

REVIEW OF OUTCOME OF COMPLAINTS MADE TO OMBUDSMAN

Responsible Cabinet Members

**Responsible Cabinet Member - Councillor Stephen Harker, Leader and
Efficiency and Resources Portfolio
Councillor Sue Richmond – Adult Social Care Portfolio
Councillor Cyndi Hughes - Children and Young People Portfolio
Councillor Andy Scott, Housing, Health and Partnerships Portfolio**

Responsible Directors

**Paul Wildsmith, Managing Director
Suzanne Joyner, Director of Children and Adults Services
Ian Williams, Director of Economic Growth and Neighbourhood 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 (HO) since the preparation of the previous report to Cabinet on 9 October 2018.

Summary

2. This report sets out in abbreviated form the decisions reached by the LGSCO and the HO since the last report to Cabinet and outlines actions taken 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 LGSCO and the HO 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
Managing Director**

Background Papers

Note: Correspondence with the LGSCO and HO 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	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 LGSCO and HO 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.

Information

7. Between 1 April 2018 and 30 September 2018, 19 cases were the subject of decision by the LGSCO.
8. Between 1 April 2018 and 30 September 2018, two cases were the subject of decision by the HO.
9. 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	9
Closed after initial enquiries: out of jurisdiction	1
Not upheld: No maladministration	1
Premature	2
Upheld: Maladministration Injustice	6

10. The outcome of cases on which the LGSCO reached a view is as follows:

HO Findings	No. of Cases
Service Failure	2

Local Government and Social Care Ombudsman (LGSCO)

Closed after initial enquiries: no further action

11. The first of these was for the Environmental Services and concerned the attitude of a Street Scene Operative when collecting refuse. The LGSCO closed the complaint on the basis it was very unlikely they could add to the Council's investigation or obtain a different outcome for the complainant.
12. The second of these related to the Council allegedly failing to adhere to its Home to School Transport Policy when considering an application and appeal for free school transport. The LGSCO closed the complaint on the basis there was no outstanding injustice caused by the Council's actions and the investigation would not achieve the outcome the complainant wanted.

13. The third of these was for Adult Services and concerned the Council failing to take account of an individual's disability when providing information, equipment and when corresponding with the complainant. The LGSCO closed the complaint as it was unlikely they would be able to add to the Council's investigation or reach a different outcome.
14. The fourth of these was for Adult Services and concerned a delay in providing a care needs assessment and carers assessment. The LGSCO closed the complaint on the basis it was unlikely to add anything satisfactory to the investigation already carried out by the Council and the injustice was not significant enough to justify their involvement.
15. The fifth of these was for Environmental Services and concerned an individual's dissatisfaction with the Council not responding to a complaint about its failure to cut back trees that were overhanging the complainant's property. The LGSCO closed the complaint on the basis the Council had responded to the complaint.
16. The sixth of these was for Customer Services and concerned the length of time it took to answer a telephone call. The LGSCO closed the complaint on the basis the injustice caused to the complainant did not justify their involvement.
17. The seventh of these was for Anti-Social Behaviour and concerned an individual's dissatisfaction with the Council sending an anti-social behaviour warning letter. The LGSCO closed the complaint on the basis there was insufficient evidence of fault by the Council and the Council had already taken appropriate action in response to the complaint.
18. The eighth of these was for Customer Services and concerned a delay by the Council in escalating the complainant's concerns to Stage 2 of the complaints procedure. The LGSCO closed the complaint on the basis there was insufficient evidence of injustice.
19. The ninth of these was for Children's Services and concerned the Council's actions in response to an allegation of unprofessional conduct by one of its employees. The LGSCO closed the complaint on the basis there was no evidence of fault in those of the Council's actions they were able to consider.

Closed after initial enquiries: out of jurisdiction

20. This complaint was for Housing and concerned the way the Council dealt with issues regarding a garden fence. The LGSCO could not investigate this complaint as they had no jurisdiction to consider the council housing management matters in question.

Not upheld: No maladministration

21. This complaint was for Highway Asset Management. The complainant is registered as blind and complained the Council failed to assess the impact of the changes it made to its street lighting and traffic bollards. Because of this, the complainant said they had been disadvantaged and can no longer safely go out at night. The LGSCO concluded the Council gave due regard to the impact of its changes and was not at fault.

Premature

22. The first of these was for Adult Services and concerned an individual's dissatisfaction with the Council's involvement in the decision to detain him in hospital under the Mental Health Act. The LGSCO would not investigate as the complainant had not allowed the Council the opportunity to consider the complaint in accordance with its complaints procedure.
23. The second of these was for Adult Services and concerned a delay in providing a care needs assessment and carers assessment. The LGSCO would not investigate as the complainant had not allowed the Council the opportunity to consider the complaint in accordance with its complaints procedure. This complaint was subsequently determined by the LGSCO, the outcome being 'Closed after initial enquiries: no further action'. Details are contained in paragraph 14 of this report.

Upheld: Maladministration Injustice

24. The first of these was for Financial Assessments and concerned an individual's dissatisfaction with the Council's decision to include the daily living component of Personal Independence Payment (PIP) in their financial assessment. The LGSCO found there was fault in the way the Council adopted its policy on charging for care and support for adults in non-residential settings. To resolve the complaint the Council agreed to:
 - (a) Carry out a new public consultation on its proposed charging policies.
 - (b) Present a new report to the Cabinet which included an accurate summary of the relevant law and statutory guidance and explained Councillors have discretion about treatment of income from benefits for people who receive care and support in a non-residential setting (apart from prescribed benefits which the law says must be disregarded).
 - (c) Suspend action to recover the complainant's invoiced contributions until Cabinet had approved its new policy.
 - (d) Carry out a new financial assessment for the complainant following Cabinet's decision which includes a review of all eligible disability-related expenditure.
 - (e) Consider whether the complainant's personal circumstances are exceptional and justify a waiver of charges under the provisions in the policy.
 - (f) Carry out a wider review of financial assessments completed since December 2016 for other clients in similar circumstances to the complainant if the Cabinet decided to disregard all or part of the daily living component of PIP as income.
25. The second of these was for Adult Services. The substantive complaint concerned the individual's dissatisfaction with the decision to reduce their care package without giving full consideration to the impact of their sight loss on their abilities. The LGSCO found no fault in how the Council completed the reassessment of the complainant's needs, but found that it delayed in responding to a complaint about this and when it did, provided an incomplete and unsatisfactory response. The

Council has taken action to address the issue that led to the delay in responding to this complaint.

26. The third of these was for Adult Services and concerned a delay in completing a care assessment, dissatisfaction with the completed assessment and with the Council seeking medical information without consent. The LGSCO found there was a delay which the Council had acknowledged and apologised for and that the Council had subsequently reinstated the care package at the higher level. The LGSCO did not find any fault with regard to the Council allegedly obtaining medical information without consent.
27. The fourth of these was for Financial Assessments and concerned an incorrect charge for residential care. The LGSCO found the Council was at fault for a failure to consider whether the complainant was receiving 'intermediate care' and a failure to publish proper guidance on what amounts to intermediate care. To resolve the complaint the Council agreed to apologise, submit a fresh invoice and within three months consider its guidance and policy on intermediate care, amend its current guidance to explain what constitutes a short-break and what is intermediate care and in what circumstances it will pay for care.
28. The fifth of these was for Adult Services and concerned a failure to follow a support plan. The Council acknowledged there had been some instances of it not complying with the support plan since it investigated the complaint in September 2016. The LGSCO noted this had been distressing for the complainant, but was not persuaded the mistakes had a significant impact. The Council offered to have monthly monitoring meetings to discuss any ongoing issues with the complainant, which the LGSCO felt was an appropriate response.
29. The sixth of these was for Adult Services and concerned an individual's dissatisfaction with the Council not properly explaining their finances and about having an appointee, not taking action although it knew the complainant's appointee was allowing arrears to accrue and expecting them to repay the arrears although they did not know about them. The LGSCO upheld the complaint and to resolve the matter the Council agreed to:
 - (a) Apologise setting out the faults identified and the actions taken/to be taken, to prevent similar problems in future.
 - (b) Waive the arrears accrued after the point the Council should have taken action.
 - (c) Pay the complainant £350 (or deduct this from any remaining debt).
 - (d) Ensure assessments and support plans address finances adequately when there is any indication that the person needs support in that area.
 - (e) Ensures assessments and support plans address communication needs adequately when there is any indication the person may need support in this area.
 - (f) Take action to ensure all staff are aware to check whether the situation fits within the description of abuse set out in its own framework and to ensure the principles of safeguarding are considered when a safeguarding concern is received.

(g) Ensure decisions about safeguarding are properly recorded and detailed.

(h) Review safeguarding training to ensure this is made clear.

Housing Ombudsman (HO)

Service failure

30. Both of these complaints concerned the Council's decision to repair rather than replace the tenant's front doors. The Housing Ombudsman was satisfied there was no maladministration by the Council in its decision not to replace the doors, however, they found service failure in respect of the way the complaints were handled on the basis that while the Council's responses were reasonable and in accordance with its complaints procedure, the Council did not provide an explanation as to why a neighbour's door had been replaced when the complainants' had not. To resolve the complaint the HO ordered the Council to pay the complainants £100 compensation each in recognition of the stress and inconvenience this caused. The HO also recommended the Council offer again to carry out the remedial works to the doors and consider that in some limited circumstances providing information about why a third party qualified for a service when the complainant did not may be reasonable.

Analysis

31. During the first half of 2018/19 the Council received six Upheld: Maladministration injustice decisions from the LGSCO, compared to four for the same period in 2017/18.

32. All six of the upheld: maladministration Injustice decisions related to Adult Services and associated financial matters. There were no identifiable themes running through the complaints determined during the first half of 2018/19 and the actions identified to remedy the complaints should ensure there is not a re-occurrence.

Outcome of Consultation

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