
REVIEW OF OUTCOME OF COMPLAINTS MADE TO OMBUDSMAN

Responsible Cabinet Member - Councillor Bill Dixon, Leader

Responsible Director - Paul Wildsmith, Director of Resources

SUMMARY REPORT

Purpose of the Report

1. To provide Members with an update of the outcome of cases which have been considered by the Local Government Ombudsman (LGO) and to indicate any points for particular attention since the preparation of the report for the meeting of Cabinet on 1 November 2011.

Summary

2. This report sets out in abbreviated form the outcome of matters which have been the subject of complaints to the LGO since the last report to Cabinet on which the LGO has come to a conclusion. The report considers whether the authority needs to take any action as a result of the findings of the LGO.

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 Resources**

Background Papers

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

S17 Crime and Disorder	This report is for information to members and requires no decision. 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. There are no issues in relation to Health and Wellbeing.
Sustainability	This report is for information to members and requires no decision. There are no issues in relation to Sustainability
Diversity	This report is for information to members and requires no decision. 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. There is no impact on any particular group.
Budget and Policy Framework	This report does not recommend any change 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 our understanding the number of people who feel they can influence decisions in their locality (formerly NI 4).

MAIN REPORT

Information and Analysis

5. Cabinet at its meeting on 14th May, 2002 considered a report on the outcome of cases referred to the LGO during the Municipal Year 2001/02 and resolved that at each meeting of Cabinet a similar report should be submitted on the outcome of cases since the previous meeting of Cabinet. It was subsequently decided that this report would be provided on a bi-annual basis.
6. In the second half of 2011/12, 8 cases were the subject of decision by the LGO.
7. The outcome of cases on which the LGO reached a view is as follows :-

Finding	No. of Cases
Not in Jurisdiction & Discretion not Exercised	3
Not to Initiate an Investigation	4
To Discontinue Investigation Injustice Remedied	1
To Discontinue Investigation	2
Outside Jurisdiction	1
No or Insufficient Evidence of Maladministration/Service Failure	4

N.B. While the LGO count 'premature complaints' as a complaint received against the Council they no longer count them as a complaint decision.

Analysis of Findings

8. The opportunity is normally taken to analyse the areas of the Council's functions where complaints have arisen. It seems 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.
9. Not in Jurisdiction & Discretion not Exercised – One of these complaints concerned a long standing dispute over Council Tax liability. The complainant appealed the Council's decision to the Valuation Tribunal who dismissed the appeal. The complainant submitted a further appeal to the Council, which was not upheld. The Council advised the complainant they were entitled to refer the matter back to the Valuation Tribunal. Despite being advised of how to appropriately challenge the decision the complainant pursued the matter via a number of inappropriate routes; including his Councillor, MP and the Council's complaints procedure. The Council refused the complaint and repeatedly advised the complainant that they should refer the matter back to the Valuation Tribunal. The Council designated the complainant an 'unreasonably persistent complainant' in relation to the matter in May 2011. The complainant approached the LGO in September 2011 who decided not to investigate the complaint as the complainant had the right to appeal the Council's decision to the Valuation Tribunal.
10. Not in Jurisdiction & Discretion not Exercised – The second of these complaints concerned a dispute regarding Housing and Council Tax Benefit. The complainant had a number of

problems which led to them failing to submit an appeal within timescale. The Council adopted a sympathetic approach to the complainant and reconsider the decision. The complainant was happy with the outcome and the LGO thanked the Council for our assistance in resolving the matter.

11. Not in Jurisdiction & Discretion not Exercised – The third of these complaints concerned a dispute over the appropriateness of the planning fees paid in relation to a substantial planning application. The complainant felt that the developer had been undercharged and as a result felt that all of the Council’s ratepayers had suffered an injustice. The LGO took the view that the complaint was not within their jurisdiction as the Local Government Act 1974 says the LGO shall not conduct an investigation in respect of any action which affects all or most of the inhabitants of the area of the authority concerned. The LGO did suggest that the complainant may like to put their complaint to the District Auditor.*
12. Not to Initiate an Investigation – The first complaint the LGO decided not to investigate related to a Local Land Search and a Party Wall Act matter. The LGO decided not to investigate the element of the complaint regarding the search as it was not made to the LGO within 12 months of the complainant having notice of the matters alleged; the LGO felt there was no obvious evidence of maladministration in the way the Council dealt with the search which would lead them to exercise their discretion to accept a late complaint; and they felt the complainant had a responsibility, as the purchaser of the property, to have made additional specific enquiries at the time. With regard to the Party Wall Act matter the LGO did not accept this element as it was not the subject of the original complaint and the matter had not been through the Council’s complaints procedure as required. At the time of writing the report the Council had not received a complaint about this matter.
13. Not to Initiate an Investigation – The second complaint the LGO decided not to investigate was about weeds. Following an explanation as to what the Council had done the LGO decided there was no continuing significant injustice to the complainant to warrant their involvement.
14. Not to Initiate an Investigation – The third complaint the LGO decided not to investigate was from a young person in the care of the Council, who made a complaint in anger and subsequently withdrew it. The Council did write to the young person to make sure they did not want to take the complaint further and provided the young person with information about how to access an advocate.
15. Not to Initiate an Investigation – The fourth complaint the LGO decided not to investigate concerned a traffic survey undertaken in relation to a planning application. The LGO decided not to investigate as they did not feel the new access road would have a significant impact on the complainant’s amenity and as such did not feel there was any injustice to the complainant. Furthermore, at the time the complaint was made planning permission had not been granted. The LGO advised the complainant to await the planning decision then, if they remained dissatisfied, to put all of their concerns together in a single complaint which should be addressed to the Council’s Complaints Manager in the first instance. At the time of writing the report the Council had not received a complaint about this matter.
16. To Discontinue Investigation Injustice Remedied - This complaint concerned the Council’s actions in publicising a major planning application for a School Sports Pitch as though it were a minor application and failing to enforce the conditions of the permission it granted. The LGO did find evidence of maladministration in the way the planning application was

publicised but agreed with the conclusions of the Council's internal investigation i.e. that there wasn't any injustice to the complainant as they were personally notified about the proposal. While there was no injustice to the complainant on this occasion the Council has amended its procedures to avoid a re-occurrence. The LGO concluded that noise from the pitch harmed the complainant's amenity and that they were entitled to expect the Council to take prompt and firm action to bring that nuisance to an end. The Council agreed to work with the developer to ensure the noise attenuation barrier (required by the condition) was installed within a given timeframe. This in the LGO's view represented a satisfactory settlement of the complaint.

17. To Discontinue Investigation - The first of these complaints concerned the Council's alleged failure to investigate and respond properly to reports of anti social behaviour and noise nuisance from the complainants neighbour. The LGO took the view that the Council provided sufficient evidence to demonstrate that it did respond to the reports and take appropriate action. The LGO also noted that many of the issues reported by the complainant were allegations of criminal activity and as such were matters for the police.
18. The second concerned the Council's refusal of the complainants request for a tariff increase for their hackney carriage vehicle. The complainant approached the LGO prior to making a complaint to the Council and following the Council's initial response under the Corporate Complaints, Compliments and Comments Procedure. The complainant advised the LGO that they would refer their Stage 2 complaint to the Council, however, the Council did not receive any further contact from the complainant.
19. Outside Jurisdiction – This complaint concerned the appropriateness of a fine imposed on a parent in relation to their son's absence from school.
20. No or Insufficient Evidence of Maladministration/Service Failure
21. The first of these complaints concerned a change in the refuse collection point from the rear of the complainants property to the front. While the LGO acknowledged the fact that the complainant did not like the new arrangements they did not consider that there was any maladministration on the part of the Council.
22. The second concerned the requirements of the Council's private hire and hackney carriage licensing policy and an alleged failure to consult on changes to the policy. The LGO did not find any evidence of maladministration and discontinued their investigation into the matter.
23. A further complaint under this heading alleged that the Council had granted planning permission for a two storey rear extension which did not accord with the 45 degree 'rule'. The LGO concluded that the issues raised about the impact on light and the 45 degree 'rule' were considered before a decision was recommended and made and as such there was no evidence of maladministration and finally the last of these complaints concerned a long standing dispute over a development and the Council's alleged failure to protect the complainant from the effects of contamination from the site. The LGO did not find any evidence of maladministration by the Council.

Outcome of Consultation

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

