

Report of: Director of Law and Governance and Monitoring Officer

Meeting of:	Date:	Ward(s):
Audit	31 January 2019	All

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SUBJECT: Update on Ombudsman's decisions July 2018 to December 2018**1. Synopsis**

- 1.1 This report updates the Committee on the number, nature and findings of complaints made to the Local Government and Social Care Ombudsman (LGSCO) during the period from 1st July to 31st December 2018.

2. Recommendations

- 2.1 To note the contents of the report.

3. Background

- 3.1 The Commission for Local Administration in England, commonly known as the Local Government Ombudsman, was set up following the Local Government Act 1974. In June 2017 the Local Government Ombudsman's title was changed to the Local Government and Social Care Ombudsman (LGSCO) to reflect its wider remit
- 3.2 The main statutory functions for the LGSCO are found in the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007. Their powers include:
- investigating complaints against councils and some other authorities;
 - investigating complaints about adult social care providers from people who arrange or fund their adult social care (Health Act 2009);
 - providing advice and guidance on good administrative practice; and

d) looking at service failure in addition to maladministration (LGPIHA 2007).

- 3.3 All investigated complaints result in a decision. The LGSCO issues these decisions, either by way of a statement of reasons for the decision or a report. If the LGSCO decides that the council has done something wrong and that this fault (be that maladministration, service failure, or failure to provide a service) has caused an injustice to the complainant, the LGSCO will recommend what the council should do to put this right.
- 3.4 Additionally, where a complaint of fault is upheld and a formal report (or public interest report) is to be issued; this must be considered by the Executive (for executive functions) or Full Council or its appropriate committee (for non-executive functions).
- 3.5 In the case of complaints about the council, the outcomes of these complaints are reported to Members by way of this committee. The most recent report come before this committee on the 23rd January 2018

Complaints against the Council

- 3.6 During the 1st July 2018 to 31st December 2018, 5 complaints about the Council to the LGSCO were upheld. There were no 'not upheld' complaints. The number of complaints that were closed after initial enquiries and accordingly did not reach investigation stage, is not yet available from the LGSCO.

Table one at Appendix One provides a brief summary of the complaints that were upheld.

Full copies of the decisions in Table one can be found on the LGSCO's website:

<https://www.lgo.org.uk/Decisions>.

- 3.7 Since 1st July 2018, the council has not received any decision which has resulted in a formal (Public Interest) report of maladministration.
- 3.8 In April 2013, the Housing Ombudsman took over responsibility for all new complaints about social housing. This includes complaints about a local authority's (or arms-length management organisation's) relationship as landlord to its tenants or leaseholders.
- 3.9 The Housing Ombudsman's jurisdiction occasionally overlaps with that of the LGSCO Ombudsman. They are both able to conduct joint investigations and work under a Memorandum of Understanding. For the relevant period, one complaint has resulted in the Housing Ombudsman making a decision of maladministration. Table three provides a brief summary of this complaint and can be found at Appendix One.
- 3.10 In order to ensure that the council continually improves its performance and that lessons are learned from the Ombudsman's decisions, all reports are shared with the service area and relevant officers.

Local Government Ombudsman's Report 2017/18

- 3.11 In August 2018, the Local Government Ombudsman published comparative data for each local authority on the number of complaints received, upheld and not upheld for 2017/18. Appendix 2 to this report shows the comparative information for each London local authority.
- 3.12 Islington was below the London average for the number of complaints referred to the ombudsman and the number that were upheld and not upheld. The number upheld against Islington was significantly below the number upheld for our neighbouring councils.

4. Implications

4.1 Financial implications:

There are no financial implications arising directly from this report.

However, s 92 of the Local Government Act 2000 provides that the authority may, if they think appropriate, make a payment to, or provide some other benefit for, a person where:

(a) that action taken by or on behalf of the authority in the exercise of their functions amounts to, or may amount to, maladministration, and

(b) that a person has been, or may have been, adversely affected by that action,

During the period from 1st July 2018 to 31st December 2018, £4,330 was payable to complainants for maladministration arising out of Ombudsman decisions. Payments are met from within existing budgets.

4.2 Legal Implications:

In accordance with s 5A(2) of the Local Government and Housing Act 1989 the Monitoring Officer is under an obligation to prepare a report to the Executive 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 LGSCO has conducted an investigation into the matter. This obligation applies to all LGSCO decisions.

In preparing that report, the Monitoring Officer is under a duty to consult as far as practicable with the Head of Paid Service and the Chief Finance Officer (s 5A(5)(a)). As soon as practicable after the report has been prepared, the Monitoring Officer's report must be sent to each member of the authority (s 5A(5)(b)).

Under s 5A(6) it is the duty of the authority's Executive to consider the Monitoring Officer's report within 21 days. Under s 5A(8), as soon as practicable after the Executive has concluded its consideration of the report, the Executive must prepare a report which specifies: (a) what action (if any) the Executive has taken in response to the report of the Monitoring Officer; (b) what action (if any) the executive proposes to take in response to that report and when it proposes to take that action; and (c) the reasons for taking the action specified in the Executive's report or, as the case may be, for taking no action. The Executive must also arrange for a copy of that report to be sent to each member of the authority and the authority's Monitoring Officer (s 5A(9)).

However, the LGSCO in their letter to this authority dated the 20th July 2017 stated:

"..... I do not seek to impose a prescriptive 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 my investigations, 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....."

4.3 Environmental Implications

There are no environmental implications arising from this report

4.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A resident impact assessment has not been conducted, as this report provides monitoring information and a legal update for the Committee.

5. Reason for recommendations

- 5.1 This report ensures that the statutory requirements of the Local Government Act 1974, and Local Government Housing Act 1989 are met.

Appendices

Appendix One: Table one and two: LGSCO complaints received during 1st July 2018 to 31st December 2018.

Table three: Housing Ombudsman complaints received during 1st July 2018 to 31st December 2018.

Appendix Two: Complaints / enquiries received by Local Government Ombudsman in 2017/18 in respect of London local authorities

Background papers:

None

Final report clearance:

Signed by:



Monitoring Officer (Director of Law and Governance)

Date 17 January 2019

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Appendix One:

Table One - Complaints received by the Local Government and Social Care Ombudsman 1 July to 31 December 2018

No	LGSCO Case no (ID)	Date	Nature of Complaint	Brief Description	Type of Decision	Outcome
1	17009564	22.08.18	Children Services/Assessment	Mr F complained that the Councils Children and Families Assessment report was one-sided and flawed and did not present an impartial evaluation of the evidence. The Ombudsman concluded that the report was one-sided and caused distress as Mr F had to pursue a complaint in order for the Council to acknowledge its mistakes and correct its records. The Council offered £800 by way of compensation.	Statement	Upheld Financial Award: The LGSCO considered the award of £800 to be a satisfactory response.
2	18000775	23.10.18	Parking /Penalty Charge Notice	Mr B complained that the Council wrongly issued parking penalty notices to visitors to his home. The Ombudsman concluded that the notices should not have been issued as valid visitor parking permits were displayed. The Council then continued to issue penalty charge notices in the same circumstances after the issue was brought to its attention.	Statement	Upheld Financial Award: £75 to each recipient of the penalty charge notice. £150 to the complainant.
3	18006095	26.10.18	Finance/ Housing Benefit	Mr X complained that the Council wrongly removed his housing benefit which resulted in him becoming homeless. The Ombudsman found that the Council was at fault for ending the housing benefit too soon. The Council's actions did not result in Mr X losing his home.	Statement	Upheld Financial Award: £200 in recognition of time and trouble.

4	17017665	17.12.18	Leaseholder	<p>Mr Y complained that the Council unreasonably withheld consent for alterations to his leasehold property because it insisted on the agreement of a neighbouring leaseholder. The Ombudsman has found there was delay in the Council's issuing the licence and offered an additional payment to ensure the remedy offered by the Council is in line with Ombudsman guidelines.</p>	Statement	<p>Upheld</p> <p>Financial Award:</p> <p>£400 for delay.</p> <p>£100 in recognition of time and trouble.</p>
5	18 004 176	19.12.18	Adults/ Direct Payments	<p>Mr H complained that the Council stopped paying him direct payments to pay for a second room for a carer and then delayed reconsidering this decision when he asked it to. The Ombudsman found that the Council was at fault as it did not consider its decision to stop paying for the second room and it did not identify how it else it would discharge its duty to meet eligible night time needs. The Council then took too long to reconsider its decision during which time Mr X paid rent himself for a second room to enable a carer to stay overnight.</p>	Statement	<p>Upheld</p> <p>Financial Award:</p> <p>Refund £2,280 five and a half months rent paid for the extra room.</p>

Table two – ‘closed’ complaints received by the Local Government and Social Care Ombudsman during 1st July 2018- 31st December 2018
 This information is not yet available from the LGSCO

Table three – complaints received by the Housing Ombudsman during 1 July 2018 -31 December 2018

No	Housing Ombudsman Case no (ID)	Date	Nature of Complaint	Brief Description	Type of Decision	Outcome
1	201615415	11.07.18	Housing/repairs	H complained about the time taken by the Council (PFI) to respond to repairs to the bedroom in a reasonable time and insufficient compensation was offered for its failings. The Ombudsman found that the extent of the works were not fully identified until several months after the defects were reported and then there were delays in carrying out the repairs.	Statement	Maladministration Financial award: £400 delays/poor communication and failure to escalate the complaint.

APPENDIX 2

Complaints / enquiries received by Local Government Omdusman 2017/18 -Comparative Informatio

Authority	Complaints and Enquiries Received 2017/2018	Upheld	Not Upheld	Percentage Upheld
Barking	122	12	3	80%
Barnet	169	19	13	59%
Bexley	84	13	6	68%
Brent	168	21	12	64%
Bromley	165	30	24	56%
Camden	137	17	8	68%
City of London	7	0	0	0%
Croydon	226	33	18	65%
Ealing	199	18	20	47%
Enfield	151	16	12	57%
Greenwich	121	22	5	82%
Hackney	125	20	7	74%
Hammersmith	92	14	4	78%
Haringey	184	24	18	56%
Harrow	114	21	6	78%
Havering	94	10	13	44%
Hillingdon	130	20	11	65%
Hounslow	132	10	6	63%
Islington	126	11	5	65%
Kensington	85	7	10	41%
Kingston	86	11	7	55%
Lambeth	193	30	16	65%
Lewisham	146	16	8	67%
Merton	93	12	7	63%
Newnham	227	35	16	65%
Redbridge	141	36	21	63%
Richmond	54	6	5	55%
Southwark	164	27	10	73%
Sutton	92	13	4	77%
Tower Hamlets	106	17	12	59%
Waltham Forest	148	24	14	63%
Wandsworth	100	12	6	67%
Westminster	133	20	15	57%
Total	4314	597	342	
Average	131	18.1	10.4	63.60%

n for London