

**CABINET
6 SEPTEMBER 2022**

COMPLAINTS MADE TO LOCAL GOVERNMENT OMBUDSMAN

Responsible Cabinet Members

**Councillor Jonathan Dulston, Leader
Councillor Andy Keir – Local Services
Councillor Scott Durham, Resources Portfolio
Councillor Lorraine Tostevin - Adults
Councillor Jon Clarke - Children and Young People
Councilor Kevin Nicholson - Health and Housing
Councillors Mike Renton – Stronger Communities
Councillor Alan Marshall – Economy**

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) since the preparation of the previous report to Cabinet on 7 December 2021.
2. To provide Members with the Annual Review Letter of the LGSCO (**Appendix 1**).

Summary

3. This report sets out in abbreviated form the decisions reached by the LGSCO and the HOS between 1 April 2021 and 31 March 2022 and outlines actions taken as a result.

Recommendation

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

Reasons

5. 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.

Elizabeth Davison
Group Director of Operations

Background Papers

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 Wellbeing | 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 and Climate Change |
| 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. |
| Impact on Looked After Children and Care Leavers | This report has no impact on Looked After Children or Care Leavers. |

MAIN REPORT

Background

6. 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.
7. 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.

Decisions reached by the LGSCO and the HOS during 2021/22

8. Between 1 April 2021 and 31 March 2022, 16 cases were the subject of decision by the LGSCO.
9. Between 1 April 2021 and 31 March 2022, 2 cases were the subject of decision by the HOS.
10. The outcome of cases on which the LGSCO reached a view is as follows:

| LGSCO Findings | No. of cases 2021/22 | No. of cases 2020/21 | No. of cases 2019/20 | No. of cases 2018/19 |
|--|-------------------------|-------------------------|-------------------------|-------------------------|
| Closed after initial enquiries: no further action | 9 | 4 | 7 | 10 |
| Closed after initial enquiries: out of jurisdiction | 1 | 1 | 2 | 2 |
| Not upheld: no maladministration | 1 | 2 | 1 | 3 |
| Premature | 0 | 0 | 0 | 4 |
| Upheld: Maladministration and Injustice | 4 | 2 | 6 | 10 |
| Upheld: Maladministration, No Injustice | 0 | 1 | 0 | 0 |
| Upheld: maladministration and injustice - no further action, satisfactory remedy provided by the org | 1 | 0 | 0 | 0 |
| Upheld: not investigated - injustice remedied during Body in Jurisdiction's complaint process | 0 | 1 | 0 | 0 |

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

| HOS Findings | No. of cases 2021/22 | No. of cases 2020/21 | No. of cases 2019/20 | No. of cases 2018/19 |
|----------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| No Maladministration | 0 | 0 | 1 | 2 |
| Service Failure | 2 | 1 | 0 | 2 |

Local Government and Social Care Ombudsman (LGSCO)

Closed after initial enquiries: no further action

12. The LGSCO decided not to investigate this complaint about the actions of the Council's building control officers because it was unlikely an investigation could add to the Council's response. The complainant was also not caused any personal injustice by the matter.
13. The LGSCO decided not to investigate a complaint about the Council's refusal to award the complainant a COVID-19 hardship payment for the 2021/22 financial year because there was no evidence of fault in the Council's decision. The LGSCO added they would not investigate the Council's publication of misleading information on its website as the issue did not cause the complainant a significant injustice.
14. The LGSCO decided not to investigate a complaint about contact restrictions placed on the complainant by the Council because there was no evidence of fault in how the Council dealt with the matter.
15. The LGSCO decided not to investigate a complaint about how the Council dealt with planning applications for a development near the complainant's property because the last planning decision was made by the Council in 2019, the complaint was late and there were no good reasons to investigate it now. The LGSCO added they would not investigate a complaint about a recent ecology survey because the Council was not involved in this being carried out.
16. The LGSCO decided not to investigate a complaint about problems the complainant faced in registering to vote because the Council provided an explanation and the complainant did not wish to pursue the complaint further.
17. The LGSCO decided not to investigate a complaint about renewing a bus pass for an older person because there was insufficient evidence of fault by the Council and insufficient evidence of injustice.
18. The LGSCO decided not to investigate a complaint about the location of a street light which impacts on the complainant's property because there was not enough evidence that any fault by the Council caused the injustice the complainant claimed.
19. The LGSCO decided they would not investigate a complaint about the Council's actions regarding the placement of three children with the complainant because they would be unable to add anything significant to the Council's investigation.
20. The LGSCO decided not to investigate a complaint about the Council's actions relating to how much an individual should pay for their social care, because the complaint was late and there was not good reason to accept it.

Closed after initial enquiries: out of jurisdiction

21. The LGSCO concluded they cannot investigate a complaint about maintenance work to Council properties next to the complainant's home because they do not have the power to investigate complaints about the management of social housing by councils.

Not upheld: no maladministration

22. The LGSCO did not find any fault with the Council's actions in approving planning applications for development near the complainant's property. The LGSCO found the Council properly considered the impact on surface water drainage and potential flooding of nearby properties including the complainants.

Upheld: Maladministration and Injustice

23. The LGSCO upheld an Adult Social Care complaint about the Council's handling of a Direct Payment between 2015 and 2018, resulting in the Council issuing the complainant an invoice for approximately £7000 for unaccounted and unauthorised spending of the Direct Payments. The LGSCO determined the Council was at fault for failing to monitor, audit and provide support on the spending of the direct payment. It was also at fault for failing to keep adequate records. The Council agreed to apologise for the distress and uncertainty this caused and reduce the outstanding debt owed.
24. The LGSCO upheld another Adult Social Care complaint regarding the Council failing to carry out its safeguarding duties towards the complainant. The complainant said the Council's actions had a negative impact on their mental health. The LGSCO found the Council at fault for not recording the rationale for its decision in accordance with its Safeguarding Policy. The Council has agreed to apologise; make a payment to recognise the uncertainty caused by the fault identified and remind staff to adhere to the Safeguarding Policy, in particular retaining complete and accurate records demonstrating how decisions are made in relation to safeguarding enquires.
25. The LGSCO upheld a further Adult Social Care complaint about the Council reducing the complainants support package without proper consideration of their needs and fettering their discretion in deciding to refuse some elements of support, unlawfully applying a blanket policy in the allocation of domestic support hours. The Council agreed to apologise for its failure to properly reassess the complainant's care needs; review the complainant's care needs and produce a care and support plan which details, how these needs will be met, in consultation with the complainant; consider what, if any support the complainant had missed, and decide on a suitable remedy; pay the complainant £250 for their time and trouble pursuing the complaint with the Council and the Ombudsman and ensure staff undertake assessments/reviews in accordance with the law and guidance.
26. The LGSCO upheld a complaint about the Council's failure to carry out cleansing of the lane next to the complainant's home and the fact it confiscated the complainant's bin without notice, delayed in returning the bin and delayed in responding to their complaint. The LGSCO concluded this caused the complainant distress, led to them having to dispose of their own refuse and led to them going to time and trouble to pursue their complaint. The Council agreed to apologise; make a payment to the complainant and introduce a monitoring schedule to ensure the lane is cleansed fortnightly.

Upheld: maladministration and injustice - no further action, satisfactory remedy provided by the org

27. The LGSCO upheld a complaint about the Council's Financial Assessment Team's handing of a direct payment in relation to adult social care services. The LGSCO concluded there

was evidence of delay by the Council in sending an invoice. The Council had already offered a satisfactory remedy for this complaint before the complaint came to the LGSCO offering a payment plan, an apology and £100 compensation. The LGSCO also concluded there was no fault on the Council's part in relation to the calculation of invoices or in asking for direct payments to be repaid in accordance with its policy.

Housing Ombudsman Services (HOS)

Service Failure

28. The HOS found service failure in respect of the Council's handling of the resident's allegations of unacceptable staff conduct towards them. The HOS concluded that following the residents decision not to disclose their CCTV footage of the incident to the Council in order to determine the complaint it would have been reasonable for the Council to have approached the witnesses to the incident and asked for their version of events. The HOS ordered the Council to award the resident £100 and write to the resident to apologise for the limitations in its investigation.
29. The HOS found Housing Services failed to take any meaningful actions to investigate new ASB reports from a resident after mediation attempts ended, even after the resident advised how the situation had impacted their health. It also contributed to a lack of clarity on why it had decided a particular course of action, did not address their concerns about the impact of this decision and failed to offer any compensation for the errors identified through its complaints process. The HOS ordered the Council to write to the resident to apologise for the service failures identified; pay the resident compensation of £250 in recognition of the distress and inconvenience caused and ensure it has procedures in place so that it is able to conduct risk assessments when residents report that they have been subject to verbal abuse or threats related to ASB.
30. The organisational learning identified as a result of these complaints should ensure there is not a re-occurrence.

LGSCO's Annual Review letter 2022.

31. 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).
32. 83% of complaints the LGSCO investigated were upheld, compared to 64% 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).
33. The LGSCO found that in 20% of upheld cases the Council had already provided a satisfactory remedy, compared to an average of 12% in similar authorities.
34. 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 again 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

35. The organisational learning identified as a result of these complaints should ensure there is no re-occurrence.
36. The delay in implementing the LGSCO's remedies was, in part, as a result of the pandemic. The Complaints Manager has highlighted this issue with officers responsible for implementing remedies to complaints agreed with the LGSCO in order to reduce delays in the remedy process.

Outcome of Consultation

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