well as information about any non-compliance with recommendations.
29. The regulations governing providers under the Health and Social Care Act 2008 will represent the "obligations" placed on providers but these will not themselves deal in such detail as specifically cooperating with the LGO or implementing LGO recommendations. These matters are appropriate for CQC's assessment criteria, i.e. they are among the range of issues that CQC can be expected to include in their assessment criteria as indicators of whether providers are complying with the registration requirements relating to complaints handling. CQC will take these matters into account, alongside a range of other matters, to indicate whether the provider is of sufficient standard to deliver a service. LGO recommendations – especially non-compliance with them - can be expected to be considered by CQC as an indicator of poor, or even unsafe, service provision generally and could prompt a service inspection by CQC. Enforcement action by CQC may well therefore occur in response to poor complaints handling and to LGO recommendations. Again, awareness by providers that there is a connection between LGO recommendations and CQC action is likely to provide a strong incentive to comply.

## Consultation

30. We do not foresee the need to enter into a formal public consultation because the policy is a Ministerial commitment made in Parliament. The proposed reform creates an additional resource for non local authority service users rather than removing or replacing an existing service. Furthermore, the Department is working closely with the LGO to create a stakeholder group to advise on operational and other matters. This will include representatives of service user groups and private sector providers.

## Summary and recommendation

31. In summary, we recommend Option 2, whereby the Local Government Ombudsman takes on the role of considering complaints by adult social care service users whose care is not provided or arranged by a local authority.
32. Making independent complaints consideration available to the group of service users who arrange or pay for their own adult social care potentially gives access to the Ombudsman for some 300,000 people who currently do not have it. We envisage up to 1,000 people actually having their complaint looked at by the Ombudsman each year, at an average cost of some £1450 per person. The improved quality of complaints handling that is expected to accrue, as well as service quality improvement more generally, represent significant benefits although it would need disproportionate effort to attempt to quantify these. The solution of using the Local Government Ombudsman to operate the new scheme has significant advantages over the alternative options. In conclusion it is plausible that the proposed new service is sufficiently valuable intrinsically, when this is considered alongside the benign impact it should have on service quality, to justify the cost.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	Yes	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	No
Rural Proofing	No	No

### Equality Impact Assessment

1. The Department's new arrangements for handling complaints by those self-funding their social care must take regard of the following:
  - be easily understood by both the individual using, and the staff delivering services;
  - respond to the needs of service users whilst being fair to the staff delivering those services;
  - support the individual to raise their complaints;
  - use the findings from complaints to improve future care; and
  - reassure users that appropriate standards are implemented and maintained by private providers.

### Equality of access

2. The Department aims to ensure that everyone wishing to complain about their self-funded social care is able to do so. We need to ensure that access to the self-funder complaints scheme is designed to be inclusive to all groups.
3. There is some evidence to suggest that in the case of learning disability, the public sector NHS and social care complaints procedures contain too many barriers for people to overcome. There is also anecdotal evidence that some groups are underrepresented within the profile of people who currently complain.
4. The Department is currently reforming the NHS and adult social care complaints procedures with equality of access in mind. The self-funder complaints scheme will similarly be alert to the particular challenges that some groups have in accessing complaints services.
5. As part of the implementation of the policy, we will be considering our information requirements to ensure there are monitoring systems in place to determine that the new system is accessible to everyone.
6. The proposals will benefit all complainants and a simplified route to experienced and external independent oversight (by the LGO) will increase access to vulnerable groups. The policy will create equality of access between those receiving publicly funded social care and privately secured care.

**Small firms impact test**

1. There is a possibly disproportionate effect on small providers, who may have less developed existing complaints procedures. However, this is not quantifiable.