

**LOCAL GOVERNMENT OMBUDSMAN COMPLAINTS**  
**ANNUAL REPORT FOR 2012/13 AND OMBUDSMAN'S ANNUAL LETTER**

**Joint Report by the Ombudsman Link Officer and the Head of Business Strategy and Support Services**

**RECOMMENDATIONS:**

- (a) That the complaints made to the Local Government Ombudsman referred to the Council during 2012/13 and their outcomes be noted;
- (b) that the Ombudsman's Annual Letter to the Council be noted;
- (c) that the complaint made to the Education Funding Agency referred to the Council during 2012/13 and its outcome be noted.

**INTRODUCTION**

1. In October 1999 the Committee agreed it should receive an Annual Report summarising all complaints about the County Council dealt with by the Ombudsman. It should also receive an Annual Report of any such complaints investigated by the Education Funding Agency for completeness. This Report fulfils that purpose, provides a brief commentary on the Ombudsman's Annual Review letter and gives information about changes implemented by the Local Government Ombudsman within her own organisation.

**ANNUAL REPORT**

**2. Ombudsman's Jurisdiction**

- 2.1 The Ombudsman's jurisdiction is covered by The Local Government Act 1974 which defines the main statutory functions for the Ombudsman as:
  - to investigate complaints against councils and some other authorities
  - to investigate complaints about adult social care providers from people who arrange or fund their adult social care (Health Act 2009)

The Ombudsmen's jurisdiction under Part III of the Act covers all local authorities (excluding town and parish councils); police and crime bodies; school admission appeal panels.

- 2.2 The Apprenticeships, Skills, Children and Learning (ASCL) Act 2009 gave the LGO new powers for considering complaints against a school by pupils and parents of a pupil, and replaced the role of the Secretary of State. However The Education Act 2011, which was given Royal Assent on 15 November 2011, repealed the power to complain to the Local Government Ombudsman about internal school matters. From July 2012 these responsibilities ceased in all 14 local authority areas that were trialing escalating school complaints to the Ombudsman and the role has reverted to the Secretary of State.

**3. Caseload**

- 3.1 The Ombudsman no longer has jurisdiction over school admission appeals for schools which have become Academies and the Secretary of State directed the Education Funding Agency to '*handle complaints about the administration of an Independent Appeals Panel for admission or exclusions or permanent exclusions*'. This is relevant to the County Council inasmuch as the Devon Independent Admissions Appeals Committee which is administered by the Council's staff will continue to offer that service to Academy's should they wish to subscribe to it. As shown in Appendix A there was only one complaint to the Education Funding Agency which resulted in no evidence of maladministration in relation to compliance with the Code or consideration of evidence. However, maladministration was found in relation

to the content of the Decision Letter (which is contested) but that had no material effect on the decision.

3.2 The number of complaints received for the last four years is shown below:

Year	Complaints
2012/13	62
2011/12	50
2010/11	54
2009/10	56

3.3 Details of all complaints received during 2012/13 and the outcomes are set out at Appendix B. The year 2012/13 has experienced an increase in the number of complaints received by the Ombudsman in respect of services provided by DCC. This is likely due to the changes made to the corporate customer feedback policy in April 2012. Stage 3 was removed saving the County Solicitor's valuable time and stage 2 requests are now robustly assessed prior to full investigation, saving front line management time and costs. If the Council is confident it has followed policy, procedure and legislation requirements customers are directed to the Ombudsman at an early stage. Indeed the Ombudsman Link Officer would have expected a more significant rise in complainants approaching the Ombudsman.

3.4 Appendix B shows that:

- None of the complaints resulted in a finding of maladministration against the County Council;
- there was no question of probity raised by a complainant.

3.5 The Ombudsman decided that 7 of the complaints she received were outside her jurisdiction where such cases can include:

- Something the complainant has known about for more than twelve months but not pursued in the interim; and
- matters which have been—or could be—dealt with by the courts or a tribunal;
- matters affecting all or most of the inhabitants of an area
- and that 14 complaints were premature, the complainant not having exhausted the Council's complaint procedure or other course of action open to them.

#### **4. Local settlements**

4.1 Each year a small number of complaints are resolved through a local settlement. These are proposed by the Ombudsman when she identifies either an error by a council or a possible way out of an impasse. In the latter case the Council may not be at fault but is asked to "do a little extra" to help.

4.2 It is important to note that the recommended remedies are not necessarily of a different order from those emerging from our own complaints system and can include:

- A letter apologising for any inconvenience caused;
- redrafting an information leaflet;
- reviewing an issue after (say) 12 months;
- a small payment in consideration of the complainant's "time and trouble"; or
- a more substantial recompense, e.g. for expenditure incurred owing to a shortfall in council services.

4.3 In 2012/13, ten cases resulted in local settlements of which 7 were adult social care, 2 home to school transport appeals and 1 planning. Examples of remedies are:

- Apology for a failure to advise a customer of the withdrawal of a service.
- An apology and £250 payment made for the anger and uncertainty caused to the complainant by the Council not considering a planning condition in terms of quarry operations.
- A letter of apology and explanation of why a voluntary group had ceased operating, no financial penalty.

In respect of one of the home to school transport cases, the Council is keen that awareness of this case is raised and a strong message delivered that DCC does not agree with the decision made by the LGO. The Member appeal panel in question was made aware of the fact that the school year group was over PAN (planned admission number). However the Ombudsman believes that the panel should have questioned the Council representative about the impact on the year group or school if a further child was admitted, given the school overall was below capacity.

## 5. Breakdown by Origin and Service Area/Subject

- 5.1 Complaints lodged in 2012/13 are broken down by origin (by complainant's address) as follows. Figures for the previous three years are also shown to provide an indicative comparison:

District	2012/13	2011/12	2010/11	2009/10
Mid Devon	5	6	10	1
Exeter	12	9	9	14
Torridge	0	6	-	6
North Devon	10	6	9	8
East Devon	8	7	7	8
Teignbridge	13	8	7	7
West Devon	3	1	6	4
South Hams	5	6	5	6
Out of County	5	1	1	2

- 5.2 The breakdown of complaints by subject is shown below with, again, comparative figures for the previous two years only, as these also reflect the changes in organisational structure within the County Council introduced in 2011.

Subject	2012/13	2011/12	2010/11
Highways & Traffic Management	9	10	9
Planning	5	1	2
Public Rights of Way	-	1	-
Development Management	-	-	2
Services to Communities	2	1	-
Adult Social Care	15	17	12
School Attendance/Transport/Admission/Exclusion	11	10	5
Children's Social Care	11	5	11
Governance & Corporate Issues	2	2	2
Outside Ombudsman's jurisdiction	7	2	11

## **6. OMBUDSMAN'S ANNUAL REVIEW LETTER**

- 6.1 The Annual Review letter is the successor to the Ombudsman's Annual Letters, setting out her observations on her dealings with the County Council over the year. A copy of her letter for 2012/13 is attached at Appendix C.
- 6.2 Members will note that the Ombudsman has not given her usual comment on the Council's performance due to other priorities and lack of resource. The Ombudsman herself has been challenging her own organisation's structure and processes following a negative report about its practice by the Communities and Local Government Select Committee. However, more detailed information about the Council's performance will be available in next year's letter.
- 6.3 The Local Government Ombudsman Link Officer is however pleased to report once again that there are no cases where evidence of maladministration has been found and the Ombudsman did not wish to raise any issues in respect of the complaints received.

## **7. Change within the Ombudsman's organisation**

- 7.1 2012/2013 has been a year of change for the Local Government Ombudsman's organisation as it faced a critical report about its performance from the Communities and Local Government Select Committee and as most public sector organisations has had to react to funding cuts.

Of major note organisationally, Jane Martin is now the only Ombudsman covering England, as following the long term absence due to ill health of Anne Seex, the organisation has decided on a one Ombudsman structure.

Operationally an assessment stage has been introduced by the Ombudsman, which means each complaint is not immediately allocated to an investigator but is assessed and can be rejected more promptly, against a consistent assessment code. Devon County Council is fortunate to have a positive relationship with the Local Government Ombudsman and during this assessment stage much information is shared by telephone saving officer time. However, I think it is fair to say there are some 'teething' problems with this new approach. There does not appear to be any attempt at this stage to consider previous contact with the customer and occasionally sufficient information is not shared for the Council to provide a meaningful early response.

## **8. Future Developments**

- 8.1 Members will be acutely aware of the continuing financial constraints being faced by the County Council and the tough decisions around service provision that are being taken. The expectation of customers does not reduce in line with the challenges the Council faces, indeed customers feel more empowered to hold the Council to account, and therefore it is envisaged that more customers will escalate their dissatisfaction beyond the Council's own complaint procedure to the Ombudsman. Even as the Council becomes more of an enabling authority and procuring many services, it remains entirely accountable for those services, however much day-to-day control it delegates to providers.
- 8.2 Members have previously acknowledged that complaints to the Ombudsman do not always involve the Council or the Appeals Committee having done anything wrong, that they come from people who would have liked something more, or better, or a different outcome. It is unlikely that public expectations of services will diminish in the short term and therefore no reason to suppose that complaints will fall significantly. Despite these challenges customer relations staff are giving every effort to ensure that capacity to respond to the Ombudsman is maintained.

8.3 The Ombudsman, in an attempt to be more transparent made a decision during 2012/2013 that it would publish all final decisions on its website from 1<sup>st</sup> April 2013. DCC does not receive significant criticism from the Ombudsman and therefore if we continue to deliver services within our own policy and procedure guidelines, as well as within statutory requirements, we should not be concerned about this visible approach.

## 9. Considerations

9.1 This Report and the accompanying appendices have no specific equality, sustainability, legal implications, financial, carbon impact, risk management or public health issues that are not already covered by or subsumed within the detailed policies or actions referred to therein.

ROB PARKHOUSE  
ALISON LAYTON-HILL

**Electoral Divisions:** All

### Local Government Act 1972: List of Background Papers

Contact for Enquiries: Alison Layton-Hill  
Tel No: 01392 38314, Room 120

<u>Background Paper</u>	<u>Date</u>	<u>File Reference</u>
-------------------------	-------------	-----------------------

Nil

Education Funding Agency (EFA) Cases 2012-13

Details of complaints made to EFA to *handle complaints about the administration of an Independent Appeals Panel for admission or exclusions or permanent exclusions*.

Case Reference	Complainant	Academy	Complaint received	Comments sought from	Comments due	Response due	Response sent (days)	Outcome/Finding of EFA
1	Holden	Rydon School	22.10.12	RCH		29.10.12	24.10.12	No evidence of maladministration in relation to compliance with the Code or consideration of evidence.  Maladministration found in relation to the content of the Decision Letter (which is contested) but that has no material effect on the decision.

APPENDIX B

No	Ombudsman Ref	Date received	Subject	Location/District	Date and Outcome
1	11 023 522	02/04/2012	Children's Social Care	Teignmouth	12/04/2012 Premature complaint
2	12 000 539	12/04/2012	Adult Social Care	Cullompton	27/11/2012 Local settlement
3	11 020 648	11/04/2012	Adult Social Care	London (PHSO)	Ombudsman's discretion
4	11021784 PHSO	13/04/2012	Adult Social Care	Barnstaple	19/04/2012 Closed
5	11 021 784	13/04/2012	Adult Social Care	Exeter	29/11/2012 Local settlement
6	11 018 083	24/04/2012	Highways	Ilfracombe	27/07/2012 No evidence of maladministration
7	11 022 032	10/04/2012	School Exclusion	Exmouth	10/04/2012 Insufficient evidence to investigate
8	12 000 169	27/04/2012	Children's Social Care	Taunton	15/05/2012 No evidence of maladministration
9	12009779	09/11/2012	DCC record retention	Exeter	09/11/2012 Premature complaint
10	11 0227 71	29/05/2012	Adult Social Care	Bideford	30/10/2012 Local settlement
11	11 0100 25	08/06/2012	Residents Parking	Totnes	17/08/2012 No evidence of maladministration
12	12 0037 78	23/07/2012	Children's Social Care	Runcorn	07/09/2012 Ombudsman's discretion
13	12003670	08/06/2012	Residents Parking	Totnes	17/08/2012 No evidence of maladministration
14	12000539	23/07/2012	Adult Social Care	Cullompton	27/11/2012 Local settlement
15	12 004 781	23/07/2012	Adult Social Care	Tavistock	15/10/2012 Local settlement
16	12004454	27/07/2012	Education Post 16	Barnstaple	15/08/2012 No evidence of maladministration
17	12 004 615	27/07/2012	Education Post 16	Bideford	13/08/2012 No evidence of maladministration
18	12 005 036	27/07/2012	Education Post 16	Honiton	15/08/2012 No evidence of maladministration
19	12007555	30/07/2012	Children's Social Care	Ottery St Mary	10/08/2012 Premature complaint
20	12006865	06/08/2012	Adult Social Care	Exeter	15/08/2012 Premature complaint
21	12005317	03/07/2012	School Admission appeal	Exeter	18/07/2012 No evidence of maladministration
22	11022879	28/03/2012	Highways	Kingsbridge	14/08/2012 No evidence of maladministration
23	09006988	07/2012	Adult Social Care	Axminster	30/04/2012 Local settlement - apology
24	11016453	21/02/2012	Adult Social Care	Tedburn St Mary	26/06/2012 Local settlement- £200 time and trouble
25	12001637	22/05/2012	School Admissions	Newton Abbot	22/05/2012 No evidence of maladministration
26	12009032	22/082012	Children's Social Care	Exeter	21/09/2012 Outside Jurisdiction
27	11010190	19/10/2012	Highways	Exeter	19/10/2012 Outside Jurisdiction
28	12003351	17/10/2012	Registration	Torquay	17/10/2012 No evidence of maladministration
29	12009762	05/09/2012	Planning	Buckfasleigh	12/09/2012 Premature complaint
30	12010059	12/09/2012	Planning	Buckfastleigh	12/09/2012 Premature complaint
31	11 019 605	08/10/2012	Children's Social Care	Exeter	17/10/2012 No evidence of maladministration
32	12 010 082	11/10/2012	Education	Axminster	11/10/2012 Outside Jurisdiction
33	12 009 374	27/09/2012	Children's Social Care	Honiton	05/12/2012 Premature Complaint
34	12 009 639	04/09/2012	Children's Social Care	Totnes	04/09/2012 Premature complaint
35	12004 241	31/07/2012	Adult Social Care	Exeter	31/07/2012 Complaint withdrawn
36	12011955	05/11/2012	School Transport	Honiton	05/11/2012 No evidence of maladministration
37	12010528	23/10/2012	Adult Social Care	Moretonhampstead	14/12/2012 No evidence of maladministration
38	12013111	29/10/2012	Highways (roadwork delays)	Bideford	08/11/2012 Premature complaint

No	Ombudsman Ref	Date received	Subject	Location/District	Date and Outcome
39	12013521	06/11/2012	Children's Social Care	Yeovil MP	<b>Outstanding</b>
40	12000978	02/11/2012	Planning-Whitecleaves Quarry	Buckfastleigh	<b>30/08/2013 Local settlement £250</b>
41	12012948	25/10/2012	Highways (Bridleways)	Cullompton	<b>19/11/2012 Out of Jurisdiction</b>
42	12011106	12/11/2012	Highways (gritting)	Bridford	<b>27/03/2013 Insufficient evidence of fault</b>
43	12012153	12/11/2012	Highways (HGV nuisance)	Crediton	<b>13/02/2013 No evidence of maladministration</b>
44	12006252	01/08/2012	Ban on contact with authority	Exeter	<b>19/09/2012 No evidence of maladministration</b>
45	12013018	15/11/2012	Adult Social Care	Cumbria	<b>03/01/2013 Investigation discontinued – multi council agreement</b>
46	12015184	30/11/2012	Highways (flooding)	Chulmleigh	<b>30/11/2012 Premature complaint</b>
47	12009156	30/11/2012	School Transport Appeal	Okehampton	<b>14/03/2013 Local settlement Apology</b>
48	12012798	30/11/2012	School Transport Appeal	Okehampton	<b>14/03/2013 Local settlement Apology</b>
49	12011913	19/11/2012	Children's Social Care	Exmouth	<b>25/01/2013 No evidence of maladministration</b>
50	12015850	13/12/2012	Highways (Parking)	Newton Abbot	<b>28/06/2013 No evidence of maladministration</b>
51	12014317	03/07/2012	School Admissions Appeal	Exeter	<b>04/07/2012 No evidence of maladministration</b>
52	11023522	03/01/2013	Children's Social Care	Teignmouth	<b>28/03/2012 No evidence of maladministration</b>
53	12014213	04/01/2013	School Transport Appeal	Barnstaple	<b>06/06/2013 No evidence of maladministration</b>
54	12017497	21/01/2013	Children's Social Care	Ilfracombe	<b>12/09/2013 Premature complaint</b>
55	12018024	04/02/2013	Children's Social Care	Newton Abbot	<b>24/04/2013 Outside Jurisdiction</b>
56	12017234	18/02/2013	Trading Standards	Newton Abbot	<b>09/04/2013 No evidence of maladministration</b>
57	12016587	18/02/2013	Highways (Flooding)	Barnstaple	<b>20/02/2013 Outside jurisdiction</b>
58	12009762	05/09/2012	Planning -Whitecleaves	Buckfastleigh	<b>12/09/2012 Premature Complaint</b>
59	12015412	06/12/2012	Adult Social Care	Exeter	<b>13/12/2012 Premature Complaint</b>
60	12001332	08/05/2012	PFI	Exeter	<b>Out of Jurisdiction</b>
61	12020143	12/03/2013	Adult Social Care	Totnes	<b>07/05/2013 Premature complaint</b>
62	12020000	15/03/2013	Planning	Crediton	<b>22/05/2013 No evidence of maladministration</b>



16 July 2013

*By email*

Dr Phil Norrey  
Chief Executive  
Devon County Council

Dear Dr Norrey

### **Annual Review Letter**

I am writing with our annual summary of statistics on the complaints made to the Local Government Ombudsman (LGO) about your authority for the year ended 31 March 2013.

This year we have only presented the total number of complaints received and will not be providing the more detailed information that we have offered in previous years.

The reason for this is that we changed our business processes during the course of 2012/13 and therefore would not be able to provide you with a consistent set of data for the entire year.

In 2012/13 we received 62 complaints about your local authority. This compares to the following average number (recognising considerable population variations between authorities of a similar type):

District/Borough Councils-	10 complaints
Unitary Authorities-	36 complaints
Metropolitan Councils-	49 complaints
County Councils-	54 complaints
London Boroughs-	79 complaints

### ***Future development of annual review letters***

We remain committed to sharing information about your council's performance and will be providing more detailed information in next year's letters. We want to ensure that the data we provide is relevant and helps local authorities to continuously improve the way they handle complaints from the public and have today launched a consultation on the future format of our annual letters.

I encourage you to respond and highlight how you think our data can best support local accountability and service improvements. The consultation can be found by going to [www.surveymonkey.com/s/annualletters](http://www.surveymonkey.com/s/annualletters)

### ***LGO governance arrangements***

As part of the work to prepare LGO for the challenges of the future we have refreshed our governance arrangements and have a new executive team structure made up of Heather Lees, the Commission Operating Officer, and our two Executive Directors Nigel Ellis and Michael King. The Executive team are responsible for the day to day management of LGO.

Since November 2012 Anne Seex, my fellow Local Government Ombudsman, has been on sick leave. We have quickly adapted to working with a single Ombudsman and we have formally taken the view that this is the appropriate structure with which to operate in the future. Our sponsor department is conducting a review to enable us to develop our future governance arrangements. Our delegations have been amended so that investigators are able to make decisions on my behalf on all local authority and adult social care complaints in England.

### ***Publishing decisions***

Last year we wrote to explain that we would be publishing the final decision on all complaints on our website. We consider this to be an important step in increasing our transparency and accountability and we are the first public sector ombudsman to do this. Publication will apply to all complaints received after the 1 April 2013 with the first decisions appearing on our website over the coming weeks. I hope that your authority will also find this development to be useful and use the decisions on complaints about all local authorities as a tool to identify potential improvement to your own service.

### ***Assessment Code***

Earlier in the year we introduced an assessment code that helps us to determine the circumstances where we will investigate a complaint. We apply this code during our initial assessment of all new complaints. Details of the code can be found at:

[www.lgo.org.uk/making-a-complaint/how-we-will-deal-with-your-complaint/assessment-code](http://www.lgo.org.uk/making-a-complaint/how-we-will-deal-with-your-complaint/assessment-code)

### ***Annual Report and Accounts***

Today we have also published *Raising the Standards*, our Annual Report and Accounts for 2012/13. It details what we have done over the last 12 months to improve our own performance, to drive up standards in the complaints system and to improve the performance of public services. The report can be found on our website at [www.lgo.org.uk](http://www.lgo.org.uk)

Yours sincerely

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style with a horizontal line underneath the name.

Dr Jane Martin  
Local Government Ombudsman  
Chair, Commission for Local Administration in England