

LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN COMPLAINTS
ANNUAL REVIEW LETTER and REPORT FOR 2016/17

Joint Report by the Ombudsman Link Officer and the Head of Digital Transformation and Support Services

Recommendations:

- (a) That the complaints made to the Local Government Ombudsman referred to the authority during 2016/17 and their outcomes be noted;
- (b) That the content of the Ombudsman's Annual Review Letter to the Council be noted and also how Devon County Council compares to its CIPFA comparators. .

1. Introduction

- 1.1 The reporting year saw the retirement of Dr Jane Martin after completing her seven year tenure as Local Government Ombudsman. Michael King has been appointed as her successor.
- 1.2 The Ombudsman has also recently changed its name to the Local Government & Social Care Ombudsman. Since 2010 it has operated with jurisdiction over all registered adult social care providers and is able to investigate complaints about care funded and arranged privately; this change in name has come about as a result of frequent feedback from care providers that the previous name was a real barrier to recognition within the social care sector. It is hoped that the name change will serve to give the social care sector part of the Ombudsman jurisdiction the profile it deserves.
- 1.3 The intention of the Ombudsman this year is to provide a breakdown of upheld complaints to show how they were remedied. This includes the number of cases where the Ombudsman recommendation remedied the fault and the number of cases where the Ombudsman decided the authority had offered a satisfactory remedy during the local complaints process.
- 1.4 The Ombudsman has chosen not to include a "compliance rate" in this year's letters; this was what indicated a council's compliance with the Ombudsman recommendations to remedy a fault. From April 2016, the Ombudsman established a new mechanism for ensuring the recommendations it makes to councils are implemented. This has meant the recommendations made are more specific, and will often include a time frame for completion. The Ombudsman then follows up with the council and seeks evidence that recommendations have been implemented. As a result of this new process, the plan is for the Ombudsman to report a more sophisticated suite of information about compliance and service improvement in future.
- 1.5 The Ombudsman surveyed councils this year in order to find out, amongst other things, how they use the data in the annual letters and what data is the most useful. This feedback will be used to inform work over the next year to provide councils, elected members and members of the public with more meaningful data that allows for more effective scrutiny and easier comparison with other councils.

2. Annual Review Letter

2.1 Ombudsman's Jurisdiction

2.1.1 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 statutory duty to report Ombudsman findings and recommendations

2.2.1 There is a duty under section 5(2) of the Local Government and Housing Act 1989 for the Monitoring Officer to prepare a formal report to the Council where it appears that the authority, or any part of it, has acted or is likely to act in such a manner as to constitute maladministration or service failure, and where the Ombudsman has conducted an investigation in relation to the matter.

2.2.2 This requirement applies to all Ombudsman complaint decisions, not just those that result in a public report (*Devon County Council has only had 1 public report in the last few years*). The Ombudsman does not seek to impose a proscriptive approach, as long as the Parliamentary intent is fulfilled in some meaningful way and the authority's performance in relation to Ombudsman investigations is properly communicated to elected members.

2.2.3 The Ombudsman has issued some guidance in relation to this and the Council takes action that is in line with this guidance; this being that:

- where the Ombudsman makes findings of maladministration / fault in regard to routine mistakes and service failures and the authority has agreed to remedy the complaint by implementing the recommendations made by the Ombudsman the duty is satisfactorily discharged if there is a periodic report to the council summarising the findings on all upheld complaints over a specific period

Devon county council reports on a quarterly basis to Standards Committee and Leadership/Cabinet in this way.

- Where an investigation has wider implications for council policy or exposes a more significant finding of maladministration, due to the scale of the fault or injustice, or the number of people affected, it would be expected that the Monitoring Officer consider whether the implications of that investigation should be separately reported to members.

This is an approach that Devon County Council would take and is initiated by discussion between the Customer Relations Manager and the Monitoring Officer.

- In the unlikely event that the council is minded not to comply with the recommendations from the Ombudsman following a finding of maladministration the Ombudsman would always expect the Monitoring Officer to report this to members under section 5 of the Local Government and Housing Act. It should be noted that this course of action is an exceptional and unusual course of action and should be considered at the highest tier of the council if it is being considered.

Devon County Council has not found itself in this position but if in future there was occasion then it would follow this expectation.

2.2.4 Those duties set out in 2.2.3 are in addition to the pre-existing duties placed on all authorities in relation to Ombudsman Reports under the Local Government Act 1974. Under those provisions, whenever the Ombudsman issues a formal, public report to the authority it is obliged to lay that report before the council for consideration and respond within three months setting out the actions that have been taken, or propose to take, in response to the report.

3. Ombudsman Report Devon County Council in 16/17

3.1 Complaints Received

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

Year	Complaints
2016/2017	118
2015/2016	148
2014 / 2015	121
2013 / 2014	141
2012 / 2013	62
2011 / 2012	50

3.1.2 The decrease in the number of complaints to the Ombudsman in 2016/17 is positive as it reflects a greater degree of satisfaction by complainants in the way in which Devon County Council are investigating, responding to, resolving and learning from complaints. In this year only 25 out of the 116 complaints that received decisions were upheld which represents just 21%.

3.1.3 In addition, it should be noted that; it is clearly stated by the Ombudsman in the Annual Review Letter that: *I want to emphasise that the statistics in this letter comprise data we hold, and may not necessarily align with the data the council holds. For example, our numbers include enquiries from people we signpost back to the council, but who may never contact you*

3.1.4 The 118 complaints received by the Ombudsman about Devon County Council in 2016/17 were split across services as follows (note these are LG&SCO designated service categories)

Service	Number of Complaints (% of total)
• Adult Care Services	34 (29%)
• Corporate & Other Services	2 (2%)
• Education & Children's Services	47 (40%)
• Environmental Services	3 (2.5%)
• Highways & Transport	28 (23.5%)
• Planning & Development	3 (2.5%)
• Other	1 (0.5%)

3.1.5 As Adult Care Services, Education & Children's Services and Highways & Transport are the largest Service areas and the services that the Council receives most complaints about it is expected that these would be the services that the Ombudsman receives most complaints about.

3.2 Ombudsman Complaint Decisions in 16/17

3.2.1 A summary of all decisions is below with the comparison from 15/16 for information

Decision of Ombudsman	Number (% of decisions) 16/17	Number (% of decisions) 15/16
Investigated – Upheld	25 (22%)	18 (12%)
Investigated – Not Upheld	13 (11%)	28 (19%)
Advice given	0 (0%)	1 (1%)
Closed after initial enquiries	41 (35%)	45 (31%)
Incomplete / Invalid	9 (8%)	11 (7%)

Referred back for local resolution 28 (24%) 44 (30%)

- 3.2.2 Of the 116 complaints the Ombudsman made decisions on received about Devon County Council in 2016/17 38 were progressed to a full investigation and of these 25 were upheld, this represents a 66% uphold rate for complaints that progressed to full investigation in.
- 3.2.3 Of those 25 complaints that were investigated and upheld there were 18 where the Ombudsman felt that the fault caused an injustice and of these there were 2 where the Council had satisfactorily remedied the injustice prior to the Ombudsman involvement and in the other 16 the Ombudsman recommended a remedy to which the council agreed.
- 3.2.4 The table at **Appendix A** provides details of the 18 decisions of upheld with injustice and the required actions by the council
- 3.2.5 The decision of “Upheld” is applied when the Ombudsman finds there is some fault in the way the council acted, this is termed “Maladministration” – even if it has agreed to put things right during the course of the ombudsman investigation or had already accepted it needed to remedy the situation before the complaint was apparent to the Ombudsman.
- 3.2.6 The actions required of the Council by the Ombudsman are included within Appendix A. It should be noted that this included financial redress in 10 complaints totalling £13,666.
- 3.2.7 Whilst it is not particularly helpful to compare the complaint statistics of other local authorities against our own, as the Ombudsman report does not give enough detail of the subject of the complaint or of what was wrong a breakdown of complaints received, by service type and of the decisions made by the Ombudsman for Devon and its’ CIPFA comparators is attached at **Appendix B** for reference – (full details for all Local Authorities can be found in the Review of Local Government Complaints 2015-16 report from the Ombudsman)
- 3.2.8 It is worth noting that Devon’s improved position in relation to its’ comparator Local Authorities has been maintained over the last year and reflects the change in culture within the council in regard to how complaints are now more positively handled and seen as a tool from which the council can learn and improve.

4. Future Developments for Devon County Council

- 4.1 Although the Council continues to be faced with financial constraints that necessitate tough decisions around service provision the expectation of customers does not reduce in line with these challenges, 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 commissioning many services, it remains entirely accountable for those services, however much day-to-day control it delegates to providers.
- 4.2 It is acknowledged that complaints to the Ombudsman do not always mean the Council has done anything wrong, as is borne out by the decisions made by the Ombudsman. Often these complaints arise because the customer who would have liked something more, or better, or a different outcome from the council in reply to their complaint. It is unlikely that public expectations of services will diminish in the short term and therefore there is no reason to suppose that complaints will fall significantly. Despite these challenges the customer relations manager continues to ensure that capacity to respond to the Ombudsman within requested deadlines is maintained.
- 4.3 It remains the case that the council does not receive significant criticism from the Ombudsman and therefore we should continue to deliver services within our own policy and procedure guidelines, as well as within statutory requirements.

- 4.4 Most importantly, as in previous years, it is important that the council takes even greater measures to ensure that it is able to evidence that it is a council that learns from complaints and uses this learning to improve and maintain the quality of the services it commissions and provides. Furthermore the council may wish to consider the role of Members / Scrutiny in this area.

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[Electoral Divisions: All]

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

APPENDIX A – UPHELD OMBUDSMAN COMPLAINTS 16/17

LGO Ref	Category	Decision	Action required of Council
15010800	Adult Care Services	Maladministration & injustice – There is evidence of fault by the Council's care provider in its assessment and medical administration. Fault by the Council in the way it dealt with the complaint. The Council has taken some action already and it agrees to extra remedy.	In response to the Ombudsman's investigation, the Council has met complainant and family again. Meeting was useful. As a follow up to the meeting the Council should write to apologise and set out in writing what actions and changes complaint has helped to inform. The unnecessary distress complainant had to deal with is not an injustice that a payment can remedy. But recommend the Council pay£200 as a symbolic acknowledgment of the impact of the faults on the complainant.
15011892	Education & Children's Services	Maladministration & injustice – The Council failed to provide information on placing a child with a family, handle sensitively the need to remove foster children from the person alleged to pose a risk and avoid delay in deciding on the family's continued fostering registration.	Apologise for poor handling of the deregistration process and pay complainant £1000 to reflect the impact of the failure to share all relevant information on a child's placement; to meet with the complainant to explain the complaint & his options for remaining in the family home and the avoidable delay in the deregistration process and the time & inconvenience in bringing his complaint.
15015680	Education & Children's Services	Maladministration & injustice – Council withdrew the blue badge for a child. Child has autism which affects mobility. The Council has reviewed the application and approved it. There is no further need for the Ombudsman's involvement.	No additional actions to that of review and subsequent approval of Blue Badge
15017900	Highways & Transport	Maladministration & injustice - The Council will remove the disabled parking bay. That provides a resolution of the key element of the complaint so I am not going to investigate it further.	Nothing further than removing the disabled parking bay.
14008851	Education & Children's Services	Maladministration & injustice – The Council's own investigation found significant fault in the Council's handling of arrangements for the complainants to foster family members. The Council has apologised and taken steps to learn from the mistakes - this is a satisfactory outcome. The complaint that the findings of the RPH call into question the Council's decision to de-register them as foster carers is not found.	Nothing additional to actions agreed as a result of the Stage 3 RPH
15012991	Adult Care Services	Maladministration & injustice – Although there have been faults by the Council, they have not caused enough injustice to warrant a financial remedy.	The Council have agreed to: not seek to recover DP monies used to access residential care. To do a new assessment of care & support needs & work with complainant to develop a support plan and personal budget to meet the eligible needs.

15009839	Education & Children's Services	<p>Maladministration & injustice – The Council was responsible for alternative education for a 13 year old child in the period September to December 2015. The Council failed to provide an appropriate alternative education package for the child in this period. There is no evidence of significant fault by the Council causing injustice in relation to updating a statement of special educational needs and converting the statement into an Education, Health and Care Plan</p>	<p>Pay the child £1000 for lack of access during the autumn term 2015 to a suitable full time alternative education package which met the complex needs. Pay the complainant £2000 as acknowledgement of distress to feelings and inconvenience caused by having to supervise the child during the normal school working day Apologise in writing to the complainant for fault identified</p>
16003228	Education & Children's Services	<p>Maladministration & Injustice –there was fault by the council in failing to put in place the statutory provision set out in a statement of special educational needs and in failing to provide suitable full time education for a child of compulsory school age.</p>	<p>The Council will apologise, pay financial redress of £5850 (£4500 to the child for loss of educational opportunities and therapies while at School. - £1200 to the child for period April - July 2016 when no suitable s.19 education was received- and £150 to the complainant in recognition of time & trouble Review s.19 education arrangements to ensure provision is full time and suitable for a child's SEN to include therapies required to access learning effectively - review the faults in the monitoring, annual review and EHC process that happened here and ensure staff are aware: requests for a change of placement where a statement is still maintained are to be dealt with under the time periods of the education act 1996; where the council wishes to transfer a statement to an EHC plan it plans this in advance, uses the annual review as the transfer review and gives appropriate notice; where the council has not given notice of EHC transfer before annual review meeting ensure settings are aware the option of recommending amendments to the statement is still available to them; the council has a non-delegable duty to ensure provision in a statement or EHC plan is put in place.</p>
15015483	Adult Care Services	<p>Maladministration & injustice - The Council was at fault in the way that it communicated charges for care & transport. The council should carry out a further financial assessment & make procedural changes</p>	<p>Apologise to the complainant about the failure to properly advise about transport costs, to complete a face to face financial assessment & the delay in providing a copy of assessment. Remind staff about the need to send out copies of assessments. Update the service users social care assessment to determine whether there is an eligible need for transport. If there is & the complainant accepts a transport service the council should consider a financial remedy for time & effort in transporting the service user. Complete a face to face financial assessment in order that the complainant can provide details of the service users DRE.</p>

			provide information to other users of the day centre to ensure as far as possible that they are aware of the charges for transport
16002652	Adult Care Services	Maladministration & injustice – There is fault by the Council in the way it investigated a safeguarding concern and investigated the complaint. The council has agreed to remedy the injustice caused	1. Implement the IO recommendations - 2. Apologise to the vulnerable person and pay him £150 to acknowledge distress caused by the safeguarding visits - 3. apologise to the complainants for the lost opportunity and uncertainty caused by not letting them comment on the 2nd draft of the IO report - provide them with a letter on council headed paper explaining that the safeguarding investigation found no evidence to substantiate the allegations against the complainant. 4. Pay the complainants £150 for the distress and anxiety caused by the delay in telling them the outcome of the safeguarding investigation and 5. pay the complainants £100 for the time & trouble of bringing the complaint to the council and to the LGO
16006314	Adult Care Services	Maladministration & injustice –DCC to waive the outstanding fees of £266 so deemed a suitable remedy	waive the outstanding £266 fees
16006466	Adult Care Services	Maladministration & injustice - a care provider acting for the council was at fault when it spoke to the complainant's GP without his consent. Other complaints about the care provider's service are not upheld as there is not enough evidence to support them	Apologise and pay the complainant £100 as a goodwill gesture for distress caused
16000457	Education & Children's Services	Maladministration & injustice There was fault causing injustice in the Council's decision not to involve Company F in the LADO investigation. Also found fault in the Council's handling of the Advisory Notice and monitoring process, which caused injustice. However, the Council was not responsible for failure to secure employment, or Company F's loss of income.	Pay a financial remedy of £1000 to Company to recognise the fault and injustice caused by: Not involving Company in the LADO investigation; The lack of clarity surrounding the process of investigation, improvement planning and monitoring following the Advisory Notice; Failing to provide the opportunity for a review; Failing to provide the opportunity for a review; The consequent time and trouble taken by Company in trying to meet conditions which were vague or not practically possible Refund £600 of the legal fees incurred by Company specifically for the advice on recruiting a non-executive director and setting up a board of directors, which later proved to be unfeasible. Send Company a letter of apology for the faults identified. apologise to employee concerned for the distress experienced as a result of employer not being able to share any information about the LADO investigation

16008455	Education & Children's Services	Maladministration & Injustice - The Council delayed in issuing the EHCP, this is fault but did not cause significant injustice as the complainant had right of appeal & did not use it.	Council to review its procedures within 6 months of the final decision to ensure the delays identified are not repeated in the future
16008905	Adult Care Services	Maladministration & Injustice - the council did not set out clear outcomes in the client's care plan. This meant it cannot be sure the client received appropriate care at home for 2 years. The Council has agreed actions to reflect the injustice caused to the client and her mother by this fault	Apologise for the unnecessary uncertainty and distress caused to by its fault in commissioning the care and support for 2 years. Pay the client £500 to remedy failings in care planning - Pay £250 to the clients mother to recognise the uncertainty it caused by not providing her child with adequate care plans and her time & trouble in pursuing this matter
16009043	Adult Care Services – Blue Badge	Maladministration & Injustice - There was fault in the way the Council assessed the complainant's eligibility for a Blue Badge	Apologise to complainant for the fault in the assessment & communication, carry out a further physical assessment of the complainant's ability to use a parking meter to determine if eligible for a blue badge
16010064	Adult Care Services – Blue Badge	Maladministration & Injustice - The complaint is resolved by the Council's offer to carry out a fresh assessment of the complainant's walking ability for his application for a Blue Badge	undertake a new face to face mobility assessment
16010361	Adult Care Services – Blue Badge	Maladministration & Injustice - remedy agreed during investigation. The council has agreed to exercise discretion & award a Blue Badge	Pay the complainant £500 in recognition of distress and time and trouble.

APPENDIX B – CIPFA Comparators Complaints received and decisions by LGO

COMPLAINTS RECEIVED BY OMBUDSMAN 16/17

COUNCIL	Adult Care Services	Corporate & Other Services	Education & Children's Services	Environmental Services & Public Protection	Highways & Transport	Planning & Development	TOTAL
Cumbria	19	9	13	3	4	1	49
Cambridgeshire	15	3	25	0	6	2	51
Worcestershire	21	4	18	0	9	3	55
Dorset	20	1	18	3	10	4	56
Warwickshire	26	2	18	3	7	0	56
Somerset	24	5	26	0	12	1	68
Gloucestershire	18	2	26	2	19	4	71
Leicestershire	21	4	26	5	17	0	73
Lincolnshire	37	4	27	2	10	0	80
West Sussex	30	3	29	1	13	6	82
East Sussex	33	1	43	1	9	0	87
Hampshire	24	6	47	5	9	1	92
North Yorkshire	47	5	27	4	15	0	98
Devon	34	3	47	3	28	3	118
Norfolk	48	3	56	2	13	3	125
Essex	64	7	83	7	43	5	210

Notes:

- This table is structured based on total number of complaints received by the Ombudsman by Council and as such not too much attention should be paid to the position of Devon in relation to others. Everyone is entitled to refer their complaint to the Ombudsman and the table that follows which provides detail of decisions by the Ombudsman indicates that Devon has the 2nd highest number of complaints where the Ombudsman decides to close after an initial enquiry – in other words there is no fault by the council and no investigation required by the Ombudsman and the complaint was handled well.
- The main point to note is that Devon does not have a significantly higher number of complaints in any single service area than any other council, especially given the high proportion of elderly people living in Devon and the significantly high number of highway miles within the county.

DECISIONS MADE BY OMBUDSMAN 16/17

COUNCIL	Incomplete / invalid	Advice Given	Referred back for local resolution	Closed after initial enquiry	Detailed investigation carried out		% Upheld of those investigated	Total
					Not Upheld	Upheld		
West Sussex	6	1	24	24	13	10	43%	78
Lincolnshire	2	0	26	24	18	14	44%	84
Cambridgeshire	5	2	18	11	7	6	46%	49
Gloucestershire	6	0	24	20	10	10	50%	70
Cumbria	4	0	16	14	7	8	53%	49
Dorset	3	0	15	18	10	12	55%	58
Norfolk	6	3	40	28	20	25	56%	122
Essex	7	2	64	59	28	46	62%	206
Hampshire	4	2	41	26	12	20	63%	105
North Yorkshire	8	1	30	20	12	20	63%	91
Worcestershire	5	1	21	13	6	10	63%	56
Devon	9	0	28	41	13	25	66%	116
East Sussex	2	1	23	21	11	21	66%	79
Leicestershire	4	1	25	23	6	16	73%	75
Warwickshire	4	1	23	14	4	11	73%	57
Somerset	5	2	31	14	3	11	79%	66

Note:

- This table is structured based on the percentage of complaints fully investigated that are upheld. Given that Devon has one of the highest numbers of complaints referred to the Ombudsman (which is not a reflection on performance in itself) it follows that a higher number will be investigated.
- Although 66% of those complaints investigated are upheld – the actual number of upheld complaints is relatively low as a percentage of actual decisions made (25 upheld complaints out of 116 decisions is 21.5%)
- Devon is also ranked 4th highest for complaints being referred back for local resolution which is a positive indication that the council is open to rectifying any identified errors at an early point in time. This maintains the same position as last year.

