

**CABINET
10 SEPTEMBER 2019**

REVIEW OF OUTCOME OF COMPLAINTS MADE TO OMBUDSMAN

Responsible Cabinet Members

**Councillor Charles Johnson – Efficiency and Resources Portfolio
Councillor Rachel Mills – Adult Social Care Portfolio
Councillor Paul Crudass - Children and Young People Portfolio
Councilor Lorraine Tostevin - 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 11 December 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 October 2018 and 31 March 2019, 10 cases were the subject of decision by the LGSCO.
8. Between 1 October 2018 and 31 March 2019, 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	1
Closed after initial enquiries: out of jurisdiction	1
Not upheld: No maladministration	2
Premature	2
Upheld: Maladministration Injustice	4

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

HO Findings	No. of Cases
No Maladministration	2

Local Government and Social Care Ombudsman (LGSCO)

Closed after initial enquiries: no further action

11. This complaint concerned Children's Services response to the complainant's allegations about the care of some children. The LGSCO concluded the complainant could not complain on the children's behalf and had not suffered a significant personal injustice.

Closed after initial enquiries: out of jurisdiction

12. This complaint was for Legal Services and concerned the Council's refusal to pay the complainant's company for legal fees incurred during an adjudication procedure. The LGSCO determined that they cannot investigate complaints where the complainant has taken legal action and advised that it remained open to the

complainant to ask the court (adjudicator) if the Council was responsible for their legal costs.

Not upheld: No maladministration

13. The first of these complaints was for Development Management. The LGSCO concluded part of this complaint was outside jurisdiction as it related to a complaint regarding windows the complainant had been aware of since 2010. The other part of the complaint related to the lack of planning enforcement over a fence and was not upheld because there was no fault leading up to the final decision taken by the Council, although it did give some wrong information at first, which it corrected.
14. The second of these complaints was also for Development Management and concerned planning decisions taken since 2003 about the development of a farm close to the complainant's property, a lack of enforcement action taken by the Council and a more recent decision to grant planning permission for a grain silo to be moved. The Ombudsman found there was no evidence of fault in the Council's substantive decisions, that we had given reasons why we could not take enforcement action and why we granted the more recent planning application despite the complainant's objections.

Premature

15. The first of these was for Adult Services and alleged the Council had mishandled a safeguarding concern involving the complainants. As the Council was investigating the complaint, the LGSCO determined it as premature on the basis the law says they must normally be satisfied the Council knows about the complaint and has had an opportunity to investigate and to reply.
16. The second of these was for Arboriculture and again as the Council was investigating the complaint the LGSCO determined it as premature on the basis the law says they must normally be satisfied the Council knows about the complaint and has had an opportunity to investigate and to reply.

Upheld: Maladministration Injustice

17. The first of these was for Children's Services. The complaint concerned the Council failing to ensure the complainant's safety at a meeting about the welfare of their children. The complainant said they warned the Council of a risk to their safety prior to the meeting and in response the Council stated it would put adequate measures in place to reduce the risk, but did not. The LGSCO investigated whether the Council properly considered and acted on the findings and recommendations of the stage two investigation and stage three panel which considered the complaint. The LGSCO found the Council was at fault because it did not properly implement some of the recommendations that were made and there was a risk that the faults identified may reoccur. The LGSCO recommended the Council amend its procedures, increase the financial payment made to the complainant for putting them at risk of harm and offer a further payment for the time and trouble the complainant was put to in having to make the complaint. The Council agreed to implement the recommendations.
18. The second of these was Financial Assessments. The complaint concerned the Council's decision to include the value of the property owned by the complainant's

mother in its financial assessment. The complainant said the Council had not explained its change of policy. The Ombudsman found the Council was at fault on the basis the change in charging policy should have been clear and transparent to those affected by it. The Council had amended its policy documents by the time the LGSCO reached a decision. The LGSCO recommended the Council remove any extra charges that were applied up to the date the amendments were made.

19. The third of these was also for Financial Assessments. The complaint was dissatisfied with the outcome of an assessment which led the Council to asking them to pay more money towards their care. The LGSCO upheld the complaint having several concerns about the assessment procedure followed by the Council, some of which lead them to find fault. As a result, the LGSCO considered the Council had caused the complainant unnecessary uncertainty. The Council accepted the findings and agreed actions to remedy the complaint, including completing a review of its procedure followed by a review of the complainants assessed contribution.
20. The fourth of these was for Commissioning & Contracts and concerned the lack of appropriate care given to the complainant's mother, at a care home arranged by the Council. There was no fault by the care home or Council in terms of the care provided. However, the care home did not keep adequate records of the concerns the complainant raised during their mother's stay. The Council agreed to apologise for this fault and require the Care Home to improve its record keeping. The Council was not able to share important evidence of its investigation with the LGSCO and agreed to remind officers conducting interviews to share them with the Complaints and Information Governance Team.

Housing Ombudsman (HO)

No Maladministration

21. The first of these complaints concerned the way the Council dealt with reports about outstanding repairs to the entrance door to the block and the Council's use of communal space to store building materials and provide welfare facilities to workmen. The HO concluded the Council gave a satisfactory explanation as to why there was a delay in completing the work and the need to provide welfare facilities. The HO recommended the Council review its internal processes to ensure that in the future residents are updated about delays to major works in communal areas.
22. The second of these complaints concerned the Council's decision to replace rather than repair the complainant's boiler. The complainant did not feel the Council had properly considered their health concerns and support needs in reaching the decision and that communication was poor. The Housing Ombudsman concluded, in accordance with paragraph 42 of the Housing Ombudsman Scheme there has been no maladministration.

Analysis

23. During the second half of 2018/19 the Council received four Upheld: Maladministration Injustice decisions from the LGSCO, compared to one for the same period in 2017/18.

24. Three of the four Upheld: Maladministration Injustice decisions related to matters associated with the provision of adult social care services i.e. two relating to financial assessments and one to a contracted care service. The other Upheld: Maladministration Injustice decision related to children's social care services.
25. The most common complaints were policy and procedural issues in relation to financial assessments. The Council has now implemented the LGSCO's recommendations which should prevent a re-occurrence.

Outcome of Consultation

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