

## LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN COMPLAINTS ANNUAL REVIEW LETTER and REPORT FOR 2020-21

### 1. Introduction

- 1.1 During the initial phase of the Pandemic, the Ombudsman took the unprecedented step of temporarily stopping casework, in the wider public interest, to allow authorities to concentrate efforts on vital frontline services during the first wave of the Covid-19 outbreak. They restarted casework in late June 2020, after a three month pause.
- 1.2 The Ombudsman have continued to focus on the outcome of complaints and what can be learned from them. In 2018-2019 they made a series of changes to how they make and monitor recommendations to remedy fault. Their recommendations are specific and time-bound which allows them to follow up on completion and seek evidence that the recommendations have been implemented.
- 1.3 Stemming from this the Ombudsman continues to publish data on the authority compliance with recommendations. The intention is that this will further aid scrutiny of local services, along with sharing the learning from the report which highlights key cases investigated during the year.
- 1.4 Cabinet/Leadership Group is asked to note this report and the accompanying letter from the Ombudsman.

### 2. Annual Review Letter

#### 2.1 Complaint Statistics

The Ombudsman continue to move focus away from volumes of complaints received and instead focus on the outcomes from complaints and what can be learned from them. Their statistics are focused on the following three areas:

- 2.1.1 **Complaints Upheld:** The Ombudsman upholds complaints when he finds fault in an authority's actions; this is even when the authority accepted fault before the Ombudsman had investigated.
- 2.1.2 **Compliance with Recommendations:** The Ombudsman recommends ways for authorities to put things right where identified fault has resulted in injustice for the complainant, and monitor compliance rates. A compliance rate of less than 100% is deemed to be a cause for concern. We achieved a 100% compliance rate in 2020/21.
- 2.1.3 **Satisfactory remedy provided by the authority:** In these cases, the authority upheld the complaint, and the Ombudsman will have agreed with how the authority offered to put things right. The Ombudsman encourages the early resolution of complaints and credits authorities that find appropriate ways to put things right. The Ombudsman found 0% of the complaints upheld by the Council received a satisfactory remedy before complaints reached the Ombudsman. The average for comparable local authorities was 8%.

### 3. Ombudsman Report for Devon County Council in 2020/21

#### 3.1 Complaints Received

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

Year	Complaints
2020/2021	97
2019/2020	93
2018/2019	116
2017/2018	102

3.1.2 Devon County Council has seen the number of complaints received from the Ombudsman remain relatively static in comparison 2019-2020. There were 84 complaints decided on by the Ombudsman in 2020-21, with only 13 (15%) of those being upheld. This is a decrease of 5% than the previous year, where of 104 complaints decided on 21 (20%) were upheld.

3.1.3 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 97 complaints received by the Ombudsman about Devon County Council in 2020/21 were split across services as follows (note these are LGSCO designated service categories):

Service	Number of Complaints (% of total)		
	2018/19	2019/20	2020/21
Adult Care Services	46 (40%)	32 (34%)	16 (16%)
Corporate & Other Services	1 (1%)	2 (2%)	1 (1%)
Education & Children's Services	42 (36%)	36 (40%)	39 (41%)
Environmental Services	5 (4%)	4 (4%)	7 (7%)
Highways & Transport	18 (16%)	15 (16%)	30 (31%)
Planning & Development	1 (1%)	2 (2%)	1 (1%)
Benefits & Tax	N/A	N/A	1 (1%)
Other	3 (2%)	2 (2%)	2 (2%)

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 Adult Care Services experienced a decrease in the number of complaints received. Complaints about Education & Children's Services remained relatively static. Highways & Transport experienced a significant increase.

## 3.2 Ombudsman Complaint Decisions in 2020/21

3.2.1 A summary of all decisions is below with the comparison from previous years for information.

Ombudsman Decision	Number of Complaints (% of total)		
	2018/19	2019/2020	2020/21
Investigated – Upheld	22 (20%)	21 (20%)	13 (15%)
Investigated – Not Upheld	12 (11%)	14 (14%)	11 (13%)
Closed after initial enquiries	31 (28%)	33 (32%)	38 (46%)
Incomplete / Invalid	11 (10%)	6 (6%)	6 (7%)
Referred back for local resolution	34 (31%)	28 (27%)	14 (17%)
Advice Given	N/A	1 (1%)	2 (2%)

3.2.2 Of the 84 Devon County Council complaints the Ombudsman made decisions on in 2020/21, 24 were progressed to a full investigation and of these 13 were upheld; this represents a 54% uphold rate for complaints that progressed to full investigation, which is a slight decrease on the 60% upheld in 2019/20.

3.2.3 Of the 13 complaints that were investigated and upheld, there were 12 where the Ombudsman felt that the fault identified had caused an injustice, with a remedy therefore being recommended.

3.2.4 The table at **Appendix A** provides details of the 13 upheld 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 the Council has agreed to put things right during 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 6 complaints, totalling £5850.

## 4. Future Developments for Devon County Council

4.1 Although the Council continues to face challenges as a result of the Pandemic, 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 procedures to the Ombudsman. Even where the Council commissions 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. Public expectations of services have not diminished.

4.3 The Ombudsman highlights that he is:

*‘...increasingly concerned about the evidence I see of the erosion of effective complaint functions in local authorities. While no doubt the result of considerable and prolonged budget and demand pressures, the Covid-19 pandemic appears to have amplified the problems and my concerns. With much greater frequency, we find poor local complaint handling practices when investigating substantive service issues and see evidence of reductions in the overall capacity, status and visibility of local redress systems.*

***With this context in mind, we are developing a new programme of work that will utilise complaints to drive improvements in both local complaint systems and services. We want to use the rich evidence of our casework to better identify authorities that need support to improve their complaint handling and target specific support to them. We are at the start of this ambitious work and there will be opportunities for local authorities to shape it over the coming months and years.'***

- 4.4 Devon County Council welcomes the oversight from the Ombudsman, and we look forward to working with him in the future to help drive improvements with the services we deliver. The Council should take even greater measures to ensure that it is able take a person-centred approach, 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. As recommended by the Ombudsman, the Council is working with Members and Scrutiny in this area to identify key areas of development.

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**APPENDIX A - Local Government and Social Care Ombudsman  
Complaints with Maladministration and Injustice 2020-21**

LGSCO Ref	LGSCO Category	Complaint Summary and Findings	Recommendations
18019191	Adult Social Care	Mr F complained on behalf of his mother, Mrs X. Mr F complained about the Council's handling of Mrs X's placement at Edenmore Care home which it arranged and commissioned. The Council was not fault for how it arranged Mrs X's placement. There was also no fault in how the care home authorised Mrs X's urgent Deprivation of Liberty Safeguard in April 2019. The care home failed to retain Mrs X's medication records from July 2018 until March 2019. This is fault.	<p>Write to Mr F and apologise for the uncertainty caused to him by the care home failing to retain Mrs X's medication records between June 2018 and April 2019.</p> <p>Remind the care home that it should keep and retain all residents care records for at least three years, or in line with its document retention schedule.</p>
19010399	Adult Social Care	Mrs B complained about a Council funded care home's poor care and communication around the end of her late mother's life, as well as poor complaint handling. The Ombudsman does not uphold the complaint about end of life care and communication with Mrs B before her mother died. The Ombudsman has found faults in the care home's procedure, record keeping and communication with Mrs B after her mother died.	<p>Ensure Mrs B receives a meaningful apology for each of the faults identified in this decision and their impact on her.</p> <p>The Council will ensure the Home has:</p> <p>reviewed its policies and procedures on sudden and unexpected deaths in residential care, including record keeping, to ensure they comply with all relevant legislation and guidance; and</p> <p>made all relevant staff aware of the reviewed policies and procedures.</p>

19013656	<b>Adult Social Care</b>	<p>Ms X complains the Council failed to deal properly with the assessment of her care needs and unreasonably stopped her personal budget, leaving her without any support.</p> <p>It was Ms X's decision to cancel support from the Support Provider in December 2017. Since then, the only way to move forward has been to reassess her needs under the Care Act. The Ombudsman cannot find fault with the Trust for not giving Ms X a direct payment without first reassessing her needs. It needed to satisfy itself that a direct payment would be used to meet eligible care needs.</p> <p>The faults identified by the Ombudsman have added unnecessarily to Ms X's distress. They have also contributed to the failure to complete an assessment of her social care needs</p>	<p>Having first identified more flexible ways of assessing Ms X's needs, write to her offering alternative approaches and apologising for the previous lack of flexibility, and pay her £500.</p> <p>Produce an action plan explaining how the Trust is going to: a) improve its record keeping; and b) ensure officers take a more flexible approach to assessments, as required by the Care and Support Statutory Guidance.</p>
20002941	<b>Adult Social Care</b>	<p>Mr X complains the Council and its care provider, XY, failed to deal properly with his return home on 20 April 2020, resulting in him being asked to pay for the Care Workers' gloves and being told he would have to go back to a care home if he did not agree to pay.</p> <p>The Ombudsman found that the Council did not handle Mr X's concerns properly. On 20 April it told him it would check the position on paying for gloves but did not do so. On 27 April it discouraged Mr X from making a complaint.</p> <p>When the Council responded to Mr X's complaint it told him he did not need to pay for gloves worn by Care Workers when providing care. But it did not address the question of whether that is what had happened. Nor did it consider whether other people may have been wrongly asked to pay for personal protective equipment. That is fault by the Council.</p> <p>It has caused injustice to Mr X by putting him to the time and trouble of pursuing his complaint further.</p>	<p>Write to Mr X apologising for not addressing his concerns properly.</p> <p>Pay him £100 to redress the injustice caused.</p>
19015397	<b>Adult Social Care – Blue badge</b>	<p>Mr X complained about how the Council assessed his application for a blue badge. The Ombudsman found inaccuracies in the assessment and appeal that meant Mr X could not be confident the Council considered his application properly.</p>	<p>The Council will complete a further independent mobility assessment of Mr X.</p>

19020560	<b>Children's Social Work</b>	<p>Miss B complains the Council failed to implement a child protection plan put in place when her son, who is now 15, was a baby. She considers the Council has not provided adequate support to her.</p> <p>She further complains about the way the Council has considered her complaints and the remedy provided.</p> <p>She says it has had an adverse impact on her and her son's mental health and she has suffered financially by not receiving the benefits to which they were entitled. There was fault which caused injustice to Miss B.</p> <p>The fault in the complaint handling was due to the complainant raising ongoing concerns about the support and involvement of children's social care during the investigation of an existing complaint, and this not being identified as a new complaint for investigation.</p> <p>That meant that by the time the review panel was held in March 2019 there was no factual information about what had happened over the last year, and the new complaint had been overlooked.</p> <p>The Ombudsman considered the offer by the Council of £300 a suitable remedy for the failure to capture the new complaint.</p> <p>The other fault was a failure to appropriately remedy issues, beyond an apology, that had been upheld at both Stage 2 and Stage 3; these related to a lack of support from social care, and the detrimental effect of this on the complainant and her son.</p> <p>The Ombudsman considered that it was not possible to draw any firm conclusions on what should have happened but that the complainant had a justifiable sense of grievance following the outcome of the complaint which required a remedy.</p>	<p>Pay Miss B £1000 to remedy the injustice. This is in addition to the £300 which has been offered for the injustice from the faults in the complaint handling.</p>
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20006171	<b>Children's Social Work</b>	<p>Ms X complains that the Council has lost all its records from her time in foster care in the early 1990s. This includes a letter to her from her birth mother, who is now deceased.</p> <p>Ms X also complains about the way the Council handled her request to access her records and resulting complaints. As a result, Ms X will never know what her mother wrote to her and has no record of her early life.</p> <p>The Ombudsman found fault with the time it took for the Council to reply to Ms X's complaint.</p> <p>The Council accepts that it took over three months to respond formally to Ms X's complaint in December 2019. It says it was conducting extensive searches to look for the file.</p> <p>The Ombudsman confirmed that within our response to this enquiry, DCC confirmed this. However, the Ombudsman believed that the Council could have been more proactive in keeping Ms X informed about its actions and when she could expect a response. Its failure to do so caused Ms X unnecessary added anxiety.</p> <p>The Ombudsman also found fault, as the Children Act 1989, which was in force when Ms X left care, said Councils had to keep records for at least 50 years. The Council accepts that it has lost Ms X's children's services file. As a result, Ms X will never know what was in the letter her mother wrote to her. This is a significant injustice to Ms X.</p> <p>The Ombudsman also found within its investigation, that in 1998 the area where Ms X lived became a unitary authority.</p> <p>This means it took over responsibility for delivering children's social care services for that area. Given the confusion, it seems likely that this is the point at which the files were lost or destroyed.</p> <p>There is no evidence the Council did transfer Ms X's file to B. The Court made a care order which said the Council had to look after Ms X. On this basis, the Ombudsman found the Council was responsible for the data when it was lost. As a result, the Council agreed to the Ombudsman's recommendation to pay the complainant £1000 and apologise.</p> <p>The injustice to Ms X is significant and cannot be easily quantified.</p>	<p>Apologise in writing to Ms X.</p> <p>Pay Ms X £1000.</p>
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19021160	<b>Childrens Social Work</b>	Mrs X complains about the way the Council dealt with her son Y's care package and agreed the Direct Payments for his care needs. We found fault by the Council in its failure to consider Mrs X's complaints through the statutory complaint procedure. But this did not cause her a significant injustice because the Council dealt with her concerns through its corporate complaint procedure. However, the Council took too long to undertake its investigation causing Mrs X frustration and time and trouble in chasing the Council for responses.	<p>Apologise to Mrs X for the delay in carrying out its investigation into her complaint at stage 1 and 2 of its complaint procedure.</p> <p>Pay Mrs X £150 to recognise her frustration over the delays in investigating her complaint and her time and trouble in pursuing her concerns further.</p>
19008360	<b>Education</b>	There was fault by the Council in failing to ensure a child received suitable full-time education when she was medically unfit to attend school.	<p>The Council will apologise to Mr X and Y for the faults identified.</p> <p>The Council will pay Y £2800 (£400 per month for seven months) to acknowledge that the education provided to her was not suitable or full-time and that the Council did not take into account Y's views or that of the family about the type of education that would be suitable. This money should be held in an account in Y's name but supervised by parents and used for her educational or social benefit. Within eight weeks of my final decision, the Council will review its procedures for children missing education due to medical needs to ensure:</p> <p>That cases of children absent from school due to medical needs brought to the attention of officers in other teams are always notified to the Named Officer or Inclusion team so they can ensure appropriate provision is in place</p>

			<p>without delay.</p> <p>That when the SEN team receives information from parents that a child cannot access full-time school for medical reasons that it provides parents with the details of the Named Officer and signposts them to the policy for medical needs.</p> <p>That the Council consider whether it should have a process so parents can self-refer to the Inclusion team / Named Officer so cases where schools have not remembered to make the necessary notification do not slip through the net.</p>
<b>19009619</b>	<b>Education</b>	<p>Ms B complains the Council wrongly told her there was a place for her son, X, at his preferred school. When he arrived at the school at the beginning of term there was no place for him. She says this caused considerable distress to X and her. It meant he has missed out on education, and she has had the financial cost of buying a school uniform for the school he could not attend. There was fault by the Council which caused injustice to Ms B and X.</p>	<p>It should pay £400 to X which is to reflect the missed education and the distress caused to him.</p> <p>It should pay Ms B £150 for the distress caused to her and it should refund her directly the cost of the school uniform.</p>

19009167	Highways	<p>Mr B complains the Council has failed to tackle problems with the behaviour of cyclists using a trail near to his home.</p> <p>Mr B uses the trail daily on his mobility scooter and is concerned that the behaviour could lead to an accident to him or other users of the trail.</p> <p>He further complains the Council has not contacted him as promised about involvement in a group of interested parties to formulate a code of conduct for users.</p> <p>There are no particular statutory powers or duties on which the Council can rely to control the behaviour of the users of the footpath. It is for the Council to decide whether more signage is appropriate.</p> <p>In April 2019 it told Mr B it would involve him in its consideration of what further action it could take. It said it would need his input over the summer with a view to implementation in the autumn.</p> <p>That time frame slipped but the Council did not tell Mr B. I am not aware that Mr B chased the Council for an update but, even so, I consider the Council should have told him what was happening given the earlier contact.</p>	Apologise to Mr B for failing to update him.
19013780	Highways	<p>Mr X complained the Council did not properly consider the Armed Forces Covenant when it decided his request for a disabled parking bay. Mr X believes this may have deprived him of a disabled parking bay, causing inconvenience when he holds meetings for other disabled people.</p> <p>Mr X complained over the phone to the Council about its decision in November. From the evidence the Ombudsman saw, during this call, Mr X said the Council had not conformed to a 'military charter'. The Council wrote to Mr X in December to confirm he did not meet the eligibility criteria for the marking of a disabled parking bay and the Council had closed his application. It did not address the 'military charter' which we understand to be the Armed Forces Covenant.</p> <p>The Ombudsman found fault with the Council for its failure to consider the Armed Forces Covenant when deciding Mr X's original application. This fault caused Mr X an injustice as he was denied the opportunity to have his application properly considered.</p> <p>The Council was unaware of the Covenant and the effect it might have on its decision about Mr X's application. I am not saying the Council should approve Mr X's application. However, it should properly consider whether Mr X's circumstances mean he should be offered special treatment. The Council's final decision may be the same. I cannot question this if it has been properly reached</p>	<p>Reconsider Mr X's disabled parking bay application, taking account of his veteran status and considering the Armed Forces Covenant.</p> <p>Ensure that all Council staff are made aware of the Armed Forces Covenant and informed of how they may need to consider it as part of their role at the Council.</p>