

Report of: Acting Director of Law and Governance and Monitoring Officer

Meeting of:	Date:	Ward(s):
Audit	29 July 2019	All

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SUBJECT: Update on Ombudsman's decisions January to June 2019
1. Synopsis

- 1.1 This report updates the Committee on the number, nature and findings of complaints dealt with by the Local Government and Social Care Ombudsman (LGSCO) during the period from 1st January to 30th June 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:
- a) investigating complaints against councils and some other authorities;
 - b) investigating complaints about adult social care providers from people who arrange or fund their adult social care (Health Act 2009);
 - c) 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 period 1st January to 30th June 2019, 15 complaints about the Council were considered by the LGSCO:
- 2 was upheld;
 - 3 were not upheld, and
 - 10 were closed after initial enquiries and accordingly did not reach investigation stage.

Attached as Appendix one are two tables. The first, Table one, provides a brief summary of the upheld and not upheld complaints. The second, Table two, provides a summary of the complaints closed after initial enquiries.

- 3.7 Full copies of the decisions in Tables one and two can be found on the LGSCO's website: <https://www.lgo.org.uk/Decisions>.
- 3.8 Since 1st January 2019, the council has not received any decision which has resulted in a formal (Public Interest) report of maladministration.
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 The number of complaints in respect of the council received by the LGSCO during the period 1 April 2018 to 31 March 2019 and comparative figures for other local authorities will not become available until August 2019 and will be summarised in the next monitoring report to this committee in January 2020.

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 January to 30th June December 2019, £150 was payable to one complainant for maladministration arising out of Ombudsman decisions. The payment was 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 5(A)(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 January to 30th June 2019
Table three: Housing Ombudsman complaints received during 1st January to 30th June 2019

Background papers:

None

Final report clearance:

Signed by:

Monitoring Officer (Acting Director of Law and Governance) Date

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