

PUBLIC

Agenda Item No.5 (a)

DERBYSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

4TH JULY 2018

Report of the Director of Legal Services

**ANNUAL REVIEW LETTER OF THE LOCAL GOVERNMENT
OMBUDSMAN**

1. Purpose of the Report

To inform the committee of the Local Government Ombudsman's Annual Review Letter for the year ended 31st of March 2017.

2. Information and Analysis

The terms of reference of the Standards Committee include "the overview of Local Government Ombudsman's investigations." Therefore, the Committee is invited to receive the Annual Review Letter from the Local Government Ombudsman, giving details of the total number of complaints for Derbyshire County Council for the year ending 31 March 2017. The letter is attached as Appendix A for consideration. All of the Ombudsman's annual review letters are published on their website (www.lgo.org.uk) and copied to the Audit Commission.

Derbyshire's Annual Review Letter will also be published on the Council's website
[http://www.derbyshire.gov.uk/council/complaints/ombudsman/default-asp](http://www.derbyshire.gov.uk/council/complaints/ombudsman/default.asp)

The aim of the Annual Review Letter is to provide councils with information which will help them assess their performance in handling complaints.

For the period ending 31 March 2017, the LGO received 84 complaints relating to Derbyshire County Council. The 84 complaints compares to 96 complaints for Derbyshire in the period 2015/16 (a decrease of 12.5%).

In respect of the 12 complaints upheld by the LGO in 2016/17, only 7 required the Council to provide a remedy; this was on the basis that of the 12 cases upheld the LGO determined that in 5 of those cases, although there was fault, there were no grounds to say that the fault caused an injustice that ought to be remedied.

In terms of the 12 complaints upheld by the LGO these can be identified in relation to the following County Council departments:

Department	Number of decisions against the Council
Adult Care ¹	6
Children's Services	3
Economy, Transport & Communities	2
Property Services	1

Details of the twelve complaints and the remedies are set out in Appendix B²

There were no reports issued against the Council in 2016/17 because in all of the 12 cases where there were findings against the Council, the LGO suggested a remedy which the Council agreed to.

The LGO has indicated that when it produces the Annual Review Letter for 2017/18 it intends to include a more sophisticated suite of information about compliance and service improvements. Effectively, this means that the LGO will indicate, in respect of decisions upheld, where the Council has complied with its recommendation. The LGO also intends to provide more meaningful data which will allow for more effective scrutiny and easier comparison with other councils.

The Annual Report for 2016/17 specifically refers to the statutory duty of councils to report Ombudsman findings and recommendations. There is a duty under section 5(2) of the Local Government and Housing Act 1989 for a council's monitoring officer to prepare a formal report to the

¹ The LGO report identifies 7 complaint upheld relating to Adult Care, but one of these is a Disabled Facilities Grant (DFG) matter, and is identified in the table above as a Property Services matter.

council where it appears that the Authority, or any part of it, has acted or is likely to act in such a manner so as to constitute maladministration or service failure and where the LGO has conducted an investigation in relation to the matter.

This requirement applies to all Ombudsman complaint decisions, not just those which result in a public report. It is, therefore, a significant statutory duty that is triggered in most authorities every year following findings of fault by the LGO. The Ombudsman has indicated that he has received several enquiries from authorities to ask how he expects this duty to be discharged. The Ombudsman has therefore produced some guidance on this as follows:

- Where the LGO has made 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 following an investigation, the duty is satisfactorily discharged if the monitoring officer makes a periodic report to the Council summarising the findings on all upheld complaints over a specific period. In a small authority this may be adequately addressed through an annual report on complaints to members, for example.
- Where an investigation has wider implications for council policy or exposes a more significant finding of maladministration, perhaps because of the scale of the fault or injustice, or the number of people affected, the LGO would expect the monitoring officer to consider whether the implications of that investigation should be individually reported to members.
- In the unlikely event that an authority is minded not comply with the LGO's recommendations following a finding of maladministration, the LGO would always expect the monitoring officer to report this to members under section 5 of the Act. This is an exceptional and unusual course of action for any authority to take and should be considered at the highest tier of the authority.

Derbyshire County Council discharges this duty by including the LGO's Report in the Report on Complaints and Compliments to Cabinet and, in due course, the report from Cabinet is reported to the Standards Committee. In addition, as necessary, significant individual reports are reported separately to Members.

3. Legal Considerations

The Local Government Ombudsman's powers are defined by the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007 and as described in the report.

4. Other Considerations

In preparing this report the relevance of the following factors have also been considered: financial, human rights, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

5. Background Papers

The file held on behalf of the Director of Legal Services

6. Officer's Recommendation

To note the annual review letter of the Local Government Ombudsman for the year ended 31st March 2017.

**Janie Berry
Director of Legal Services**

Local Government & Social Care OMBUDSMAN

20 July 2017

By email

Ian Stephenson
Chief Executive
Derbyshire County Council

Dear Ian Stephenson,

Annual Review letter 2017

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman (LGO) about your authority for the year ended 31 March 2017. The enclosed tables present the number of complaints and enquiries received about your authority and the decisions we made during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

The reporting year saw the retirement of Dr Jane Martin after completing her seven year tenure as Local Government Ombudsman. I was delighted to be appointed to the role of Ombudsman in January and look forward to working with you and colleagues across the local government sector in my new role.

You may notice the inclusion of the '*Social Care Ombudsman*' in our name and logo. You will be aware that since 2010 we have operated with jurisdiction over all registered adult social care providers, able to investigate complaints about care funded and arranged privately. The change is in response to frequent feedback from care providers who tell us that our current name is a real barrier to recognition within the social care sector. We hope this change will help to give this part of our jurisdiction the profile it deserves.

Complaint statistics

Last year, we provided for the first time statistics on how the complaints we upheld against your authority were remedied. This year's letter, again, includes a breakdown of upheld complaints to show how they were remedied. This includes the number of cases where our recommendations remedied the fault and the number of cases where we decided your authority had offered a satisfactory remedy during the local complaints process. In these latter cases we provide reassurance that your authority had satisfactorily attempted to resolve the complaint before the person came to us.

We have chosen not to include a 'compliance rate' this year; this indicated a council's compliance with our recommendations to remedy a fault. From April 2016, we established a new mechanism for ensuring the recommendations we make to councils are implemented, where they are agreed to. This has meant the recommendations we make are more specific, and will often include a time-frame for completion. We will then follow up with a council and seek evidence that recommendations have been implemented. As a result of this new process, we plan to report a more sophisticated suite of information about compliance and service improvement in the future.

This is likely to be just one of several changes we will make to our annual letters and the way we present our data to you in the future. We surveyed councils earlier in the year to find out, amongst other things, how they use the data in annual letters and what data is the most useful; thank you to those officers who responded. The feedback will inform new work to

provide you, your officers and elected members, and members of the public, with more meaningful data that allows for more effective scrutiny and easier comparison with other councils. We will keep in touch with you as this work progresses.

I want to emphasise that the statistics in this letter comprise the data we hold, and may not necessarily align with the data your authority holds. For example, our numbers include enquiries from people we signpost back to the authority, but who may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

The statutory duty to report Ombudsman findings and recommendations

As you will no doubt be aware, there is duty under section 5(2) of the Local Government and Housing Act 1989 for your 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 LGO has conducted an investigation in relation to the matter.

This requirement applies to all Ombudsman complaint decisions, not just those that result in a public report. It is therefore a significant statutory duty that is triggered in most authorities every year following findings of fault by my office. I have received several enquiries from authorities to ask how I expect this duty to be discharged. I thought it would therefore be useful for me to take this opportunity to comment on this responsibility.

I am conscious that authorities have adopted different approaches to respond proportionately to the issues raised in different Ombudsman investigations in a way that best reflects their own local circumstances. I am comfortable with, and supportive of, a flexible approach to how this duty is discharged. I do 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.

As a general guide I would suggest:

- Where my office has made 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 following an investigation, I feel that the duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the council summarising the findings on all upheld complaints over a specific period. In a small authority this may be adequately addressed through an annual report on complaints to members, for example.
- Where an investigation has wider implications for council policy or exposes a more significant finding of maladministration, perhaps because of the scale of the fault or injustice, or the number of people affected, I would expect the Monitoring Officer to consider whether the implications of that investigation should be individually reported to members.
- In the unlikely event that an authority is minded not to comply with my recommendations following a finding of maladministration, I would always expect the Monitoring Officer to report this to members under section five of the Act. This is an exceptional and unusual course of action for any authority to take and should be considered at the highest tier of the authority.

The duties set out above in relation to the Local Government and Housing Act 1989 are in addition to, not instead of, the pre-existing duties placed on all authorities in relation to Ombudsman reports under The Local Government Act 1974. Under those provisions, whenever my office issues a formal, public report to your authority you are obliged to lay that report before the council for consideration and respond within three months setting out the action that you have taken, or propose to take, in response to the report.

I know that most local authorities are familiar with these arrangements, but I happy to discuss this further with you or your Monitoring Officer if there is any doubt about how to discharge these duties in future.

Manual for Councils

We greatly value our relationships with council Complaints Officers, our single contact points at each authority. To support them in their roles, we have published a Manual for Councils, setting out in detail what we do and how we investigate the complaints we receive. When we surveyed Complaints Officers, we were pleased to hear that 73% reported they have found the manual useful.

The manual is a practical resource and reference point for all council staff, not just those working directly with us, and I encourage you to share it widely within your organisation. The manual can be found on our website www.lgo.org.uk/link-officers

Complaint handling training

Our training programme is one of the ways we use the outcomes of complaints to promote wider service improvements and learning. We delivered an ambitious programme of 75 courses during the year, training over 800 council staff and more 400 care provider staff. Post-course surveys showed a 92% increase in delegates' confidence in dealing with complaints. To find out more visit www.lgo.org.uk/training

Yours sincerely



Michael King
Local Government and Social Care Ombudsman for England
Chair, Commission for Local Administration in England

Local Authority Report: Derbyshire County Council
For the Period Ending: 31/03/2017

For further information on how to interpret our statistics, please visit our website:
<http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
23	1	5	35	3	16	0	1	0	84

Decisions made

Detailed Investigations					Complaints Remedied	
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate
9	0	34	24	5	12	71%
Notes Our uphold rate is calculated in relation to the total number of detailed investigations. The number of remedied complaints may not equal the number of upheld complaints. This is because, while we may uphold a complaint because we find fault, we may not always find grounds to say that fault caused injustice that ought to be remedied.					by LGO	Satisfactorily by Authority before LGO Involvement
					7	0
					Total	
					84	

Complaint Reference	Details of complaint	Findings and Remedy
15/019/158 Children's Services	This complaint related to the delay by the Council in issuing health and care plans for two children.	The LGO found that the Council was at fault for the delay in issuing health and care plans for the two children. The LGO recommended that the Council apologise to the parents of the children concerned and make a payment of £1,000 for the distress caused to the parents and for their time and trouble in bringing the complaint.
16/005/246 Children's Services	This complaint related to a decision not to offer a child a place at her preferred school. The parent of the child appealed the decision because she did not believe the Panel properly considered her appeal.	The LGO found that there was fault in the way the Panel handled the appeal for a school, but this did not cause any injustice because there were not sufficient grounds for the Panel to uphold the appeal.*
15/016/111 Children's Services	This complaint related to an allegation that there was flawed decision making leading to the placement of the complainant's grandson in foster care in August 2014 and that Children's Services failed to consider properly the grandparents' ability and willingness to care for the child and did not communicate properly with them. The complainants also said that they had not had a proper explanation for what happened.	The LGO found that there was fault by the Council in failing to communicate properly with the complainants about the decision to place their grandson in foster care and the Council also took too long to deal with their complaint. The Ombudsman recommended the Council should write to the complainants to apologise.
15/014/375 Adult Care	This complaint related to an allegation that the Council's care provider, Mediline, failed to visit the complainant on the evening of 7 June 2015, despite calls from him pointing out that no-one had	The LGO found that the Council was accountable for the actions of the service provider. The Council agreed to write to the complainant acknowledging and apologising for the pain and distress caused

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	arrived, leaving him in discomfort and distress until the next morning.	to him by the missed call and to make a payment of £50 to him for the pain and distress caused to him.
15/020/881 Adult Care	This complaint related to the complainant being unhappy with the Council's investigations into an incident in which the complainant's mother fell from a hoist and cut her head whilst she was receiving care at home from BradCare, which the Council had arranged to care for her.	The LGO found that there was no fault by the Council over the way it dealt with the safeguarding investigation. However, the Council was accountable for the incident. The Council agreed to make a payment of £1,000 to the complainant's mother who had suffered the injury and a payment of £1,000 to the complainant for her to share with those members of her mother's family who had been distressed by the incident.
16/002/663 Adult Care	The complainant complained on behalf of her mother that the Council delayed telling her the outcome of a safeguarding referral, the Council did not deal correctly with property adaptations and did not carry out an assessment or complete a carer's assessment after the complainant's mother left hospital.	The LGO agreed that there was delay in the Council telling the complainant about the outcome of the safeguarding referral. However, this did not cause significant injustice. There was no fault in the way the Council dealt with the property adaptations, an assessment after the complainant's mother left hospital or a carer's assessment.*
15/003/611 Adult Care	The complaint related to a delay in putting in place reablement care, meaning that the complainant's mother stayed in hospital longer than was necessary, the Council not providing enough calls after hospital discharge, the Council wanting the complainant's mother to go into a care home, late care being provided one morning, the Council failing to carry out a carer's assessment and the Council discriminating against the complainant as an employee.	The LGO found that there was a delay in assessing the complainant's mother's needs in hospital which amounted to fault. The Council was not solely responsible for the delay in discharging the complainant's mother because the NHS also needed to complete an occupational therapy assessment. An incident where the complainant's mother became unwell with low blood sugar was not attributable to the Council. The Council provided reablement calls in line with the

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		complaint's mother's eligible needs. The complainant made her own arrangement for a carer's assessment and the Council also offered her a carer's assessment and was therefore not at fault. The LGO did not investigate that part of the complaint about discrimination as an employee because it was not within the LGO's remit to investigate personnel issues.*
15/011/309 Adult Care	The complaint related to the care the complainant's husband received whilst in a care home. The complaint was that the complainant's husband was able to leave the home and put himself at risk. The complaint also related to incidents the care home reported to the family about their father's (the complainant's husband's) behaviour.	The LGO found that there was some administrative fault, but did not consider that this led to an injustice.*
15/011/625 Property	The complaint related to the Council's failure to provide an adequate remedy for poor work by its contractor on a bathroom adaptation at the complainant's home and failure by the Council to ensure the safety of other members of the complainant's family.	The LGO found that there was fault by the first contractor acting on behalf of the Council relating to the quality of workmanship of the bathroom adaptation funded by a Disabled Facilities Grant (DFG). The Council had admitted fault, offered a suitable remedy and had taken action to investigate the quality of the workmanship of the first contractor by carrying out an audit. The Council agreed to make a payment of £3,450 to the complainant to be shared between the complainant, his wife and his brother in law in recognition of the distress and inconvenience caused by the fault. The Council also agreed to carry out an audit of the work of the contractor involved to investigate if other service users had

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		suffered a similar injustice. The Council agreed that it would share a copy of the audit's findings with the Ombudsman.
15/011/247	The complaint was that the Council made a mistake when it told the complainant there was a footpath running across her land. After the complainant applied for a diversion of the footpath, the Council realised the footpath did not run across the land. The complainant said that because of the Council's original error, she had been caused worry and stress from people being able to walk across her land and she had spent considerable time and trouble in negotiating with the neighbour and landowner to divert the path onto his land. The delay in dealing with the diversion order and the realisation of the error caused problems with the sale of the complainant's house and the purchase of a new property.	The LGO found that the Council made a mistake when it told the complainant there was a footpath running across her land. This caused injustice to the complainant from the worry of the possible use of the path, the time and trouble in applying for a diversion application and in difficulties in selling her home. The LGO agreed that a payment of £3,000 by the Council to the complainant would be a satisfactory resolution to the complaint.
16/008/662	The complaint was that the Council had not followed its policy regarding its response to a flooding incident which involved the complainant's house.	The LGO found that the Council should have explained better its early decision not to take enforcement action against the riparian land owner in line with its powers as Lead Local Flood Authority. However, this did not cause significant injustice to the complainant and the Council had come to a decision properly in line with its policy decision not to take enforcement action.*

* These are the five cases where the LGO found fault, but found that there were no grounds to say that the fault caused an injustice that ought to be remedied.