

LOCAL GOVERNMENT OMBUDSMAN COMPLAINTS ANNUAL REPORT FOR 2015/16 & OMBUDSMAN'S ANNUAL REVIEW LETTER

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 Council during 2015/16 and their outcomes be noted;
- (b) That the content of the Ombudsman's Annual Review Letter to the Council be noted together with the improvements this shows in regard to Devon's approach to complaints and in how it compares to its CIPFA comparators. .
- (c) That the intention of the Ombudsman this year, as a result of feedback from Local Authorities last year, is to provide additional information to focus the statistics more on the outcome from complaints rather than just the numbers of complaints received.

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 fulfils that purpose, provides a brief commentary on the Ombudsman's Annual Review letter including changes implemented / proposals for future working by the Local Government Ombudsman within her own organisation.

2. ANNUAL REPORT

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 Complaints Received by Ombudsman about Devon County Council in 15/16

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

Year	Complaints
2015/2016	148
2014 / 2015	121
2013 / 2014	141
2012 / 2013	62

2011 / 2012	50
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2.2.2 The significant increase in the number of complaints to the Ombudsman in 2015/16 should not be a concern as there has been a deliberate awareness campaign by the Ombudsman and the number of complaints received by the Ombudsman is not necessarily a reflection on poor performance by the Council, this is determined by the outcome of these complaints and in this year only 18 out of the 147 concluded were upheld which represents just 12%.

2.2.3 In addition it was clearly stated by the Ombudsman in her Annual Review Letter 2015 that: *We know that these numbers will not necessarily match the complaints data that your authority holds. For example, our numbers include people who we signpost back to the council but who may never contact you.*

2.2.4 The 148 complaints received by the Ombudsman about Devon County Council in 2015/16 were split across services as follows (note these are LGO designated service categories)

Service	Number of Complaints (% of total)
• Adult Care Services	42 (28%)
• Corporate & Other Services	6 (4%)
• Education & Children’s Services	60 (40.5%)
• Environmental Services	5 (4%)
• Highways & Transport	33 (22%)
• Planning & Development	2 (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.

2.3 Ombudsman Complaint Decisions in 15/16

2.3.1 Within the 2015/16 reporting year the Ombudsman made decisions on 147 complaints about Devon County Council. This included decisions on 46 complaints that the Ombudsman fully investigated, of these 18 were upheld and 28 not upheld. This equates to an “upheld” rate of 39% for all those complaints fully investigated. It should be noted that 69% (101 complaints) of the complaints the Ombudsman made a decision on this year were not taken forward passed the enquiry or assessment stages of the process.

2.3.2 A summary of all decisions is below with the comparison from 14/15 for information

Decision of Ombudsman	Number	Number
	(% of Total decisions)	(% of Total decisions)
	2015/16	2014/15
• Investigated – Upheld	18 (12%)	21 (17%)
• Investigated – Not Upheld	28 (19%)	20 (16%)
• Advice given	1 (1%)	1 (1%)
• Closed after initial enquiries	45 (31%)	39 (31%)
• Incomplete / Invalid	11 (7%)	6 (5%)
• Referred back for local resolution	44 (30%)	38 (30%)

2.3.2 The table at **Appendix A** provides details of the 18 decisions of upheld and the required actions by the council

2.3.3 18 complaints investigated by the Ombudsman about the Council were upheld, meaning that there was a finding of maladministration. The decision of “Upheld” is applied when the Ombudsman finds

there is some fault in the way the council acted – 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.

- 2.3.4 Of those 18 complaints where there was a finding of maladministration it was deemed that in 14 of these there had been a degree of injustice. In 2 of these the Council had applied a satisfactory remedy prior to the Ombudsman concluding the investigation and as such there was no further remedy required.
- 2.3.5 The actions required of the Council by the Ombudsman are included within Appendix A. It should be noted that this included financial redress in 5 complaints totalling £4,300.
- 2.3.6 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)
- 2.3.7 It is worth noting that Devon's position in relation to its' comparator Local Authorities has improved since last year quite considerably 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.

3. OMBUDSMAN'S ANNUAL REVIEW LETTER

- 3.1 The Annual Review letter is the successor to the Ombudsman's Annual Letters, it provides an annual summary of statistics on the complaints made to the Local Government Ombudsman (LGO) about this Council to the year ending 31 March 2016.
- 3.2 It is intended that the information provided by the Ombudsman set alongside the data the Council records about local complaints will assist in assessing the Council's performance.
- 3.3 During this year the Ombudsman issued a public interest report about the way the Council decided to discontinue school transport after a family were forced to move home. The school transport appeal panel failed to take account of all relevant information when it decided not to uphold the appeal. We also found that the Council had failed to give due regard to the Armed Forces Covenant when reaching its decision.

4. MOVING FORWARD WITHIN THE OMBUDSMAN'S ORGANISATION

- 4.1 In the last year the Ombudsman has reviewed how it structures the casework teams in order to provide insight across the emerging combined authority structures. As a response to feedback from councils, this included reconfirming the Assistant Ombudsman responsibility for relationship management with each Council. This was communicated to Link Officers through a manual entitled "working with the LGO"
- 4.2 **The LGO corporate strategy** is based upon the twin pillars of remedying injustice and improving local public services. In order to measure progress against the objective to improve local services she issued a survey in March 2016 to all councils. 98% of respondents (DCC did respond) believed that the investigations by the LGO have had an impact on improving public services.
- 4.3 The Ombudsman is confident that the continued publication of decisions, focus reports on key themes and the data in the annual review letters is helping the sector to learn from its mistakes and support better services for citizens.

- 4.4 The same survey demonstrated a significant proportion of councils are sharing the information the Ombudsman provides with elected members and scrutiny / standards committees. This approach is welcomed.
- 4.5 **Ombudsman Reform:** There is progress in regard to the creation of a single ombudsman for public services in England. The government has announced the intention to produce draft legislation and the Local Government Ombudsman will continue to support government in the realisation of this and are advising on the importance of maintaining 40 years plus experience of working with local government and the understanding it has of the unique accountability structures.
- 4.6 Dr Jane Martin, the current Local Government Ombudsman comes to the end of her seven year term at the end of January 2017 and will be handing over to, an as yet, not publicised successor.

5. FUTURE DEVELOPMENTS FOR DEVON COUNTY COUNCIL

- 5.1 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 commissioning many services, it remains entirely accountable for those services, however much day-to-day control it delegates to providers.
- 5.2 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.
- 5.3 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.
- 5.4 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]

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Reference
Nil		

APPENDIX A – UPHELD OMBUDSMAN COMPLAINTS 14/15

LGO Ref	Category	Decision	Action required of Council
14015935	Adult Care Services	Maladministration & injustice – A Learning Disabled Client made a complaint in regard to her enabler and that they did not have a workable relationship.	It was agreed by the council to try to engage the client in a mediation process and the LGO was happy with this.
14009771	Education/Children’s Services	Maladministration & injustice – The Council wrongly decided to discontinue school transport after the family were forced to move home. They say the school transport appeal did not take into account of all relevant information in deciding not to uphold their appeal. Did not take account of the Armed Forces Covenant	Apologise, put in place home-school transport for daughter asap. Pay £1000 to reimburse the costs family incurred, pay a further £1000 to acknowledge the avoidable stress the council’s faults caused the family.
15004126	Adult Care Services	Maladministration & injustice – council refused to renew the customers blue badge as it considered did not meet the eligibility criteria	DCC to offer a reassessment of complainant’s mobility with a different assessor (offered by Dependability 25/8/15)
15004032	Adult Care Services	Maladministration & injustice – The Council has offered to apologise and carry out a new assessment, which is a suitable outcome to the complaint.	Apologise and commission a further mobility assessment that allows the complainant to demonstrate his difficulty with walking on inclines.
14013856	Highways & Transport	Maladministration & injustice – Council was not at fault by refusing to pay for a section of the boundary wall to be built as it had made no agreement to do so. It was at fault through its contractor changing the layout of the corner of a boundary wall without consulting the owner This caused injustice as they would have left the original wall in place	The Council to pay £1000 as payment towards the cost of her replacement wall.
15002849	Adult Care Services	Maladministration & Injustice –There was fault by the Council in it's communication with the complainant and fault in not asking the client if he would like to be interviewed as part of the safeguarding investigation.	Reconvene strategy meeting and consider complainant’s views
14013408	Education & Children’s Services	Maladministration & injustice - There was some fault by the Council in failing to ensure the complainants' child received suitable education while he was out of school following exclusion.	DCC to apologise to complainants and their son for failing to ensure adequate education provision and for the way it dealt with the complaint. Pay £250 in recognition of 3 weeks missed education and the complainants £150 for time & trouble
15005231	Highways & Transport	Maladministration & injustice – The Council failed to deal effectively with reports of mud/muck on the road that presented a danger to complainant and other road users. Failed to comply with its published complaints procedures.	Council has already taken suitable action with regard to the delays and failures in handling the complaint.

14018417	Adult Care Services	Maladministration & injustice – Fault but not significant enough to affect safeguarding outcome. Recommendation to apologise, review findings and recommendations of safeguarding report and confirm to complainant who can have access to the report.	<p>1. Apologise to Provider for not being clear about how it had reached the decision to close the safeguarding investigation</p> <p>2. review the findings and recommendations of the safeguarding investigation to confirm whether it should amend the report. Write to Provider with the outcome</p> <p>3. Confirm to Provider who will have access to the report, who can request a copy of the report and how</p> <p>4. To consider the outcome of the complaint in the review of our safeguarding operational guidance that is planned for early 2016. This will then feed in to a planned review of safeguarding training.</p> <p>5. Take the outcome for discussion to the Leadership Forum which involves all frontline and middle managers – i.e. all of those manager who act as the “responsible Manager”. There is a cyclical learning process in this Forum which identifies learning, agrees actions, and reviews the impact of those actions.</p>
15010814	Adult Care Services	Maladministration & injustice -There is fault with how the complainant was assessed for a blue badge	Council have offered a further face to face assessment with a different assessor
15016170	Adult Care Services	Maladministration & injustice There is fault with how the complainant was assessed for a blue badge	Carry out a fresh walking assessment & inform LGO when done
15005707	Education & Children’s Services	Maladministration & Injustice - complaint about the way the Council handled allegations about a foster carer	<p>Pay £350 in recognition of the uncertainty and distress caused by the prolonged investigation</p> <p>Council to review all of the available training to LADO officers</p> <p>Change procedure to bring payments to Foster Carers against whom allegations have been made more in line with Devon County Council staff members; as such Foster Carers in future will be paid the full rate until any investigation is completed.</p>
15011406	Adult Care Services	Maladministration & Injustice - Council was at fault for not adequately reviewing the complainant’s care package after a move to supported living accommodation. Also delayed in helping him move to alternative accommodation. Acting on advice from his care provider the complainant also bought a sling for a hoist the Council may have provided free.	<p>Apologise for the faults identified. Pay £700 in recognition of injustice and refund the money spent on the sling while living in supported</p> <p>Accommodation. Provide a named point of contact who will contact weekly to ensure better communications with the Council</p>

APPENDIX B – CIPFA Comparators Complaints received and decisions by LGO

COMPLAINTS RECEIVED BY OMBUDSMAN 15/16

COUNCIL	Adult Care Services	Corporate & Other Services	Education & Children's Services	Environmental Services & Public Protection	Highways & Transport	Planning & Development	TOTAL
Dorset	24	2	14	4	7	1	52
Cumbria	10	2	30	2	7	0	53
Norfolk	45	3	40	6	14	1	109
Leicestershire	22	5	30	4	16	2	79
Cambridgeshire	15	5	26	1	10	0	57
Worcestershire	20	3	28	2	7	1	61
Gloucestershire	23	4	24	1	10	0	62
Somerset	21	3	27	1	9	0	61
Lincolnshire	36	2	28	3	9	2	80
Warwickshire	33	1	23	2	8	0	67
North Yorkshire	37	3	31	2	18	4	93
West Sussex	43	6	36	6	18	6	115
Hampshire	37	4	58	4	15	1	119
Devon	42	6	60	5	33	2	148
East Sussex	51	4	32	1	7	2	97
Essex	52	8	146	11	58	2	277

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 15/16

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		
Dorset	1	0	20	16	6	5	45%	48
North Yorkshire	5	0	30	29	19	19	50%	102
Gloucestershire	0	0	4	6	2	4	67%	16
Lincolnshire	6	1	38	14	13	9	41%	81
Leicestershire	7	0	30	32	10	7	41%	86
East Sussex	9	0	32	30	22	28	56%	121
Warwickshire	3	1	23	22	6	4	40%	59
Essex	7	1	89	70	73	24	25%	264
Worcestershire	2	2	21	12	8	8	50%	53
Cambridgeshire	3	1	26	15	9	12	57%	66
Cumbria	5	1	25	14	4	7	64%	56
Devon	11	1	44	45	28	18	39%	147
West Sussex	5	0	42	44	14	9	39%	114
Hampshire	4	1	60	25	7	17	71%	114
Norfolk	8	0	43	29	9	8	47%	97
Somerset	2	0	36	12	4	14	78%	68

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 39% of those complaints investigated are upheld – the actual number of upheld complaints is relatively low as a percentage of actual decisions made (18 upheld complaints out of 147 decisions is 12%) and a significantly better percentage when compared to other councils. Devon has the joint 2nd lowest percentage of complaints upheld by the Ombudsman – this is a considerable improvement in performance from last year.
- Devon is also ranked 3rd 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.

