

HEALTH ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Miscellaneous

Adult social care

Schedule 5: Investigation of complaints about privately arranged or funded adult social care

Section 34I: Adverse findings notices

339. Section 34I requires providers to consider any statement containing recommendations by a Local Commissioner and notify the Commissioner within the “required period” – one month of receiving the statement (or any longer period agreed in writing by the Local Commissioner) – of the action which the provider has taken or proposes to take. If by the end of that period, the Local Commissioner has not received this notification, or is satisfied before the period expires that the provider has decided to take no action, the Local Commissioner may require a provider to publish an adverse findings notice. The Commissioner may also do this in two other circumstances: firstly, if not satisfied with the action which the provider has taken or proposes to take; or secondly, if, after a further month following the end of the “required period” (or any longer period agreed in writing by the Local Commissioner), the Commissioner has not received satisfactory confirmation that the provider has taken the proposed action.
340. Subsection (4) provides that an adverse findings notice, in a form agreed between the provider and a Local Commissioner, should include details of any action recommended in the Local Commissioner’s statement which the provider has not taken, any supporting material required by the Local Commissioner, and an explanation of the provider’s reasons for not having taken the recommended action (if the provider wishes). The adverse findings notice must be published by the provider in a manner directed by the Local Commissioner. The Local Commissioner might for example, require publication in a local newspaper or, if the provider has an internet site, on that site.
341. Under subsection (6), a Local Commissioner must publish an adverse findings notice if the provider fails to do so in accordance with subsections (4) and (5), or cannot agree the form of the notice with the Local Commissioner within one month of the date the notice was received (or longer if agreed in writing by the Local Commissioner). Subsection (7) requires the provider to reimburse the LGO on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under subsection (6).