

REVIEW OF OUTCOME OF COMPLAINTS MADE TO OMBUDSMAN

Responsible Cabinet Member - Councillor Bill Dixon, Leader

**Responsible Director - Paul Wildsmith,
Director of Neighbourhood Services & Resources**

SUMMARY REPORT

Purpose of the Report

1. To provide Members with an update of the outcome of cases which have been determined by the Local Government Ombudsman (LGO) since the preparation of the previous report to Cabinet on 8 December 2015.

Summary

2. This report sets out in abbreviated form the decisions reached by the LGO since the last report to Cabinet and outlines the positive actions taken by the Council as a result.

Recommendation

3. It is recommended that the contents of the report be noted.

Reasons

4. The recommendation is supported by the following reasons :-
 - (a) It is important that Members are aware of the outcome of complaints made to the LGO in respect of the Council's activities.
 - (b) The contents of this report do not suggest that further action, other than detailed in the report, is required.

**Paul Wildsmith
Director of Neighbourhood Services & Resources**

Background Papers

Note: Correspondence with the LGO is treated as confidential to preserve anonymity of complainants.

Lee Downey, Complaints and Information Governance Manager
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S17 Crime and Disorder	This report is for information to members and requires no decision. Therefore there are no issues in relation to Crime and Disorder.
Health and Well Being	This report is for information to members and requires no decision. Therefore there are no issues in relation to Health and Well Being.
Carbon Impact	This report is for information to members and requires no decision. Therefore there are no issues in relation to Carbon Impact.
Diversity	This report is for information to members and requires no decision. Therefore there are no issues in relation to Diversity.
Wards Affected	This report affects all wards equally.
Groups Affected	This report is for information to members and requires no decision. Therefore there is no impact on any particular group.
Budget and Policy Framework	This report does not recommend any changes to the Budget or Policy Framework.
Key Decision	This is not a Key Decision.
Urgent Decision	This is not an Urgent Decision.
One Darlington: Perfectly Placed	This report contributes to all the delivery themes.
Efficiency	Efficiency issues are highlighted through complaints.

MAIN REPORT

Background

5. Cabinet has previously resolved that they would consider reports on the outcome of cases referred to the LGO during the Municipal Year on a bi-annual basis.
6. The opportunity is normally taken to analyse the areas of the Council's functions where complaints have arisen. It is appropriate to do that in order to establish whether there is any pattern to complaints received or whether there is a particular Directorate affected or a type of complaint which is prevalent. If there were a significant number of cases in any one particular area, that might indicate a problem which the Council would seek to address.
7. The LGO has recently condensed the number of categories they use when determining complaints, to align their findings more closely with those of local authorities. The Council's experience to date has been that some decisions that would not have previously been categorised as maladministration injustice now are. The Local Government LGO's office has confirmed that this is the picture nationally.

Information

8. Between 1 October 2015 and 31 March 2016, 12 cases were the subject of decision by the LGO.
9. The outcome of cases on which the LGO reached a view is as follows :-

Finding	No. of Cases
Closed after initial enquiries: no further action	3
Not upheld: No further action	1
Not upheld: No maladministration	3
Upheld: Maladministration Injustice	5

Closed after initial enquiries: no further action

10. The first of these complaints was for Adult Social Care, Ongoing Care. The Council did not initially accept the complaint, as the complainant did not have the consent of the person in receipt of the service to do so and they were deemed to have capacity; as defined by the Mental Capacity Act 2005. The Council agreed to carry out a capacity assessment and review its decision about whether to accept the complaint.
11. The second of these complaints was for Regulatory Services, Parking. The LGO decided not to investigate the complaint about the Council's handling of a challenge to a parking ticket as the Council considered the gentleman's argument and he could have appealed to the Traffic Penalty Tribunal.
12. The third of these was for Adult Social Care, Mental Health Services for Older People. The LGO decided not to investigate this complaint about the use of the Mental Health Act 1983 as there was not enough evidence of fault with the Council's actions to warrant an investigation. The LGO decided not to investigate the complainants concerns about an alleged breach of data protection as it would be reasonable for the complainant to ask the Information Commissioner's Office to consider the matter.

Not upheld: No further action

13. This complaint was for Regulatory Services, Development Control. The complaint related to planning decisions that were made in 2000 and 2013. The complainant contended that if it was not for the planning permissions granted by the Council, they would not be in a dispute with their neighbour over access rights on private land. The complainant had taken their case to the Lands Tribunal, which the LGO considered the appropriate forum for their complaint.

Not upheld: No maladministration

The first of these complaints was for School and Pupil Support, Transport. The LGO decided there was no evidence of fault in the Council's handling of the request for school transport.

15. The second of these complaints was for Adult Social Care, Psychosis Team. This was a joint complaint and considered by both the LGO and the Parliamentary and Health Service Ombudsman (PHSO) who did not find any evidence of fault in a multi-agency decision to apply for a deprivation of liberty safeguard order. The Ombudsmen also found a suitable remedy had been offered for delays in completing a carers' assessment.
16. The third of these was for Environmental Services, Refuse Collection. The LGO decided that the Council's decision to require residents near a rural track to continue to bring their waste to a collection point at the main road was consistent with its policy, legal powers and established practice and that there was no evidence the policy was being applied unfairly or that the policy caused the complainants a significant injustice.

Upheld: Maladministration Injustice

17. The first of these complaints was for Finance Adults, Financial Assessments. The complainant was dissatisfied with the Council's handling of her mother's admission into a care home and its delayed and poor communication in relation to the care home costs. The LGO recognised that the Council had confirmed procedures had been improved to reduce the chance of such problems happening again but still felt more should be done to remedy the injustice caused. The Council apologised and agreed to make a payment to the complainant in accordance with the LGO's Guidance on Remedies.
18. The second was for Environmental Services, Arboriculture. The LGO decided that the Council was not at fault in deciding the complainant could not fell a tree on Council land behind her house. However, the Council was at fault for taking 11 months to carry out the equality impact assessment and communicate the decision to the complainant. The Council agreed to amend its procedures to ensure that each time one of its trees is inspected a record is kept of the outcome for future reference.
19. The third was for Review and Development Safeguarding, Adult Safeguarding. The LGO decided that the Council did not deal properly with a safeguarding alert about the complainant's care of one of her clients. It upheld allegations against her when it had or should have had information to reach a different decision and later found the allegations against her should not have been upheld. The Council apologised and agreed to make a payment to the complainant in accordance with LGO's Guidance on Remedies to reflect the distress and worry she experienced. The Council also agreed to ensure it put in place the practice guidance recommended by the investigating officer during the Council's internal investigation and confirm to the LGO it had done so.
20. The fourth of these complaints was for Learning Disability and Mental Health, Life Stages Service 26+ Team. The LGO decided that the Council did not deal properly with the complaint made by a gentleman on behalf of his sister. The Council agreed to assess his sister's capacity (as defined by the Mental Capacity Act 2005) to consent to him making a complaint on her behalf, undertake a best interest decision if necessary and communicate the decision to the gentleman.

21. The last of these complaints was for Learning Disability & Mental Health, Mental Health Adults. This was a joint complaint and considered by both the LGO and the PHSO who decided TEWV NHS Trust and the Council did not manage changes to the set up of a mental health team well. However, the services had already resolved these issues. The Ombudsmen also found fault in the way the Trust and Council handled the complaint, including poor communication. The Trust and Council apologised and provided evidence that action was being taken to improve joint working which the Ombudsmen were satisfied with.

Analysis

22. During 2015/16 the Council received a total of 24 LGO decisions compared to 22 in 2014/15. 10 were adult social care complaints, 10 were corporate complaints and 4 were children's social care complaints.
23. Whilst the majority of decisions during 2015/16 were not upheld, 10 were, compared to 3 in 2014/15. While this increase does warrant further analysis it should be noted that it can in part be attributed to the recording changes outlined in paragraph 7.
24. 7 of the Upheld: Maladministration Injustice decisions related to adult social care complaints, 2 related to children's social care complaints and one related to a corporate complaint.
25. There were a few themes running through the complaints considered by the LGO/PHSO during 2015/16.
- (a) Two adult social care complaints concerned issues around the administration of Disabled Facilities Grants (DFG's). The Council has now implemented a robust process to ensure DFG's are processed in a timely manner.
 - (b) Two adult social care complaints identified issues with providing carers assessments. A further recommendation regarding the need to offer a Carer's Assessment every time an informal carer is identified is included in the Adult Social Care Annual Complaints, Compliments and Comments Report 2015/16.
 - (c) Three adult social care complaints concerned the way in which adult social care complaints were managed. The Council has amended its process for considering complaints made on behalf of people who may lack capacity, as defined by the Mental Capacity Act 2005 and are currently working with other Councils and NHS Trusts across the region to improve joint working practices.

Outcome of Consultation

26. The issues contained within this report do not require formal consultation.