

## LOCAL GOVERNMENT OMBUDSMAN COMPLAINTS

### 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 2013/14 and their outcomes be noted;
- (b) That the Committee agree that all Council Members, and co-opted Members of Standards Committee, be advised of future rulings from the Local Government Ombudsman where the Council has been found to be failing.

#### 1. Introduction

- 1.1 In October 1999 the Committee agreed it should receive an Annual Report summarising all complaints about the County Council dealt with by the Ombudsman. This report provides a brief commentary about published findings by the Local Government Ombudsman within her own organisation.

#### 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 that arrange or fund their adult social care (Health Act 2009)

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

#### 3. Caseload

- 3.1 The number of complaints received for the last five years is shown below:

Year	Complaints
2013/14	105
2012/13	62
2011/12	50
2010/11	54
2009/10	56

- 3.2 Details of all complaints received during 2013/14 and the outcomes are set out at Appendix A. The 2013/14 figure demonstrates a swift upturn in the number of complaints received by the Ombudsman in respect of services provided by the Council. This can be explained by:
  - Imposed austerity measures resulting in reduced Council services, with service user's expectations at a level higher than the Council can afford to deliver

- Operational changes within the Local Government Ombudsman's office. These have been borne as a result of substantial budget cuts and a negative report about LGO performance from the Communities and Local Government Select Committee
  - the Council's continuation to offer a robust Corporate Customer Feedback Procedure, which came into force in April 2012
  - the Department for Transport's changed criteria relating to the award of Blue Badges which has resulted in a large number of historic Blue Badge owners progressing their complaint when badges are refused under new legislation
- 3.3 Appendix A shows that a total of 10 complaints made to the Ombudsman resulted in findings that the Council were found failing, causing maladministration and injustice. See section 5 below for further information on these cases.
- 3.4 The Ombudsman decided that 16 of the complaints she received were outside her jurisdiction, where such cases can include:
- something the complainant has known about for 12 months but not pursued in the interim
  - matters which have been, or could be, dealt with by courts or in tribunal
  - matters affecting all or most of the inhabitants in an area
- 3.5 11 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 Due to funding cuts in the Local Government Ombudsman's office in the last financial year (37%) the Council has responded to the challenges brought by these changes. Of particular note is that the definition of 'local settlement' has been revisited with the Ombudsman using the terms 'injustice' and 'maladministration' more frequently in their reports than in previous years. When drawing comparisons between this year and previous years' data this should be recognised, and those cases where the Council has been found at fault which may previously have been considered to be a local settlement have been highlighted in section 5 of this report. It should be noted that this more stringent approach is not exclusive to Devon; other authorities are reporting the LGO's more robust approach.
- 4.2 However, local settlements continue to be offered by the Local Government Ombudsman as a remedy to an error made by the Council or to identify a possible way out of a situation. The Council may not be found to be 'at fault'; rather the Council are asked to 'do a little extra' to help. In 2013/14, 6 complaints resulted in local settlements, of which 4 were related to school admission complaints, 1 children's social care and 1 related to Information Governance. Examples of remedies offered include
- a letter apologising for any inconvenience caused
  - providing access to the complainant to re-apply for a service previously refused
5. **Maladministration and Injustice**
- 5.1 The Council has been found at fault on 10 occasions during the year 2012/13.

- 5.1.1 Case 13003248 relates to post-16 education for a young person with special educational needs associated with physical disability. The complaint is about the way the Council made a decision about a post-16 placement at an Independent Specialist Provider.

The Council defended its existing policies and procedures, and disputed the LGO's findings that the Council had caused injustice to the complainant and their family member. Upon disputing the initial findings of the investigator, a visit was arranged to Devon where the investigator conducted face to face interviews with key managers and officers in education and social care relating to the case. The published result was that Devon was found failing.

Resulting from this case, the Council were required to:

- review student's education placement
- offer an apology to parent and separately to student
- pay compensation of £500 each to parent and student for time and trouble, stress and anxiety
- conduct an investigation into the social care background to the complaint

- 5.1.2 Case 13002869 relates to a complaint concerning a developer building on a lay-by. Neighbours affected by the loss of the layby complained to the LGO stating that the Council was not consistent with its findings as to whether the layby was HMPE (Highway Maintainable at Public Expense) or not

Action taken / in progress:

- Independent survey to establish highway boundaries
- Compensation payments to complainant of £500 for time and trouble, anxiety and stress
- County Council to reassert the land for the benefit of the public

- 5.1.3 13004850 was brought by a customer who was invoiced for additional charges, over and above the Council's contracted rate, during their relative's stay in Nursing/Residential Home.

Action taken:

- Council reimbursed customer with additional fees incurred
- Council considered pursuing Nursing/Residential Home separately for a refund through its contractual relationship – Legal Advice suggested may not difficult to pursue.
- Council reminded all care providers that they cannot charge additional fees for the same services directly with the service user/representative

- 5.1.4 Cases 13004151 and 13008912 relates to communication failure between the Council and two complainants who were affected by unauthorised works to a watercourse.

Action taken:

- Apology issued to each complainant
- £150 payment to each complainant in recognition of communication failure
- Ensure necessary works completed within provided timescale

- 5.1.5 13014039 relates to support offered by the Council to a student with additional needs through transition and in his first year in 6<sup>th</sup> form, resulting in breakdown of the student's placement and loss of a year of statutory education.

Action taken:

- £3500 educational support fund to be available for education provision during remainder of academic year

- £1000 to parent for time and trouble, stress and anxiety

5.1.6 13011136 relates to the handling of a further education placement for a student with SEN.

Action taken:

- Letters of apology to parent and student
- £50 compensation each to parent and student for time and trouble, stress and anxiety
- That the Council evidence new processes to effectively manage Post-16 placements as part of the Pathfinder activity.

5.1.7 13014528 relates to a customer's perception that his Blue Badge application was not properly considered.

Action taken:

- New assessment offered with a different assessor

5.1.8 13005847 relates to a parents complaint that his child's carers failed to follow protocols to monitor blood sugar levels

Action taken:

- Council has provided instructions to staff to reduce the risk of repeat incident

5.1.9 13009650 relates to a complaint made in response to customer's Blue Badge application being turned down.

Action taken:

- Mobility assessment offered to customer to determine qualification

5.1.10 The LGO Link Officer considers that should complaints detailed in 5.1.4 – 5.1.9 (inclusive) be registered in previous years, that the LGO would have ruled local settlement rather than failure.

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

6.1 Complaints lodged in 2013/14 are broken down by origin (complainant's address) as follows. Figures for the previous four years are also shown to provide an indicative comparison

District	2013/14	2012/13	2011/12	2010/11	2009/10
Mid Devon	7	5	6	10	1
Exeter	24	12	9	9	14
Torridge	3	-	6	-	6
North Devon	16	10	6	9	8
East Devon	9	8	7	7	8
Teignbridge	18	13	8	7	7
West Devon	11	3	1	6	4
South Hams	14	5	6	5	6
Out of County/ unknown	3	5	1	1	2

6.2 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, as introduced in 2011.

<b>Subject</b>	<b>2013/14</b>	<b>2012/13</b>	<b>2011/12</b>	<b>2010/11</b>
Highways & Traffic Management	24	9	10	9
Planning & Development	7	5	1	4
Public Rights of Way	-	-	1	-
Services to Communities	2	2	1	-
Adult Social Care	13	15	17	12
School Attendance/Transport/ Admission/Exclusion	10	11	10	5
Children's Social Care	8	11	5	11
Governance and Corporate Issues	2	2	2	2
Blue Badges	23	-	-	-
Outside Ombudsman's jurisdiction	16	7	2	11

6.3 The Local Government Ombudsman have recently published a review of adult social care complaints which contains details of the challenges that lie in the way of delivering accessible, effective and accountable services as well as posing questions that the customer relations team are using to scrutinise service provision.

6.3.1 Data gathered from the LGO for inclusion in this report includes adult social care complaints and those relating to Blue Badge applications (which the LGO consider to be social care); the Council have received a high volume of the latter during the last year due to changes within Department for Transport legislation and the county's demography.

6.3.2 In comparison with other local authorities the report demonstrates that Devon has a less than average complaints and less than average dissatisfaction ratings in adult social care.

6.3.3 When looking at complaints per head of population Devon were included in the 'greater than or equal to 2 but less than 5 complaints per 100,000 people'. When comparing this with neighbouring authorities it can be demonstrated that adult social care complaints made to the LGO from Devon are in the same category as Cornwall. Devon receives more adult social care complaints per 100,000 people than Somerset and Dorset, but less than Plymouth and Torbay.

6.3.4 The report highlights national themes, the top six of which are:

1. Assessment / Care Planning
2. Fees / Charges
3. Residential Care
4. Transport
5. Safeguarding
6. Domiciliary Care

6.3.5 When comparing the data in the report with historical data it can be seen that Devon have seen a 240% increase in adult social care cases in the past year alone. Of 36 complaints (23 of which were related to Blue Badge applications), the LGO consider that 4 of these demonstrated service failure, these receive individual attention in section 5 above.

## 7. Future Developments

7.1 In order to promote further transparency to Members and co-opted members of Standards Committee, as well as continuing to present data on the LGO function, the LGO Link Officer proposes sharing published reports made by the LGO to all Members where the Council have been found failing. In doing so, Members would be

able to see the level of engagement the Council have entered into with the Ombudsman as well as having an early steer on any identified policy or process refinements which are required as a result of the Ombudsman's findings. Members would also be aware in advance of any cases being reported by local media. Member Services will distribute these final reports.

## **8. Conclusions**

- 8.1 The Council continues to benefit from its customer feedback process and reports provided by the Local Government Ombudsman and encourages services to adopt new learning from individual complaint cases.
- 8.2 The past year has seen high volumes of cases. However Blue Badge complaints, which have not previously been considered, make up almost a quarter of the total received. Highways and Traffic Management have seen a sharp increase, which has been largely due to the unprecedented weather and resulting flooding.
- 8.3 Unavoidable austerity measures have seen the Council needing to respond to their service users with less resource, which on occasion makes complying with historic procedures and timescales unfeasible. During 2013/14 the Ombudsman have been consistent in their findings that when services do not comply with its published processes, that there is failure on the part of the Council. The Ombudsman Link Officer is strongly encouraging services to revisit their policies and procedures as they take on a changing shape with further reduced resource. It can be confidently predicted that further failings will be recorded if services do not support the need to revisit their processes and ensure they are future proofed.

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