

**CABINET
5 DECEMBER 2023**

**COMPLAINTS MADE TO THE LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN,
AND THE HOUSING OMBUDSMAN SERVICE**

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 5 September 2023.

Summary

2. This report sets out in abbreviated form the decisions reached by the LGSCO and the HOS between 1 April 2023 and 30 September 2023 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 as 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.

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

5. 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.
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 and Analysis

7. Between 1 April 2023 and 30 September 2023, the LGSCO determined 14 complaints.
8. Between 1 April 2023 and 30 September 2023, the HOS determined 1 complaints.
9. The LGSCO has 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.
10. The outcome of cases on which the LGSCO reached a decision is shown in the table below.

LGSCO Findings	No. of cases April – Sept 2023	No. of cases 2022/23	No. of cases 2021/22	No. of cases 2020/21
Closed after initial enquiries: no further action	7	9	9	4
Closed after initial enquiries: out of jurisdiction	2	4	1	1
<i>Not upheld: no fault</i>	0	1	N/A	N/A
<i>Not upheld: No further action</i>	1	N/A	N/A	N/A
<i>Not upheld: no maladministration</i>	0	1	1	2
<i>Upheld: fault and injustice</i>	2	4	N/A	N/A
<i>Upheld: Maladministration and Injustice</i>	0	0	4	2
Upheld: Maladministration, No Injustice	0	0	0	1
<i>Upheld: fault and injustice – no further action, organisation already remedied</i>	1	1	N/A	N/A
<i>Upheld: maladministration and injustice - no further action, satisfactory remedy provided by the org</i>	0	0	1	0

<i>Upheld: no further action, organisation already remedied</i>	1	1	N/A	N/A
<i>Upheld: not investigated - injustice remedied during Body in Jurisdiction's complaint process</i>	0	0	0	1

11. The outcome of cases on which the HOS reached a decision is shown in the table below.

HOS Findings	No. of cases April – Sept 2023	No. of cases 2022/23	No. of cases 2021/22	No. of cases 2020/21
Maladministration	1	0	0	0
No Maladministration	0	0	0	0
Service Failure	0	0	2	1

Local Government and Social Care Ombudsman (LGSCO)

Closed after initial enquiries: no further action

12. In this case the LGSCO concluded, they would not investigate a complaint about the care and support provided by a care provider. This was because an investigation would not lead to different findings or outcomes. In addition, the LGSCO concluded the Information Commissioner's Office (ICO) was better placed to consider a complaint about the care provider sharing confidential information.
13. In response to a complaint about the Council's decision not to issue the complainant with a pre-payment card to access their funds, the LGSCO concluded there was not enough evidence of fault in the Council's decision-making process to warrant them investigating. The LGSCO also noted the Court of Protection or the Office of the Public Guardian were also the bodies better placed to consider the complaint.
14. In their reply to a complaint about the Council's actions regarding a debt for adult social care fees, the LGSCO concluded they would not investigate because they had previously investigated the concern and the case had since been to court. The complainant said they was raising new issues, but the LGSCO found they were all in relation to the same matter. The LGSCO also concluded they would not investigate the Council's suggestion that it might invoke its unreasonably persistent complainant procedure, because it has acted in accordance with that procedure in providing the complainant with a warning about their behaviour. Though the complainant disagreed with the Council's action, the LGSCO's concluded it was unlikely they would find fault.
15. Following a complaint about the Council's advertising for a theatre show being misleading, the LGSCO concluded they would not investigate because the complainant had not suffered a significant injustice which would justify an investigation.
16. The LGSCO concluded they would not investigate a complaint about the way the Monitoring Officer dealt with a complaint about the conduct of a councillor, because it was unlikely they would find fault.

17. With regard to a complaint about the Council's consideration of a school transport appeal, the LGSCO concluded an investigation by them would not find that the original panel that considered the appeal should have awarded transport, and thus they could not say that the complainant had incurred the costs claimed as a result of fault by the Council.
18. The LGSCO decided they would not investigate a complaint about Children's Services not protecting the complainant's family from risks of harm because of the actions of other public services towards them. The LGSCO concluded there was not enough evidence of fault in the Council's actions or of the Council causing the complainant's family significant injustice. The LGSCO also concluded they could not investigate the actions of other bodies involved or matters the Council is not responsible for and an investigation could not achieve the outcome the complainant wanted.

Closed after initial enquiries: out of jurisdiction

19. In this case the LGSCO concluded they would not investigate a complaint about damage caused to the complainant's property due to a Sycamore tree belonging to the Council. This was because the courts are best placed to determine any liability for damages, therefore it was reasonable to expect the complainant to take their claim for damages to court.
20. With regards to a complaint about the Council's response to a freedom of information request, the LGSCO concluded it was reasonable for the complainant to complain to the ICO which is the proper authority to consider information access complaints.

Not upheld: No further action

21. In relation to a complaint about the Council wrongly considering a change to a grant of planning permission as a non-material amendment rather than inviting a new application, the LGSCO concluded the complainant did not live close enough to be significantly affected by the change and discontinued their investigation.

Upheld: fault and injustice

22. In the first case upheld the complainant was dissatisfied with the Council's decision to refuse their child school transport for the 2021 – 2022 school year. The LGSCO concluded, the third appeal panel to consider the matter had also failed to do so correctly.
23. To remedy the complaint the Council agreed to reconsiders the application for transport for 2021 – 2022, paying particular attention to its power to provide transport in those cases that do not meet the criteria in legislation, government guidance and its policy. The Council agreed that if it decided not to provide transport for 2021 – 2022, it would offer the complainant a fresh appeal and any appeal panel would give reasons for their decision to explain how the Council applied its policy and how it exercised its discretion. The Council also agreed to consider whether it was necessary to produce guidance for transport officers and appeal panels to explain the concept of 'discretion' and to ensure future decisions are sound and properly recorded.
24. In a previous complaint about this matter, from the same individual, the Council agreed to make a substantial payment to acknowledge the complainant's time and trouble pursuing

the complaint and the avoidable uncertainty, anxiety and distress they had suffered. The LGSCO recognised the Council was quick to arrange the last appeal, however, recommended the Council make a further payment of £250 to recognise the complainant's time and trouble pursuing another complaint after once again receiving an inadequate decision.

25. The second upheld complaint concerned the Council delaying providing the complainant's child with school transport; failing to reimburse transport costs; delaying in issuing an education, health and care plan (EHCP); failing to commission the necessary reports; failing to offer a personal budget; failing to ensure their child's special educational needs provision was implemented; failing to provide alternative education when their child was out of school; and delaying in responding to the complaint.
26. The LGSCO concluded there were delays in the transport and education; health and care plan processes; dealing with the complaint; a failure to provide alternative education; and a failure to discuss personal budgets at reviews.
27. To remedy the complaint the Council agreed to apologise; provide mileage forms to claim back transport costs; complete a risk assessment for the school transport to make sure it was suitable; pay the complainant £1,000 to reflect the missing provision from their child's EHCP as a result of the delay issuing a final plan; provide a refund of the complainant's costs in educating their child; pay the complainant £500 to reflect their distress and time and trouble; send a reminder to officers dealing with reviews of EHCPs to remind them of the need to discuss the option of a personal budget at the review meeting; and to send a reminder to complaints officers of the need to adhere to the timescales set out in the Council's complaints procedure and to keep those who have complained up-to-date when delays occur.

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

28. Following a complaint about an invoice received for care, the LGSCO concluded their investigation having made a finding of fault by the Council. Although the individual was liable for the care fees, the LGSCO found the Council failed in its duty to appropriately inform the individual about the liability. The LGSCO said the Council had made a satisfactory award to the complainant to acknowledge the impact this had and has made service improvements to prevent similar occurrences. On this basis the LGSCO did not make any further recommendations to the Council.

Upheld: no further action, organisation already remedied

29. In this case the LGSCO decided they would not investigate a complaint about Children's Services sharing incorrect information with another Local Authority. This was because the Council had accepted fault and offered an appropriate remedy and further investigation by them would not lead to a different outcome.

Housing Ombudsman Services (HOS)

30. This complaint concerned the landlord's (Council's) handling of the resident's reports of anti-social behaviour and harassment; the landlord's handling of repairs in readiness for, and after, letting; and the landlord's associated complaint handling. The HOS concluded

that while some of the landlord's investigations into the resident's reports of anti-social behaviour and harassment were appropriate, it failed to conduct a risk assessment during the lengthy period of anti-social behaviour reports and this meant that it did not provide the resident's household with sufficient support and communications. That the landlord did not let the property in a suitable condition prior to the resident's tenancy and delayed unreasonably in completing repairs once they moved in. However, its compensation award and service improvement measures offered sufficient redress given the circumstances of the case. The HOS also concluded the landlord delayed unreasonably in providing the resident with its stage 2 response.

31. The HOS ordered the Council to arrange for a senior member of the landlord's staff to apologise to the resident in writing for the failings identified in this report; pay the resident £1,050 compensation; and carry out a review of its handling of the resident's anti-social behaviour and harassment reports to determine what action it should take to prevent a reoccurrence of the failings identified. The HOS also recommended the Council review the internal training it delivers on its obligations in accordance with the Equality Act 2010 to ensure that staff are clear about their responsibilities to vulnerable residents; review any potential Equality Act 2010 considerations as a matter of standard procedure when considering a resident's complaint; and assess its internal recording procedures against the recommendations of the HOS's Spotlight report on Knowledge and Information Management.
32. Since the issues highlighted in this complaint, Housing Services had introduced a new Anti-Social Behaviour Policy. In light of the HOS's findings, the Council has undertaken a further review of that policy, in particular considering whether it properly addresses customers vulnerabilities, taking into consideration the Housing Ombudsman's Spotlight on Noise, in particular the section 'Respect'. As a result of the review, the Council has improved the process of risk assessments in relation to both victims and perpetrators.

Analysis

33. Between 1 April and 30 September 2023 the Council received two Upheld: Fault and Injustice decisions from the LGSCO, compared to a total of four Upheld: Fault and Injustice decisions in 2022/23.
34. Between 1 April and 30 September 2023 the Council received one Maladministration decisions from the HOS, compared to zero in 2022/23.
35. The organisational learning identified as a result of these complaints should ensure there is not a re-occurrence.

Outcome of Consultation

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