

LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN COMPLAINTS ANNUAL REVIEW LETTER and REPORT FOR 2017-18

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

Recommendations:

- (a) That the complaints made to the Local Government Ombudsman referred to the authority during 2017/18 and their outcomes be noted;
- (b) That the content of the Ombudsman's Annual Review Letter to the Council be noted.

1. Introduction

- 1.1 The intention of the Ombudsman this year is to reassure Councils that the volume of complaints does not, in itself, indicate the quality of performance. High volumes of complaints can be a sign of an open, learning organisation, as well as sometimes being an early warning of wider problems. Low complaint volumes can be a worrying sign that an organisation is not alive to user feedback, rather than always being an indicator that all is well. The Ombudsman is encouraging Councils to use the figures provided as the start of a conversation, rather than an absolute measure of corporate health.
- 1.2 This year, the Ombudsman's focus is on lessons that can be learned from complaints, and improvements that can be achieved through their recommendations.
- 1.3 The Ombudsman encourages councils to share the learning from complaints with scrutiny committees and councillors to assist them in holding the authority to account.

2. Annual Review Letter

2.1 Future development of annual review letters

- 2.1.1 The Ombudsman has moved away from a more simplistic focus on complaint volumes within annual review letters, and instead turning the focus onto lessons that can be learned and wider improvements that can be achieved through recommendations.
- 2.1.2 Devon County Council has volunteered to be involved in the Ombudsman's remedies project, which seeks to improve the way the Ombudsman records and publishes data about remedies. The Ombudsman has expressed his thanks to Devon County Council for volunteering to be involved in the project.
- 2.1.3 As a result of the remedies project, the Ombudsman will be making changes to the format of annual letters and will engage with councils on this in early 2019.

2.2 Supporting local scrutiny

- 2.2.1 The Ombudsman intends that the annual review letters for councils help to ensure learning from complaints informs scrutiny at a local level.
- 2.2.2 The Ombudsman has created a dedicated section of their website which contains information for scrutiny committees and councillors which is available at www.lgo.org.uk/scrutiny. The Ombudsman

has asked councils to encourage their elected members and scrutiny committees to make use of these resources.

2.3 Learning from complaints to improve services

2.3.1 The Ombudsman shares reports and other resources in order to help councils learn from the issues others have experienced and to avoid them making the same mistakes.

2.3.2 In the last year, the Ombudsman has seen examples of councils adopting a positive attitude towards complaints and working constructively with the Ombudsman to remedy injustices, and take on board learning. The Ombudsman is at pains to emphasise the importance of a culture that demonstrates learning from complaints and subsequent improvement to services as it can benefit everyone.

2.4 Complaint handling training

2.4.1 The Ombudsman has highlighted their well-established and successful training programme supporting local authorities and care providers to help improve local complaint handling. This training is available to any service with Devon County Council who may wish to host a session. Further details can be found at www.lgo.org.uk/training

2.4.2 The Ombudsman has also set up a network of council link officers to promote and share best practice in complaint handling.

3. Ombudsman Report for Devon County Council in 17/18

3.1 Complaints Received

3.1.1 The number of complaints received by the Ombudsman in the last three years is shown below:

Year	Complaints
2017/2018	102
2016/2017	118
2015/2016	148

3.1.2 In his Annual Letter to Councils, the Ombudsman has cautioned that lower volumes of complaints may be an indication that Councils are not “alive to user feedback”. Devon County Council has seen a continual reduction in numbers of complaints received by the Ombudsman over the last 3 years. There were 98 complaints decided on by the Ombudsman in the same period, with only 17 (17%) of those being upheld. This is a lower percentage than the previous year, where 21% were upheld.

3.1.3 In addition, it should be noted that the statistics in the annual letter comprise data the Ombudsman holds, and may not necessarily align with the data the council holds. For example, Ombudsman numbers include enquiries from people they signpost back to the council, but who may never contact us.

3.1.4 The 102 complaints received by the Ombudsman about Devon County Council in 2017/18 were split across services as follows (note these are LGSCO designated service categories):

Service	Number of Complaints (% of total)	
	2016/17	2017/18
Adult Care Services	34 (29%)	38 (37%)
Corporate & Other Services	2 (2%)	2 (2%)
Education & Children's Services	47 (40%)	36 (35%)
Environmental Services	3 (2.5%)	4 (4%)
Highways & Transport	28 (23.5%)	21 (21%)
Planning & Development	3 (2.5%)	1 (1%)
Other	1 (0.5%)	0 (0%)

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.

3.1.6 While there has been an overall decrease in numbers of complaints received by the Ombudsman in 2017/18, Adult Care Services experienced a slight increase in complaints received.

3.2 Ombudsman Complaint Decisions in 17/18

3.2.1 A summary of all decisions is below with the comparison from 16/17 for information

	Number of Complaints Upheld (% of total)	
	2016/17	2017/18
Investigated – Upheld	25 (22%)	17 (17%)
Investigated – Not Upheld	13 (11%)	15 (15%)
Closed after initial enquiries	41 (35%)	31 (32%)
Incomplete / Invalid	9 (8%)	2 (2%)
Referred back for local resolution	28 (24%)	34 (34%)

3.2.2 Of the 98 Devon County Council complaints the Ombudsman made decisions on in 2017/18, 32 were progressed to a full investigation and of these 17 were upheld; this represents a 53% uphold rate for complaints that progressed to full investigation.

3.2.3 Of those 17 complaints that were investigated and upheld there were 13 where the Ombudsman felt that the fault caused an injustice and recommended a remedy to which the council agreed.

3.2.4 The table at **Appendix A** provides details of the 13 upheld with injustice decisions 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". This finding will be made even if it has agreed to put things right during the course of the Ombudsman investigation or if the council 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 7 complaints, totalling £4,453.40.

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 any 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.

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 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, the council should take 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 as recommended by the Ombudsman in his latest letter.

Helen Wyatt
LGSCO Link Officer
Customer Relations Manager

Rob Parkhouse
Head of Digital Transformation & Business Support

[Electoral Divisions: All]

Contact for Enquiries: Helen Wyatt
Tel No: 01392 383000 Room: 120 County Hall

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

APPENDIX A – UPHELD OMBUDSMAN COMPLAINTS 17/18

LGO Ref	Category	Decision	Action required of Council
16003653	Education & Children's Services	Upheld: maladministration & injustice	<ul style="list-style-type: none"> a. Ensure there is a comprehensive and updated risk assessment/safety plan for Child A which takes account of his current needs and educational provision b. pay £750 per annum for three years from 2014 to 2016 to recognise the loss of opportunity and uncertainty about what services would have been provided for Child A if there had been more timely assessments and interventions in that period. This should be paid into Child A's personal budget as an additional payment so it is used for his benefit. c. reimburse Mrs X the £450 she spent on a private (BIBIC) assessment of Child A's social communication, interactions and sensory processing difficulties. The Single Assessment in June 2015 recommended Child A should receive an assessment in this area so it is reasonable for Mrs X to be reimbursed for this expense; d. the Council should pay Mrs X £5,000 to recognise the overall impact its failings had on Mrs X and her family – this includes a payment for distress and recognition that Mrs X had to provide constant supervision for Child A due to the requirements set out in the Sexual Behaviour Safety Plan and the lack of support or respite arranged by the Council. This took a considerable amount of Mrs X's time every day and had a significant impact on her quality of life and the time she had available for her other children; e. contact Mrs X's eldest daughter, who is now an adult, to ask whether she would like the Council to assess any unmet social care needs she may have and assess whether she meets the eligibility criteria for adult social care services; f. send Mrs X a copy of all the amended case records and reports g. A copy of the final LGO decision statement to be placed in each child's social care case records; h. put in place a procedure to monitor the implementation of agreed recommendations from Stage Two investigations

			and Complaint Review Panels to ensure there are no undue delays or oversights
16012704	Education & Children's Services	Upheld: maladministration & injustice	<ul style="list-style-type: none"> a) Apologising for the quality of information and recording keeping during the assessment b) Continue to review its guidance to ensure it reflects Government guidance allowing it to carry out the two stages of assessment at the same time c) Paying within six weeks of this decision £500 to Mr and Mrs X (including the £300 already offered).
16018208	Education & Children's Services	Upheld: maladministration & injustice	<ul style="list-style-type: none"> a) the Council should apologise to Mrs B for not properly explaining the process to her so she understood the Council's duty and what that involved as well as for failing to properly consider contacting the father of two of her children before interviewing them b) to include in its safeguarding training a reminder to officers to consider contacting the biological parent for permission to speak to the children where that parent is not involved in the day-to-day parenting of the children and is not part of the allegation c) where it is decided not to contact parents before interviewing children the Council will ensure the reasons for that are recorded d) where a child to be interviewed has learning difficulties the Council will consider whether that means an adult should accompany the child. The Council will keep a written record of its consideration of that point.
16011798	Education & Children's Services	Upheld: maladministration & injustice	<ul style="list-style-type: none"> a) Apologise for the fault identified in this statement b) Pay Mr E £300 to reflect the time and trouble he was put to identifying the central point of contact and in finding the Council's policy on children out of school. A further £100 for his distress in the Council failing to consider his wish for F to be educated outside the home and £200 for the uncertainty of not c) knowing whether F could have had more contact with his peers. I note the Council has not yet made the payment of £400 to reflect the delay in its complaints handling; it should make this a payment of £500 to reflect its delay in dealing with the third complaint. These payments should be made within three months of my decision.

			<p>d) Pay F £1,600 to reflect him receiving insufficient amounts of education until he was electively home educated. This payment should also be made within three months of my decision.</p> <p>For the Council to consider amending its procedures to:</p> <p>a) Check with schools that the people employed to support individual children with special educational needs, are appropriately trained;</p> <p>b) Consider recommendations made in statutory guidance are acted upon as soon as possible or to explain why practice is not being changed;</p> <p>c) Receive reports about children educated out of school to check they are receiving the full amount of education to which they are entitled.</p> <p>d) Consider parental wishes when arranging alternative provision. Even if those wishes cannot be met, the Council should explain why.</p> <p>e) Ensure procedures are robust enough to ensure the Council obtains documents promptly and sends out decision letters and drafts as soon as possible.</p> <p>f) Ensure LADOs are appropriately trained to enable them to fulfil this role.</p> <p>g) Ensure its complaints procedure is robust enough so that deadlines are adhered to.</p>
16016426	Adult Care Services	Upheld: maladministration & injustice	Apology
16008838	Adult Care Services	Upheld: maladministration & injustice	<p>a. Apologise to Ms D for the inadequate care provided on its behalf by E Care Home for her sister, Ms C.</p> <p>b. Consider how the Council might routinely monitor the quality of care it arranges for vulnerable adults, and particularly the records of care needed and delivered</p> <p>c. Council how the Council might identify people who would benefit from a 'case conference' to bring together people involved in their care and arrange the necessary meetings</p>
16011654	Adult Care Services (joint with DPT)	Upheld: maladministration & injustice	<p>a) Give Mr B an unreserved apology for the failings identified by this investigation and the injustice caused as a result. Pay Mr B £500 in recognition of his distress and time and trouble.</p>

			<p>b) Commission a review of Mr B's care needs in line with the statutory Care and Support Guidance and Care Act 2014. If that review finds Mr B has needs which qualify for support the integrated service will meet then that service will set a new personal budget and consider the case for reinstating direct payments. It will also provide Mr B with a new support plan. All organisations will use their best efforts to ensure any review completes within three months of a decision on this complaint</p> <p>Also, provide written assurance about:</p> <p>a. The training all members of the integrated service have received (or will receive) on the requirements of the Care Act 2014 and relevant local and Council policy. In particular providing reassurance this has covered the centrality of support planning to any decision on direct payments and reviewing those payments.</p> <p>b. What audit the integrated service has carried out (or intends to carry out) of those who receive direct payments following this complaint. The service should review all cases where clients receive direct payments to check they have support plans which set out what items and services the direct payments cover and how these should meet care needs. In any cases where the service identifies gaps in this information it should prioritise a review.</p> <p>c. to also review its complaint handling in this case. It will ensure that investigating officers are fully aware of the duty of candour and comply with that. It reflects poorly on the service that it identified some of the failings identified in this investigation yet did not share that with Mr B nor offer a proper apology for that. Yet this is exactly what the duty of candour should redress. It will reflect on why therefore this did not happen in this case and write to us with its findings alongside the information agreed at 47 above.</p>
17004135	Adult Care Services	Upheld: maladministration & injustice	<p>a) Apologise to Mr K for the poor communication throughout the safeguarding investigation which has caused him distress, time, trouble and frustration</p>

			b) Review council's procedures around communication with care homes in safeguarding investigations to ensure that it does not miss details of allegations
17006412	Adult Care Services	Upheld: maladministration & injustice	In recognition of the distress caused to Mrs M by the long delay in reviewing her daughter's assessment & DP the Council should pay £200
17008539	Adult Care Services	Upheld: maladministration & injustice	a) Make a payment to Ms C of £53.40 for the staff meals b) Council to remind the provider of the importance of record keeping as it could not provide a copy of the actual agreement signed by the complainant or a copy of the meal contribution policy before 2015 c) Council to remind provider of the need to address complaints and keep evidence of having done so. Provider must give reasons to complainants for why it will not respond to any complaint if it considers it has already responded to it.
16012529	Highways & Transport	Upheld: maladministration & injustice	The Council agreed to provide an advisory disabled parking bay.
16015611	Highways & Transport	Upheld: maladministration & injustice	a) apologise to Mr S for the way it handled his complaint b) review its list of properties that are eligible to apply for parking permits and bring it into line with current planning decisions and the Local Plan. c) asks prospective buyers to check the documents accompanying planning permissions and make appropriate enquiries where there is uncertainty.
17009755	Environmental Services	Upheld: maladministration & injustice	a) Issue Mr D with a formal written apology & inform Council to pay £500 b) Continue to progress the drainage matter & provide regular updates to Mr D

APPENDIX B – CIPFA Comparators Complaints received and decisions by LGSCO

COMPLAINTS RECEIVED BY THE OMBUDSMAN 17/18

COUNCIL	Adult Care Services	Corporate & Other Services	Education & Children's Services	Environmental Services & Public Protection	Highways & Transport	Planning & Development	TOTAL
Cambridgeshire	14	1	13	1	8	2	39
Worcestershire	21	1	21	2	6	0	51
Cumbria	12	5	30	4	12	1	64
Dorset	28	2	39	2	3	0	65
North Yorkshire	31	3	22	1	7	1	65
Gloucestershire	26	2	19	1	16	2	66
Leicestershire	20	3	30	4	9	2	68
Warwickshire	30	2	31	1	5	0	69
Lincolnshire	33	2	22	0	7	9	73
Somerset	34	5	27	1	11	2	80
East Sussex	48	1	35	0	10	1	95
West Sussex	39	7	36	1	13	2	98
Devon	38	2	36	4	21	1	102
Hampshire	39	11	61	0	11	2	124
Norfolk	58	4	53	1	9	0	125
Essex	70	2	73	6	38	1	190

Notes:

- This table is structured based on the 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 4th highest number of complaints

where the Ombudsman decides to close after an initial enquiry i.e. there is no fault by the council and no investigation required by the Ombudsman.

- 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 THE OMBUDSMAN 17/18

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		
Worcestershire	1	1	20	12	3	11	79%	48
Norfolk	5	1	43	26	11	33	75%	119
North Yorkshire	3	0	15	28	8	19	70%	73
Cambridgeshire	0	1	15	15	3	5	63%	39
Somerset	4	1	42	11	7	12	63%	77
Lincolnshire	1	0	37	17	7	11	61%	73
Essex	9	0	61	55	25	35	58%	185
Cumbria	1	0	25	13	9	11	55%	59
Devon	2	0	33	31	15	17	53%	98
Hampshire	11	0	53	33	10	11	52%	118
Leicestershire	1	1	24	25	5	5	50%	61
Gloucestershire	6	0	23	19	8	8	50%	64
Dorset	5	0	21	14	9	8	47%	57
East Sussex	8	0	25	20	19	16	46%	88
West Sussex	4	0	23	34	15	12	44%	88
Warwickshire	2	0	31	12	15	11	42%	71

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 53% of the complaints investigated are upheld, the actual number of upheld complaints is relatively low as a percentage of actual decisions made (15 upheld complaints out of 98 decisions is 15%)
- Devon is also ranked 4th highest for complaints being referred back for local resolution; this 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 the previous 2 years.

