

CABINET
5 SEPTEMBER 2023

COMPLAINTS MADE TO LOCAL GOVERNMENT OMBUDSMAN

Responsible Cabinet Members

Councillor Stephen Harker, Leader
Councillor Libby McCollom, Local Services Portfolio
Councillor Nick Wallis, Children and Young People Portfolio
Councillor Chris McEwan, Economy Portfolio
Councillor Matthew Roche, Health and Housing Portfolio
Councillor Mandy Porter, Resources Portfolio
Councillor Anne Marie Curry, Adults Portfolio
Councillor Dr Amanda Riley, Stronger Communities Portfolio

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 6 December 2022.
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 2022 and 31 March 2023 and outlines actions taken as a result.
4. This report also provides Members with a copy of the Annual Letter of the LGSCO, 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.

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

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.

Information and Analysis

10. Between 1 April 2022 and 31 March 2023, the LGSCO determined 21 complaints.
11. Between 1 April 2022 and 31 March 2023, the HOS determined 0 complaints.
12. The LGSCO has recently updated the decisions they use. As a result it is not possible to make a direct comparison with previous years. However, the new decisions in ***bold/italics*** in the table below are broadly comparable to those previous decisions in *italics* in the table below.

13. The outcome of cases on which the LGSCO reached a decision is shown in the table below:

LGSCO Findings	No. of cases 2022/23	No. of cases 2021/22	No. of cases 2020/21	No. of cases 2019/20
Closed after initial enquiries: no further action	9	9	4	7
Closed after initial enquiries: out of jurisdiction	4	1	1	2
<i>Not upheld: no fault</i>	1	N/A	N/A	N/A
<i>Not upheld: no maladministration</i>	1	1	2	1
<i>Upheld: fault and injustice</i>	4	N/A	N/A	N/A
<i>Upheld: Maladministration and Injustice</i>	0	4	2	6
Upheld: Maladministration, No Injustice	0	0	1	0
<i>Upheld: fault and injustice – no further action, organisation already remedied</i>	1	N/A	N/A	N/A
<i>Upheld: maladministration and injustice - no further action, satisfactory remedy provided by the org</i>	0	1	0	0
<i>Upheld: no further action, organisation already remedied</i>	1	N/A	N/A	N/A
<i>Upheld: not investigated - injustice remedied during Body in Jurisdiction's complaint process</i>	0	0	1	0

Local Government and Social Care Ombudsman (LGSCO)

Closed after initial enquiries: no further action

14. In this case the LGSCO concluded, they would not investigate a complaint about how the Adult Services, Adult Contact Team had processed the complainant's personal data, because it would be more appropriate for the Information Commissioner's Office to do so.
15. In response to a complaint about Finance (Adults) and issues with the financial assessment process, the LGSCO decided not to investigate because the Council had remedied the injustice caused by the fault. The LGSCO concluded a further investigation could not add to the Council's responses or make a different finding of the kind the complainant wanted.
16. In response to a complaint for Housing Benefit and Council Tax, regarding eligibility for the hardship support fund, the LGSCO concluded there was insufficient evidence of fault by the Council.
17. In response to a complaint for the Adult Services, Ongoing Assessment and Intervention Team (OAIT) the LGSCO decided, they would not investigate the complaint about how the Council managed the complainant's care and support needs because their investigation

could not add to the Council's investigation and because it would not lead to a different outcome.

18. In response to a complaint for Parks, Countryside and Allotments, the LGSCO decided they would not investigate a complaint about the Council giving notice to end the complainant's tenancy for their stables, as they could not achieve the outcome the complainant wanted.
19. In response to a complaint regarding the Safeguarding Partnership, the LGSCO concluded they would not investigate a complaint about care provided to the complainant's late spouse, because further investigation could not add to the responses provided by the Care Provider and the Council.
20. In response to a complaint about the Council's handling of the Council Tax account in respect of the complainant's late father's home the LGSCO concluded, as the complaint was made late and there was insufficient remaining injustice the case did not warrant their involvement.
21. In response to a complaint for Adult Services, Ongoing Assessment & Intervention Team (OAIT) the LGSCO concluded, they would not investigate a complaint about care and support provided to the complainant. This was because they could not add to the Council's response or make a different finding of the kind the complainant wanted.
22. In response to a complaint for Planning Policy, the LGSCO decided they would not investigate a complaint about alleged flaws in a supplementary planning document, which the Council put out for consultation, because the complainant had not suffered sufficient injustice to warrant their involvement.

Closed after initial enquiries: out of jurisdiction

23. In response to a complaint about Council Tax, the LGSCO concluded they would not investigate the complaint because there was insufficient evidence of fault by the Council. In addition, they noted the complainant could appeal to the Valuation Tribunal or contact the Valuation Office.
24. In response to a complaint for Finance (Adults), the LGSCO concluded they would not investigate the complaint about the Council reducing the complainant's Direct Payments, as there was no good reason for the delay in the complainant making the complaint.
25. In response to a complaint for Arboriculture, the LGSCO decided they would not investigate a complaint about the Council's consideration of an insurance claim, about a tree allegedly damaging the complainant's property. The LGSCO concluded, any damage caused by the Council's tree would be an issue of legal liability which only insurers or the courts can determine. The LGSCO advised it would be reasonable for the complainant to pursue that route.
26. In response to a complaint about the Adult Services, Mental Health Team allegedly completing an inaccurate assessment of the individual's care and support needs and failing to complete Section 42 safeguarding enquiries, the LGSCO decided there was insufficient evidence of fault and that further investigation would not achieve a different outcome.

The LGSCO initially determined the complaint as, '*Closed after initial enquiries: no further action*'. Following the complainant Judicially Reviewing the decision, the LGSCO withdrew their original decision and issued an amended decision in which they concluded, they could not investigate the complaint because the complainant had begun court action against the Council about the same matters.

Not upheld: no fault

27. In response to a complaint about the Council's alleged poor handling of the COVID-19 grant schemes, resulting in the complainant missing out on business support worth £40,000 and being put to time and trouble in chasing the Council, the LGSCO found there was no fault on the Council's part.

Not upheld: no maladministration

28. Following a complaint for Highway Network Management, the LGSCO found no fault on the Council's part in allegedly failing to carry out proper monitoring of high speeds on a stretch of road near the complainant's home.

Upheld: fault and injustice

29. In response to a complaint about how the Council dealt with an appeal for home to school transport, the LGSCO concluded there was fault by the Council as the appeal panel did not consider the Council's discretion. The LGSCO also found fault in the Council's policies on home to school transport. The Council agreed to review the appeal panel's decision and its policies.
30. In response to a further complaint about the Council's decision to refuse an appeal for home to school transport, for a child who has special educational needs, the LGSCO again found the Council was at fault. The LGSCO concluded, the Council had not explained its decision adequately and so has not demonstrated it considered the appeal properly. The Council agreed to make a payment to the complainant to recognise the impact of its failings. It also arranged another appeal hearing and reminded appeal panel members about the importance of properly explaining their decisions.
31. Alongside the council's review of current procedures in the light of this judgement, the Department for Education published revised statutory guidance on home to school transport in June 2023 which includes updated advice on appeal procedures. Officers will be working with the Darlington Parent Carer Forum and other organisations to review the council's current policies and procedures. Any proposed changes to policy would be subject to a public consultation.
32. In response to a complaint about Adult Services, Mental Health Team taking too long to complete an assessment, the LGSCO concluded there was a lack of clear communication and that the Council failed to follow up on outcomes specified in response to Council's investigation of the complaint. The LGSCO found fault because there was a lack of clear communication and avoidable delays in sending documentation to the complainant. To remedy the injustice caused by these faults, the Council agreed to apologise, make a payment to the complainant and clarify its position.

33. In response to a complaint about Children's Services, Team C, the LGSCO concluded the Council did not properly consider the findings and recommendations of an independent investigation carried out under the children's statutory complaints process. The complainant said the Council's actions caused avoidable frustration and negatively affected their mental health. The LGSCO found fault by the Council who apologised and made a payment to recognise the injustice caused.

Upheld: fault and injustice – no further action, organisation already remedied

34. In response to a complaint about the Council failing to consider a complaint in accordance with its Children statutory complaints procedure, the LGSCO found the Council was at fault for failing to complete its Stage 2 investigation within the maximum 65 working days allowed under the Regulations. The Council agreed to make a payment to the complainant and respond to the Stage 2 complaint within one month.

Upheld: no further action, organisation already remedied

35. Following a complaint for Finance (Adults), the LGSCO concluded they would not investigate a complaint about the Council charging the complainant's husband for respite care, when she was told it would be free of charge. This was because the Council had investigated the complaint and the LGSCO were satisfied the recommendations identified as an outcome of the Council's investigation, remedied the injustice caused by the fault.
36. The organisational learning identified as a result of these complaints should ensure there is not a re-occurrence.

Analysis

37. During 2022/23 the Council received four Upheld: Fault and Injustice decisions, compared to four Upheld: Maladministration Injustice decisions in 2021/22.
38. The organisational learning identified as a result of these complaints should ensure there is not a re-occurrence.
39. The LGSCO upheld less complaints about the Council, than they did on average about similar organisations.
40. The LGSCO were satisfied the Council had successfully implemented 100% of their recommendations, which again compared favourably to similar organisations.
41. The LGSCO also found the Council had provided a satisfactory remedy in more upheld cases than similar organisations, before the complaint reached the Ombudsman.

Outcome of Consultation

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