



Local Government Act 1974

1974 CHAPTER 7

[^{F1}PART 3A

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED ADULT SOCIAL CARE

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](#)

Private adult social care: matters subject to investigation

34A Interpretation: “adult social care provider” and “adult social care”

- (1) This section applies for the purposes of this Part.
- (2) “Adult social care” means social care within the meaning of Part 1 of the Health and Social Care Act 2008 which is provided to persons aged 18 or over.
- (3) “Adult social care provider” means a person who carries on an activity which—
 - (a) involves, or is connected with, the provision of adult social care, and
 - (b) is a regulated activity within the meaning of Part 1 of the 2008 Act.
- (4) Action is to be treated as action taken by an adult social care provider if it is taken by—
 - (a) a person employed by that provider,
 - (b) a person acting on behalf of that provider, or
 - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by an adult social care provider if—
 - (a) that provider provides adult social care by means of an arrangement with another person, and
 - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

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34B Power to investigate

- (1) Under this Part, a Local Commissioner may investigate a matter—
 - (a) which relates to action taken by an adult social care provider in connection with the provision of adult social care, and
 - (b) in relation to which Condition 1 or 2 is met.
- (2) But a Local Commissioner may not conduct an investigation under this Part in respect of any action or matter described in Schedule 5A.
- (3) Condition 1 is met if a complaint about the matter which satisfies sections 34C and 34D has been made to a Local Commissioner.
- (4) Any question whether Condition 1 is met in relation to a matter is to be determined by a Local Commissioner.
- (5) Condition 2 is met if—
 - (a) the matter has come to the attention of a Local Commissioner, and
 - (b) section 34E applies to the matter.
- (6) Before investigating a matter under this Part a Local Commissioner must be satisfied that—
 - (a) the matter has been brought, by or on behalf of the person affected, to the notice of the adult social care provider to which it relates and that that provider has been afforded a reasonable opportunity to investigate the matter and to respond, or
 - (b) in the particular circumstances, it is not reasonable to expect the matter to be brought to the notice of that provider or for that provider to be afforded a reasonable opportunity to investigate the matter and to respond.
- (7) In subsection (6) the reference to a person affected includes a reference to that person's personal representatives.
- (8) In deciding whether to initiate, continue or discontinue an investigation, a Local Commissioner must, subject to the provisions of this section and sections 34C to 34E, act in accordance with the Local Commissioner's own discretion.
- (9) Without prejudice to the discretion conferred by subsection (8), a Local Commissioner who is satisfied with action which the adult social care provider concerned has taken or proposes to take may in particular decide—
 - (a) not to investigate a matter, or
 - (b) to discontinue an investigation of a matter.
- (10) Her Majesty may by Order in Council amend Schedule 5A by adding, omitting or changing a description of an action or matter.
- (11) A statutory instrument containing an Order in Council made under subsection (10) is subject to annulment in pursuance of a resolution of either House of Parliament.

34C Who can complain

- (1) A complaint about a matter under this Part may only be made—
 - (a) by a member of the public who claims to have sustained injustice in consequence of the matter (“P”),
 - (b) by a person authorised in writing by P to act on P's behalf, or

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(c) in accordance with subsection (2).

- (2) Where a member of the public by whom a complaint about a matter might have been made under this Part (“D”) has died or is otherwise unable to authorise a person to act on D’s behalf, the complaint may be made—
- (a) by D’s personal representatives (if any), or
 - (b) by a person who appears to a Local Commissioner to be suitable to represent D.

34D Procedure for making complaints

- (1) Subject to subsection (3), a complaint about a matter under this Part must be made—
- (a) in writing, and
 - (b) before the end of the permitted period.
- (2) In subsection (1)(b), the “permitted period” means the period of 12 months beginning with—
- (a) the day on which the person affected first had notice of the matter, or
 - (b) if the person affected has died without having notice of the matter—
 - (i) the day on which the personal representatives of the person affected first had notice of the matter, or
 - (ii) if earlier, the day on which the complainant first had notice of the matter.
- (3) A Local Commissioner may disapply either or both of the requirements in subsection (1)(a) and (b) in relation to a particular complaint.

34E Matters coming to attention of Local Commissioner

- (1) This section applies to a matter which has come to the attention of a Local Commissioner if—
- (a) the matter came to the Local Commissioner’s attention during the course of an investigation under Part 3 or this Part,
 - (b) (subject to subsection (3)) the matter came to the Local Commissioner’s attention—
 - (i) before the person affected or that person’s personal representatives had notice of the matter, or
 - (ii) in any other case, before the end of the permitted period, and
 - (c) it appears to the Local Commissioner that a member of the public has, or may have, suffered injustice in consequence of the matter.
- (2) In subsection (1)(b)(ii), “the permitted period” means the period of 12 months beginning with—
- (a) the day on which the person affected first had notice of the matter, or
 - (b) if the person affected has died without having notice of the matter, the day on which the personal representatives of the person affected first had notice of the matter.
- (3) A Local Commissioner may disapply the requirement in subsection (1)(b) in relation to a particular matter.

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Investigations by a Local Commissioner

34F Procedure in respect of investigations

- (1) A Local Commissioner who proposes to investigate a matter under this Part must give the following persons an opportunity to comment on the matter—
 - (a) the adult social care provider concerned;
 - (b) any person who is alleged in the complaint (if any) to have taken or authorised the action which would be the subject of the investigation;
 - (c) any person who otherwise appears to the Local Commissioner to have taken or authorised that action.
- (2) Every investigation under this Part is to be conducted in private.
- (3) Subject to subsection (2), the procedure for conducting an investigation is to be such as the Local Commissioner considers appropriate in the circumstances of the case.
- (4) The Local Commissioner may, in particular—
 - (a) obtain information from such persons and in such manner as the Local Commissioner thinks fit,
 - (b) make such inquiries as the Local Commissioner thinks fit, and
 - (c) determine whether any person may be represented (by counsel, solicitor or otherwise) in the investigation.
- (5) The Local Commissioner may, if the Local Commissioner thinks fit, pay to the person by whom the complaint (if any) was made, and to any other person who attends or furnishes information for the purposes of an investigation under this Part—
 - (a) sums in respect of the expenses properly incurred by them;
 - (b) allowances by way of compensation for the loss of their time.

34G Investigations: further provisions

- (1) For the purposes of an investigation under this Part a Local Commissioner may require the following persons to furnish information or produce documents relevant to the investigation—
 - (a) the adult social care provider concerned;
 - (b) any other person who in the Local Commissioner's opinion is able to furnish any such information or produce any such documents.
- (2) Nothing in subsection (1) affects the restriction imposed by section 26 of the PSOWA 2005.
- (3) For the purposes of an investigation under this Part a Local Commissioner has the same powers as the High Court in respect of—
 - (a) the attendance and examination of witnesses, and
 - (b) the production of documents.
- (4) To assist in any investigation, a Local Commissioner may obtain advice from any person who in the Local Commissioner's opinion is qualified to give it.
- (5) A Local Commissioner may pay to any such person giving advice such fees or allowances as the Local Commissioner may determine.

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- (6) A Local Commissioner may appoint and pay a mediator or other appropriate person to assist in the conduct of an investigation under this Part.
- (7) Any person appointed under subsection (6) is to be deemed to be an officer of the Commission in carrying out functions under that appointment.
- (8) No person may be compelled for the purposes of an investigation under this Part to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (9) If any person without lawful excuse—
 - (a) obstructs a Local Commissioner in the performance of the Local Commissioner's functions under this Part,
 - (b) obstructs any person discharging or assisting in the discharge of those functions, or
 - (c) is guilty of an act or omission in relation to an investigation under this Part which, if that investigation were a proceeding in the High Court, would constitute contempt of court,the Local Commissioner may certify the offence to the High Court.
- (10) Where an offence is so certified, the High Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged (“D”), and after hearing any statement that may be offered in defence, deal with D in any manner in which the High Court could deal with D if D had committed the like offence in relation to the High Court.

Statements etc. about investigations

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
 - (b) to prevent injustice being caused in the future in consequence of similar action of the provider.

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- (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—
 - (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,

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- (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—
- (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.

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

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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.

Arrangements with other Commissioners etc.

34M Consultation with other Commissioners

- (1) Subsection (2) applies if, at any stage in the course of an investigation under this Part, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter which could be the subject of an investigation by—
- (a) the Parliamentary Commissioner, in accordance with the PCA 1967;
 - (b) the Health Service Commissioner, in accordance with the HSCA 1993;
 - (c) the Scottish Public Services Ombudsman in accordance with the SPSOA 2002; or
 - (d) the Public Services Ombudsman for Wales, in accordance with the PSOWA 2005.
- (2) The Local Commissioner—
- (a) must consult with the appropriate Commissioner or Ombudsman about the matter, and
 - (b) where a complaint was made about the matter must, if the Local Commissioner considers it necessary, inform the person initiating the complaint under this Part of the steps necessary to initiate a complaint under the PCA 1967, the HSCA 1993, the SPSOA 2002 or the PSOWA 2005, as the case may be.

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- (3) Consultation under subsection (2)(a) in relation to a matter under investigation under this Part may be about anything relating to the matter, including—
 - (a) the conduct of any investigation into the matter, and
 - (b) the form, content and publication of any report or statement of the results of or conclusions on such an investigation.
- (4) Subsection (5) applies if, at any stage in the course of conducting an investigation under the PCA 1967, the Parliamentary Commissioner forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Part.
- (5) The Parliamentary Commissioner—
 - (a) must consult with the appropriate Local Commissioner about the complaint, and
 - (b) if the Parliamentary Commissioner considers it necessary, must inform the person initiating the complaint of the steps necessary to initiate a complaint under this Part.
- (6) Where a Local Commissioner is consulted about a complaint under the PCA 1967 by virtue of subsection (5), subsection (3) applies (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (2).
- (7) Nothing in the following provisions applies in relation to the disclosure of information in the course of consultations held in accordance with this section—
 - (a) section 11(2) of the PCA 1967;
 - (b) section 15 of the HSCA 1993;
 - (c) section 19 of the SPSOA 2002;
 - (d) section 26 of the PSOWA 2005;
 - (e) section 34K(1) of this Act.

34N Collaborative working with other Commissioners

- (1) If, at any stage in the course of an investigation under this Part, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter within the jurisdiction of—
 - (a) the Parliamentary Commissioner,
 - (b) the Health Service Commissioner, or
 - (c) both,
 the Local Commissioner may conduct an investigation under this Part jointly with that Commissioner or those Commissioners.
- (2) A Local Commissioner must obtain the consent of the person affected or the complainant (if any) before agreeing to a joint investigation referred to in subsection (1).
- (3) If a Local Commissioner forms the opinion that a complaint being investigated by—
 - (a) the Parliamentary Commissioner,
 - (b) the Health Service Commissioner, or
 - (c) both,

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relates partly to a matter within the Local Commissioner's jurisdiction by virtue of this Part, the Local Commissioner may conduct an investigation under this Part jointly with that Commissioner or those Commissioners.

- (4) If a Local Commissioner conducts an investigation jointly with another person, the requirements of section 34H(1)(c) and (5) (so far as relating to a case where the Local Commissioner conducts an investigation under this Part) may be satisfied by a statement or report made jointly with that person.

34O Disclosure of information by Local Commissioner to Information Commissioner

- (1) A Local Commissioner may disclose to the Information Commissioner any information obtained by, or furnished to, the Local Commissioner under or for the purposes of this Part if the information appears to the Local Commissioner to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
 - (i) Part 5 of the Data Protection Act 1998 (enforcement),
 - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
 - (iii) Part 4 of that Act (enforcement), or
 - (b) the commission of an offence under—
 - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
 - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (2) Nothing in section 34K(1) applies in relation to the disclosure of information in accordance with this section.

34P Disclosure of information by Local Commissioner to Care Quality Commission

- (1) A Local Commissioner may disclose to the Care Quality Commission any information obtained by, or furnished to, the Local Commissioner under or for the purposes of this Part if the information appears to the Local Commissioner to relate to a matter in respect of which the Care Quality Commission has functions under any enactment.
- (2) Nothing in section 34K(1) applies in relation to the disclosure of information in accordance with this section.

General

34Q Arrangements etc. to be made by Commission

- (1) The Commission must—
- (a) divide the matters which may be investigated under this Part into such categories as it considers appropriate, and
 - (b) allocate, or make arrangements for allocating, responsibility for each category of matter to one or more of the Local Commissioners.
- (2) The Commission—

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- (a) must make arrangements for Local Commissioners to deal with matters for which they do not have responsibility pursuant to subsection (1), and
- (b) must publish information about the procedures for making complaints under this Part.

34R Review, recommendations, advice and guidance

- (1) In each financial year in which the Commission conducts a review under section 23(12), it must also review the operation (since the last review was made under this subsection) of the provisions of this Part about the investigation of matters.
- (2) The Commission may convey to government departments and the Care Quality Commission any recommendations or conclusions reached in the course of a review under subsection (1).
- (3) The Commission may—
 - (a) provide to adult social care providers or any adult social care provider such advice and guidance about good practice as appears to the Commission to be appropriate, and
 - (b) arrange for the advice and guidance to be published for the information of the public.
- (4) Before providing advice or guidance under subsection (3) the Commission must consult such persons as appear to it to be appropriate.

34S Annual reports

- (1) Every Local Commissioner must for each financial year—
 - (a) prepare a general report on the discharge of the Local Commissioner's functions under this Part, and
 - (b) submit it to the Commission not later than 2 months after the end of the year to which it relates.
- (2) The Commission must for each financial year prepare a general report on the discharge of its functions under this Part (the “Part 3A annual report”).
- (3) The Part 3A annual report must be prepared as soon as may be after the Commission has received the reports for the year from Local Commissioners under subsection (1).
- (4) The Commission must arrange for the publication of—
 - (a) the Part 3A annual report, and
 - (b) the reports which are submitted under subsection (1).
- (5) The Commission must lay a copy of the Part 3A annual report before Parliament.

34T Interpretation of Part 3A

- (1) In this Part—
 - “adult social care” and “adult social care provider” have the meanings given by section 34A;
 - “Health Service Commissioner” means the Health Service Commissioner for England;
 - “the HSCA 1993” means the Health Service Commissioners Act 1993;

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“the PCA 1967” means the Parliamentary Commissioner Act 1967;

“person affected”—

- (a) in relation to a matter which is the subject of a complaint made or to be made under this Part, means a member of the public who claims or is alleged to have sustained injustice in consequence of the matter, and
- (b) in relation to a matter coming to the attention of a Local Commissioner to which section 34E applies, means the member of the public who the Local Commissioner considers has, or may have, sustained injustice in consequence of the matter;

“the PSOWA 2005” means the Public Services Ombudsman (Wales) Act 2005;

“the SPSOA 2002” means the Scottish Public Services Ombudsman Act 2002.

- (2) The following terms have the same meaning in this Part as they have in Part 3—
 - (a) action (and other expressions connoting action) (see section 34);
 - (b) the Commission (see section 34);
 - (c) local authority (see section 34);
 - (d) Local Commissioner (see section 23(3));
 - (e) Parliamentary Commissioner (see section 34).
- (3) Section 34(1A) applies for the purposes of this Part as it applies for the purposes of Part 3.]

Status:

Point in time view as at 14/07/2014.

Changes to legislation:

Local Government Act 1974, Part 3A is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.