

**CABINET
7 SEPTEMBER 2021**

REVIEW OF OUTCOME OF COMPLAINTS MADE TO OMBUDSMAN

Responsible Cabinet Members

**Councillor Scott Durham - Resources
Councillor Heather Scott, Leader
Councillor Jon Clarke - Children and Young People
Councilor Kevin Nicholson - Health and Housing**

Responsible Directors

**Ian Williams, Chief Executive
Elizabeth Davison, Group Director of Operations
James Stroyan, Group Director of People
Dave Winstanley, Group Director of Services**

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 and Social Care Ombudsman (LGSCO) and the Housing Ombudsman Service (HOS) during 2020/21.
2. To provide Members with the LGSCO's Annual Review letter 2021 (**Appendix 1**).

Summary

3. This report sets out in abbreviated form the decisions reached by the LGSCO and the HOS during 2020/21 and outlines actions taken as a result.
4. This report also provides Members with a copy of the LGSCO's Annual Review letter 2021, which contains information on the Council's performance in relation to complaints.

Recommendation

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

Reasons

6. The recommendation is supported by the following reasons :-

- (a) It is important that Members are aware of the outcome of complaints made to the LGSCO and the HOS 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.

Ian Williams
Chief Executive

Background Papers

Note: Correspondence with the LGSCO and HOS is treated as confidential to preserve anonymity of complainants.

Lee Downey - Extension 5451

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 and Climate Change	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
Council Plan	This report contributes to all the priorities in the Council Plan
Efficiency	Efficiency issues are highlighted through complaints

MAIN REPORT

Background

7. Cabinet has previously resolved that they would consider reports on the outcome of cases referred to the LGSCO and HOS during the Municipal Year on a bi-annual basis.
8. 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.
9. The LGSCO encourages officers to share the annual letter with colleagues and elected members as the information can provide valuable insights into service areas, early warning signs of problems and is a key source of information for governance, audit, risk and scrutiny functions.

Decisions reached by the LGSCO and the HOS during 2020/21

10. Between 1 April 2020 and 31 March 2021, 11 cases were the subject of decision by the LGSCO.
11. Between 1 April 2020 and 31 March 2021, one case was the subject of decision by the HOS.
12. The outcome of cases on which the LGSCO reached a view is as follows:

LGSCO Findings	No. of Cases
Closed after initial enquiries: no further action	4
Closed after initial enquiries: out of jurisdiction	1
Not upheld: no maladministration	2
Upheld: Maladministration Injustice	2
Upheld: Maladministration, No Injustice	1
Upheld: not investigated - injustice remedied during Body in Jurisdiction's complaint process	1

13. The outcome of cases on which the HOS reached a view is as follows:

HOS Findings	No. of Cases
Service Failure	1

Local Government and Social Care Ombudsman (LGSCO)

Closed after initial enquiries: no further action

14. The first of these complaints concerned the Council not following the legal requirements when in 2019 it granted amendments to planning permission for development. The complainant argued the Council did not request a new planning application after they

pointed out there might be landowners that had not been properly notified of the development. The complainant argued this invalidated the planning application and the Council should not have considered the application. The complainant's view was based on information they had already complained to the Council about in 2018. The Council investigated their points in 2018 and presented its legal position with regards to land ownership based on affidavits it received. The complainant disagreed with the Council's legal position. The Ombudsman concluded they would not investigate the complaint as it was unlikely they would find fault in how the Council reached its decision and because there was no personal injustice to the complainant that would warrant their involvement.

15. The second of these complaints concerned two Council members pre-determining their vote on the Council's Local Plan as they had recorded media announcements prior to the decision being made, giving their views on its approval. The Ombudsman decided not to investigate as it was unlikely they would find fault by the Council and the injustice to the complainant was not sufficient to warrant their involvement.
16. The third of these complaints concerned the Council wrongly making the complainant liable for Council Tax. The Ombudsman decided not to investigate because the Council provided a fair response and there was not enough remaining injustice to require an investigation.
17. The fourth of these concerned a Council officer being rude during a telephone call. The Ombudsman decided not to investigate is because it was unlikely an investigation would be able to add to the response already provided by the Council.

Closed after initial enquiries: out of jurisdiction

18. This complaint concerned the Council giving misleading or inaccurate advice in 2017 about the complainant's entitlement to help with nursery costs. The complaint was outside the Ombudsman's jurisdiction as it was late, being made after the permitted period of 12 months.

Not upheld: no maladministration

19. The first of these complaints concerned the advice the Council gave about disability related expenses and its decision not to make allowance for all the expenses claimed when calculating the contribution towards care costs. The Ombudsman concluded the Council was not at fault.
20. The second of these complaints concerned the Council failing to ensure the complainant's two children received short break provision in line with their assessed needs following a Stage 3 complaint review panel. The complainant also complained the Council offered direct payments which were not sufficient to meet the children's needs. The complainant said this matter caused them and their family stress and put them to unnecessary time and trouble. The Ombudsman concluded there was no fault in the Council's actions.

Upheld: Maladministration Injustice

21. The first of these complaints concerned the Council wrongly treating the complainant's car as abandoned and towing it away. The complainant said they incurred costs to release the

car. The Council refused to accept a complaint about the matter on the basis that, at the time, it understood the issue was a matter for the courts. The Council accepted its 7-day vehicle removal form contained errors making it invalid, and it should have investigated the complaint in line with its Corporate Complaints Procedure. The Council agreed to refund the complainant £318 in fees paid to release his car. It also agreed to pay the complainant £150 to recognise the frustration, uncertainty and time and trouble caused by its poor handling of the complaint.

22. The second of these complaints concerned Council arranged respite care for the complainant's child, which did not meet their assessed needs. It also concerned the Council offering insufficient direct payments and not responding to the complaint about this in a timely manner. The Ombudsman found the Council was at fault as it did not respond to the complaint in line with statutory timescales. The Council agreed to make a payment of £150 to acknowledge the stress, time taken and trouble caused to the complainant because of this. The Council was not at fault in its management of the child's respite placement or direct payment funding.

Upheld: Maladministration, No Injustice

23. This complaint concerned the Council carrying out an incorrect financial assessment in relation to residential care costs. The complainant said this caused considerable distress and inconvenience. The Ombudsman found the Council was at fault when it initially failed to provide a written record of its financial assessment and when it delayed in responding to the complaint, however, this did not result in any significant injustice.

Upheld: not investigated - injustice remedied during Body in Jurisdiction's complaint process

24. This complaint concerned the Council not supporting an Adult Services, service user to set up a direct debit mandate in October 2018, when it completed a financial assessment, and a delay in sending out invoices. Following its own investigation the Council partly upheld the complaint, apologised for the distress caused by the delay in sending out the invoices, offered £500 to offset against the complainant's outstanding debt and offered to implement a repayment plan to recover the remaining debt. The Ombudsman was satisfied this remedied the injustice caused.

Housing Ombudsman Service (HOS)

Service failure

25. This complaint concerned the Council's failure to enforce an agreement for a neighbour not to feed birds and its response to reports of overhanging trees. The Ombudsman found there is no legal or tenancy requirement obliging the neighbour to stop putting nuts out for the birds, although there is an expectation on tenants not to allow their garden to become unhygienic due to the build-up of animal faeces. That on receiving the complainant's concerns about the neighbour feeding the birds, the Council took reasonable and proportionate action, however, despite some positive steps to proactively address the issues, the Council did not satisfactorily manage expectations in respect of this complaint or consistently do what it said it would. In relation to tree pruning the Ombudsman found the Council responded promptly, by acknowledging the issue raised and letting the complainant know that works would be undertaken to prune the trees once the bird

nesting season had finished. However, it took a number of chasers from the complainant, about what works would be done and when, before the Council provided this information. The work was then carried out some months later, without further contact or notice to the complainant and whilst the Council was not required to consult or notify the complainant about the specific works to be undertaken, there were misunderstandings and a lack of communication in respect of this. The Ombudsman also said it was inappropriate that the Council (as a landlord) did not inspect the works that had been undertaken and criticised the Equality Impact Assessment (EIA) undertaken as it primarily relied upon historical records and did not involve an inspection or consultation. The Ombudsman ordered the Council to pay the complainant £100, arrange an inspection of the trees and share its findings with the complainant. The Ombudsman also recommend the Council honour the “*compromise agreement*” already in place with the neighbour around bird feeding and reiterate the specific times of year that bird feeding can take place. The Ombudsman also recommended the Council undertake a revised EIA, taking into account the comments made above and communicate its conclusions to the complainant.

LGSCO’s Annual Review letter 2021

26. In their annual review letter (Appendix 1) the LGSCO focus on three key statistics and compare the Council’s performance against that of other Unitary Council’s (further information is available from the LGSCO’s [interactive map](#)).
27. 67% of complaints the LGSCO investigated were upheld, compared to 63% in similar authorities (The LGSCO uphold complaints when they find some form of fault in an authority’s actions, including where the authority accepted fault before they investigated).
28. The LGSCO found that in 25% of upheld cases the Council had already provided a satisfactory remedy, compared to an average of 10% in similar authorities.
29. The LGSCO were satisfied the Council successfully implemented their recommendations in 100% of cases compared to an average of 99% in similar authorities. However, they did note there was a delay in implementing their recommendations in two cases and asked the Council to consider how it might make improvements to reduce delays in the remedy process.

Analysis

30. During 2020/21 the Council received two Upheld: Maladministration Injustice decisions from the LGSCO, compared to six in 2019/20.
31. The organisational learning identified as a result of these complaints should ensure there is no re-occurrence.
32. While the LGSCO recorded their satisfaction with your Council’s compliance rate in relation to their recommendations, as requested by the LGSCO the Council will consider how it might make improvements to reduce delays in the remedy process.

Outcome of Consultation

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