

Division(s):

AUDIT & GOVERNANCE COMMITTEE

16 SEPTEMBER 2020

LOCAL GOVERNMENT OMBUDSMAN – ANNUAL REVIEW REPORT

Report by Steve Jorden, Monitoring Officer

RECOMMENDATION

- 1. The Committee is RECOMMENDED to note and comment on this report and on the Local Government Ombudsman’s Annual Review of Oxfordshire County Council for 2019/20**

Introduction

2. Each year, the Local Government and Social Care Ombudsman (LGSCO) issues an Annual Review Report about each council. This relates to the complaints made to the LGSCO about the Council in the previous financial year. My report updates the Committee on this area of governance for the year 2019/20.
3. While there were fewer complaints made to the LGSCO about this Council in 2019/20, the rate of cases upheld has increased on last year: 16 upheld instead of 9. This is an uphold rate of 76% of cases considered by the Ombudsman, compared to a national average of 66%.
4. On the positive side, 97% of the Council’s complaints were resolved within our own procedures. In 13% of the cases upheld by the LGSCO, the Ombudsman found that the Council had already provided a satisfactory remedy before the complaint reached the Ombudsman. This compares to only 9% in similar authorities. The Ombudsman was pleased to note that in all cases, the Council had successfully implemented all the Ombudsman’s recommendations.
5. This report explores these findings in more detail and sets them in the national context for county councils.

Purpose of the Ombudsman’s Annual Letter

6. Under the Local Government Act 1974, the LGO has two main statutory functions:
 - To investigate complaints against councils (and some other authorities)

- To provide advice and guidance on good administrative practice
7. The Ombudsman records the following categories of information – which can be found contained within the Annual Review Letter.
- Complaints and enquiries received - by subject area
 - Decisions made (upheld, not upheld, advice given, closed after initial enquiries, incomplete/invalid and premature)
8. The purpose of the Annual Letter is to reflect to councils the number and nature of the Ombudsman’s dealings with complaints about that authority. The Annual Letter is at Annex 1.

Summary of Complaints and enquiries received by the LGSCO

9. The Ombudsman records the subjects of county council complaints as follows – with Oxfordshire CC’s numbers for 2019/20. For county councils, adult and children’s social care are the services most complained about nationally.
- Adult care services- 24
 - Education and children’s services- 29
 - Highways and transport- 2
 - Corporate and other services- 2
 - Environment services-
 - Planning and development- 1
 - Other 1

Decisions made by LGO

10. During the reporting period, the LGO made **59 decisions** concerning the Council (2 higher than the previous year). Of these:

Closed by LGSCO, not pursued	12	20%
Referred to Oxon CC for resolution	23	39%
Incomplete or invalid complaints	2	3%
Offered advice by LGSCO as previously considered	1	2%
<i>Investigated</i>	<i>21</i>	<i>36%</i>

11. This means that **Investigations** were carried out on 21 complaints, 3 more than in 2018/19. The LGO’s report indicates that:

Not upheld	5	24%
Upheld	16	76%

12. This uphold rate is 26% higher than the previous year. The cases upheld are summarised below in **Annex 2**

Context

13. The Council received **532** complaints during 2019/20. These are broken down as follows, set against the numbers for recent years.

Type	2019/20	2018/19	2017/18
Corporate (i.e. non-social care)	273	380	244
Adults Social Care	119	165	169
Children's Social Care	140	135	107
	532	680	520

Summary of upheld cases

14. The LGSCO upheld 16 cases. It's important to note that in certain cases, the LGSCO was only endorsing the Council's own internal 'upheld' findings. The Annual Letter notes: "We recognise cases where an authority has taken steps to put things right before the complaint came to us. The authority upheld the complaint and we agreed with how it offered to put things right."

15. In those cases, the LGSCO endorsed action already identified by the Council in the pre-Ombudsman consideration of the complaint. This is a positive comment on the sufficiency of the Council's own complaints processes, in those instances.

16. The ***upheld complaints*** are listed in **Annex 2**. All the remedies have been implemented. Three complaints related to the same instance, an alleged failure to measure distance properly in the **school transport** arrangements re: Middle Barton. Two related specifically to Education, Health and Care Plans.

17. The complaint at item 4 in Annex 2 was the subject of a Public Report during 2019/20 This was duly [considered by Cabinet](#), and the outcomes [reported to the Education Scrutiny Committee](#), as required by the Ombudsman. Mr and Mrs X had complained to the Council delayed in providing their child, D, with a suitable education when she was not able to attend school for medical reasons. This caused the family significant distress and D missed out on education for 14 months. The council has agreed to take action which the LGO regards as providing a satisfactory remedy for the complaint. However, the nature of the issue was such that the Ombudsman exercised the powers to require consideration of the issue formally by the Council.

Exempt Information

18. None.

Conclusion

19. The Council's complaints processes continue to be effective and robust in signposting persons to the next internal stages and to the Ombudsman. As the Ombudsman notes, numbers of complaints in themselves are not problematic, as these can be signs of openness about rights of redress. I am also conscious that three upheld cases related to the same issue, and that in some cases the Ombudsman was agreeing with the Council's own 'upheld' findings: our proactive approach to offering redress was welcomed.
20. In recent years, among county councils, Oxfordshire has been among the very lowest for complaints upheld by the Ombudsman. In 2019/20, 97% of our complaints were resolved within current procedures, without Ombudsman involvement, while 3% of our complaints were upheld by him. Our aspiration should be to ensure that people are satisfied with the Council's replies and that where the Ombudsman does become involved, there is no finding that the Council could not have found for itself.
21. Accordingly, while the sufficiency and availability of our processes is clear, we can do better during 2020/21. Actions being taken to ensure this include:
- a. greater visibility for the Council's senior management team on issues, outcomes and learning;
 - b. refreshed training on best practice complaints-handling for staff and managers investigating complaints;
 - c. rigorous intervention, as appropriate, from the Monitoring Officer's staff and senior managers during the life of a complaint and during any Ombudsman investigation.
22. 2020/21 will itself be an unusual year due to COVID-19. The Ombudsman issued specific guidance at the outset of the pandemic suspending its own investigations and expressing support for authorities necessarily involved in meeting the demands of the virus. However, the Council was still able to work on several cases, despite these demands, and is currently meeting the re-start of cases as the Ombudsman begins to release them.

Legal, financial and staffing implications

23. None.

STEVE JORDEN
Monitoring Officer

Contact Officer: Glenn Watson, Principal Governance Officer
Tel No: 07776 997946

September 2020

Annex 2 – Cases Upheld by the Local Government and Social Care Ombudsman

	Nature of decision	Remedy
1	<p><u>Summary:</u></p> <p>Complaint that the Council failed to provide adequate support to complainant's adult child; in the management of her direct payments; and in the provision of proper payment for care.</p>	<p>Financial redress: Avoidable distress/time and trouble, training and guidance</p> <p>To remind staff of the need to ensure suitable arrangements are in place to manage direct payments when it agrees to pay a family member under an 'exceptional circumstances agreement'.</p>
2	<p><u>Summary:</u></p> <p>Complaint regarding</p> <p>a) a delay in carrying out an Education Health and Care (EHC) assessment, identifying a special school placement and issuing a final EHC Plan for her son;</p> <p>b) failure to ensure the son received suitable education in the meantime;</p> <p>c) failure to put in place the support set out in the EHC Plan;</p> <p>d) failure to communicate with the complainant properly.</p>	<p>Apology, financial redress, loss of service, provide information/advice</p> <p>The Council to remind relevant officers that the legal duty to ensure provision in an Education Health and Care Plan is arranged rests with the Council, not the child's school.</p>
3	<p><u>Summary:</u></p> <p>The Council has failed to address continued problems with the only lift in the care home (in which the complainant's wife lived).</p>	<p>Financial redress; avoidable distress/time and trouble; procedure or policy change/review</p> <p>Require the care provider to have in place a contingency plan to cover any situation where a new lift fails.</p>
4	<p><u>Summary:</u></p>	

	Nature of decision	Remedy
	<p>Complaint that the Council:</p> <p>a) failed in its statutory duty to arrange suitable education for their child after she stopped attending school;</p> <p>b) did not act in line with statutory guidance when it insisted that the child must be on a school roll before they could access the local hospital school;</p> <p>c) delayed in making a referral to the Secretary of State when the Fair Access Panel could not identify a school;</p> <p>d) failed to communicate with them in an effective or timely matter.</p>	<p>Financial redress: loss of service, apology. Financial redress: avoidable distress/time and trouble; Provide services.</p> <p>The Council to carry out an audit of children missing from education from September 2016 to December 2018 for whom it has a statutory duty to provide suitable full-time education. Identifying:</p> <ul style="list-style-type: none"> • the number of children brought to its attention by schools/academies as missing education; • the outcome for each child in terms of provision of education. <p>This to include the amount of time each child was out of school and the level of alternative education they received etc.</p> <p>The Council to submit the findings of the audit to the relevant Children’s or Education Scrutiny Committee together with advice about whether the Council is complying with its statutory duties and has made the service changes found in our previous investigation.</p> <p>The Council to provide evidence to the LGSCO that the audit has been completed.</p> <p>NB This case formed a ‘public report’ to Cabinet.</p>
5	<p><u>Summary:</u></p> <p>The Council:</p> <ul style="list-style-type: none"> • Failed to provide suitable alternative education for the complainant's child when reduced school attendance due to health issues; • Failed to complete a timely review of the Education, Health and Care plan, when it was clear the identified provision was not 	<p>Apology, Financial redress: Avoidable distress/time and trouble. Financial redress: Loss of service. Procedure or policy change/review. Provide training and/or guidance</p> <p>The Council to remind its staff of the importance of keeping proper and appropriate records of meetings. The Council to provide evidence of how it</p>

	Nature of decision	Remedy
	<p>meeting his needs;</p> <ul style="list-style-type: none"> • Did not provide alternative educational provision whilst her child was unable to attend school due to health issues • Delayed in drafting and issuing the amended Education, Health and Care plan following the EHCP review meeting . 	<p>has reviewed its procedures related to timely review of the support it provides to children with reduced school attendance. Also, to consider if any further procedural changes are needed to prevent a recurrence of the identified faults.</p>
6	<p><u>Summary:</u></p> <p>Failed to complete care assessment and failure to install soundproofing</p>	<p>Maladministration, no injustice caused.</p>
7	<p><u>Summary:</u></p> <p>Complaint that Council failed to follow the correct procedures when it removed two foster children from the complainant's care.</p>	<p>Procedure or policy change/review.</p> <p>Other Remedy: the Council agreed to review its policies and procedures to ensure it acts in line with legislation and guidance when removing foster children from placements</p>
8	<p><u>Summary:</u></p> <p>Complaint about the way the Council considered the complainant's application for a blue badge in September 2018.</p>	<p>Maladministration, no injustice.</p> <p>Apology. Procedure or policy change/review. The Council to review its processes to ensure that it provides reasons for refusing a blue badge.</p>
9	<p><u>Summary:</u></p> <p>The Council had investigated the complainant's complaint through the statutory children's complaints procedure. Fault was identified at stage two and three, and recommendations made. The Council offered £200 to recognise the additional distress caused by the faults identified. The</p>	<p>Financial redress: Avoidable distress/time and trouble.</p>

	Nature of decision	Remedy
	complainant complained to the LGSCO that this offer was not representative of the injustice caused. The complainant also complained the Council's policy for providing post-operative care is vague and unfair.	
10	<p><u>Summary:</u></p> <p>The Council has failed to provide home to school transport for a child whose school is named in an Education, Health and Care Plan.</p>	<p>Apology. Financial Redress: quantifiable loss. Provide services. Procedure or policy change/review.</p>
11	<p><u>Summary:</u></p> <p>Health Practice discontinued the complainant's husband's medication despite him requiring this long-term.</p> <p>The Trust failed to inform the care home, and the Practice, that the complainants medical condition needed to be monitored and that he required ongoing treatment following a hospital admission.</p> <p>The care home failed to maintain charts for the complainant's husband and did not monitor his condition appropriately.</p> <p>These failings contributed to the complainant's husband's death.</p>	<p>Apology. Financial redress: avoidable distress/time and trouble. Procedure or policy change/review.</p> <p>Council to write to the Ombudsmen to explain what action the care home will take to ensure resident care plans are robust, person-centred and in keeping with CQC Care Regulation.</p> <p>The Council to explain how:</p> <ul style="list-style-type: none"> • the care home will monitor and audit resident care plans on an ongoing basis • how the care home will ensure relevant staff are appropriately trained in the completion of assessments and plans. • what action the care home will take to ensure it provides nutritional and fluid care that is in keeping with CQC Care Regulations. • what action the care home will take to ensure it has a robust records retention policy in place and that staff are appropriately trained in the use of this policy.
12	<p><u>Summary:</u></p>	

	Nature of decision	Remedy
	Complaint about the Council's handling of the complainant's brother's discharge from hospital . He also complains about the Council's handling of his complaint.	Maladministration and injustice. No further action as already remedied.
13	<u>Summary:</u> Complaint about the care provided to the complainant's late father at a Care home . The Care home commissioned by the Council, failed to properly assess a new resident to the care home, and to manage the risk posed by the resident, who pushed her father over, leading to a broken hip which led to his death	Maladministration and injustice. No further action as already remedied.
14	<u>Summary:</u> Complaint about school transport in Middle Barton and how distance was measured	Maladministration, no injustice caused.
15	<u>Summary:</u> Complaint about school transport in Middle Barton and how distance was measured	Maladministration, no injustice caused.
16	<u>Summary:</u> Complaint about school transport in Middle Barton and how distance was measured	Maladministration, no injustice caused.

NB Grey denotes instances where the LGSCO recognised the Council had already resolved the matter.