
REVIEW OF OUTCOME OF COMPLAINTS MADE TO OMBUDSMAN

Responsible Cabinet Member - Councillor Bill Dixon, Leader

**Responsible Director - Paul Wildsmith,
Director of Neighbourhood Services and 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) and to indicate any points for particular attention since the preparation of the report for the meeting of Cabinet on 3 December 2013.

Summary

2. This report sets out in abbreviated form the decisions reached by the LGO since the last report to Cabinet. 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 Neighbourhood Services and Resources**

Background Papers

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

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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 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 of the five delivery themes.
Efficiency	Efficiency issues are highlighted through complaints.

MAIN REPORT

Information and Analysis

5. Cabinet at its meeting on 14 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. Between 1 October 2013 and 31 March 2014, 5 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
Investigation complete and satisfied with authorities actions or proposed actions	2
Maladministration causing injustice	1
Not in jurisdiction and discretion not exercised	1
Not to initiate an Investigation	1

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.

Investigation complete and satisfied with authorities actions or proposed actions

9. The first of these was an adult social care complaint and concerned an individual's dissatisfaction with our decision to take their carers allowance into account when financially assessing them for adult social care services they were assessed as needing in their own right. The complainant contended that this was contrary to the Department of Health's Guidance on Fairer Charging for Home Care. The LGO concluded that there was no legal basis for the Council's decision in this case. The Council agreed to re-assess the individual and review our processes to ensure they are consistent with the Department of Health's Guidance and our policy.
10. The second of these was a corporate complaint concerning an individual's dissatisfaction with the Council for not take their objections to a licensing application into account, when granting an alcohol license for a local business. The individual was also dissatisfied with the Council's decision not to take enforcement action against that same business following them opening late, in breach of planning conditions and the outcome of a subsequent planning application submitted by that same business.
11. In relation to the first point, the Council identified that the objection, received by email, was incorrectly marked as spam. The Council apologised for this and put measures in place to prevent a re-occurrence. The Council considered the objection in retrospect and while the Council accepted that the process followed would have been different, concluded that the points raised would not have changed the decision to grant the license. The Council also advised the complainant what support was available should they experience alcohol fuelled anti-social behaviour following the decision.
12. In relation to the second point, having been notified by the complainant that the business was sometimes trading in the evening the Council properly identified this as a breach of planning permission; as the existing planning consent only gave the business permission to trade until 6.00 pm. The Council did not believe it was in

the public interest to prosecute and instead decided to ask the trader to stop trading in the evenings and apply for the necessary planning permission. This is what the trader did. This approach was in accordance with government guidance and the Council's policy. The LGO concluded that the decision was properly made taking into account all the relevant factors.

13. In relation to the third point, the LGO concluded that again the Council had taken all the relevant factors into account, including the complainant's objections, in reaching the decision to grant planning permission for the business to trade in the evenings three nights a week and on three 'special days' during the year.

Maladministration causing injustice

14. This was a corporate complaint concerning problems with the refuse collection service shortly after the introduction of wheeled bins and a failure to properly to deal with reports of fly-tipping.
15. In relation to the first point, as it was not possible for the Council's refuse collection vehicles to access the back lane the Council decided to send a team ahead of the collection vehicle to collect the bins from properties and place them at the end of the lane. After the refuse collection had taken place, it was the Council's intention that the first team would return the bins to the rear of each property. This practice resulted in bins being placed at the end of the lane for some time and despite advising operatives not to leave the bins obstructing the lane this did not happen. On returning the bins operatives also failed to return them to individual properties, often leaving them in clusters causing a particular problem for the complainant as the bins obstructed access to their garage; which they required for work purposes. Although the complainant recognised the service was improving the LGO concluded this had caused an injustice.
16. In relation to the second point, having made a previous complaint the Council gave the complainant assurances that our operatives would report fly tips they encountered while undertaking refuse and recycling collections. The Council has a policy of removing small fly tips within two days. The LGO found evidence that the Council was not properly recording reports from the public of fly-tipping and despite the assurance given, operatives were not reporting fly-tips they encountered while undertaking refuse and recycling collections. Again the LGO concluded this had caused the complainant an injustice.
17. The LGO required the Council to monitor the refuse collection for at least two weeks, to build on the recent improvement in bin return and to see if we could make any further practical improvements; review our system for recording reports of fly-tipping; provide training for staff on reporting and recording fly-tipping and apologise to and pay the complainant £150 for our failure to report fly-tipping seen during refuse and recycling collections, act on the complainants reports and for the time and trouble we put them to.

Not in jurisdiction and discretion not exercised

18. This was a children's social care complaint concerning a parent's dissatisfaction with the way in which the Council was exercising its discretion to arrange contact between them and their children; in accordance with a court order. The Council upheld the complaint at stage 2 and agreed a course of action to facilitate contact. At the same time the matter went back to court and a new court order was made granting indirect contact only between the parent and the children. On receipt of a request to progress the matter to stage 3 the Complaints Manager made an early referral to the LGO, as the circumstances complained about no longer existed and it was not possible for the Council to provide the remedy sought i.e. direct contact with the children. The LGO decided not to investigate the matter on the basis that it was partly outside of her jurisdiction and she had no power to provide the remedy sought.

Not to initiate an Investigation

19. This was a children's social care complaint concerning a parent's dissatisfaction with the Looked After Review process. Again the Complaints Manager made an early referral to the LGO, this time on the basis that all of the points of complaint had been upheld and the Council had agreed to provide the remedy initially requested. The LGO decided not to investigate the matter on the basis that the Council had already provided a remedy and there was no other worthwhile remedy which could be provided.

Recommendation

20. It is not recommended that the authority needs to take any action as a result of the findings of the LGO.

Outcome of Consultation

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