

AUDIT & GOVERNANCE COMMITTEE

15 SEPTEMBER 2021

LOCAL GOVERNMENT OMBUDSMAN – ANNUAL REVIEW REPORT

Report by Anita Bradley, Monitoring Officer

RECOMMENDATION

1. The Committee is **RECOMMENDED** to comment on the Local Government and Social Care Ombudsman's Annual Review of Oxfordshire County Council for 2020/21, and the work undertaken by the Council since with regard to its handling of complaints.

Executive Summary

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. So this report updates the Committee on this area of governance for the year 2020/21, reflecting on those complaints that were considered by the Ombudsman up to 31 March 2021.
3. In short, a lower number of complaints about the Council were upheld by the Ombudsman in 2020/21 than in 2019/20 (7 as opposed to 16). This is in the context of a lower number of complaints that were referred to the LGSCO about the Council. This change is also to be expected due to the pause by the LGSCO in accepting new complaints for a period in 2020/21 as a result of the Covid-19 pandemic. This may mean that some cases technically received by the Ombudsman during 2020/21 are only progressed or made known to the Council during 2021/22.
4. The Council's rate of cases upheld following investigation by the Ombudsman, is 44% compared to a national average of 71% which is good. It is positive that in times when all Councils were experiencing the same challenges, this Council had a significantly lower number of upheld cases than the national picture.
5. Overall, for 2020/21 Oxfordshire County Council:
 - attracted the **fifth lowest** number of complaints received by the LGSCO about county councils
 - is the best performing County Council in relation to similar authorities in terms of the percentage of **upheld** cases

Purpose of the Ombudsman’s Annual Letter

6. Under the Local Government Act 1974, the LGSCO 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 LGSCO 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 LGSCO’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 new county council complaints **received** in 2020/21 as follows

By LGSCO category	Number of complaints received by the LGSCO
Adult social care	7 complaints
Education and children’s services	21
Highways and transport	6
Environment services	1
Planning and development	1
Corporate and other services	1

10. For county councils, education and children’s services generally attract a higher number of complaints nationally, with the LGSCO upholding almost three quarters of the complaints that it investigated in this area nationally but positively, the compliance with recommendations nationally remains at 99.5%, demonstrating a commitment within local authorities nationally to putting things right.

Decisions made by the Ombudsman

11. During the reporting period, the LGSCO made **40 decisions** concerning the Council (19 fewer than the previous year 2019/20). Of these:

Closed by LGSCO, not pursued	6	15%
Referred to the Council for resolution	16	40%

Incomplete or invalid complaints	1	2.5%
Offered advice by LGSCO as previously considered	1	2.5%
<i>Investigated</i>	16	40%

12. This means that **Investigations** were carried out on 16 complaints, 5 fewer than in 2019/20. The LGSCO's report indicates that:

Not upheld	9	56%
Upheld	7	44%

13. This uphold rate is 32% lower than the previous year. The cases upheld are summarised below in **Annex 2** with an indication of the outcomes in each case.

General comment by the Ombudsman

14. The LGSCO also commented in general terms to all councils that their investigations regularly highlight local complaint systems that are failing to respond properly to those that raise concerns. The LGSCO is "*concerned about the general erosion to the visibility, capacity, and status of complaint functions within councils*" and whilst they are not underestimating the challenges that local authorities face and the difficulties of the last 15 months, they say that "*these concerns are not new and cannot be wholly attributed to the trials of the pandemic*".

15. In the case of Oxfordshire County Council, however, the Council clearly publishes its complaints processes and signposts the rights of appeal to the next stages in each response, including the right of reference to the Ombudsman.

16. The Council has taken the decision, implemented in July 2021, to bring the Council's complaints arrangements within its Voice of the Customer service, to build on our intention to improve the customer journey, including complaints resolutions and learning from complaints. The Voice of the Customer team is part of the Corporate Customer Experience function which has responsibility for being the preferred single gateway for our customers to access Council services. The plans for this also include training in terms of investigations and the championing of best practice.

The Ombudsman cases in context - complaints received by the Council

17. The Council received **455** complaints during 2020/21. These are broken down as follows, set against the numbers for recent years.

Type	2020/21	2019/20	2018/19
Corporate Complaints (i.e. non-social care)	197	273	380
Adults Social Care Complaints	108	119	165
Children's Social Care Complaints	150	140	135
	455	532	680

Summary of upheld cases

18. The LGSCO upheld 7 cases - 4 in relation to Education and Children's and 3 Adult Social Care (although of the latter, one of these was in relation to a Blue Badge matter which the LGSCO records as an Adult Social Care service). It's important to note that in none of these cases did the LGSCO consider that the Council's own internal process remedied the complaint. This means that our complaints handling needs to be more attuned to remedying complaints. This is being factored into the improvements, learning and best practice in which is being developed through the Voice of the Customer project. Ultimately, for 2020/21, the Ombudsman recommended a remedy and in each was satisfied that the Council carried these out.
19. The **upheld complaints** are listed in **Annex 2**. Where a financial remedy was recommended by the Ombudsman, this was in accordance with its own published guidance on the circumstances in which a financial remedy may be appropriate (e.g. for time and trouble, delay or distress).

Conclusion

20. The Council's complaints arrangements in 2020/21 were effective in signposting persons to the next internal stages and to the LGSCO. However, it is clear that there is still room for improvement in terms of how the Council remedies complaints as part of its own investigations and learning. As mentioned, training in positive complaints handling and the championing of best practice are key elements of the Council's plans in the development of the Voice of the Customer approach.
21. In recent years, among county councils, Oxfordshire has been among the lowest for complaints upheld by the Ombudsman. In 2020/21, this has not changed. Oxfordshire County Council attracted the fifth lowest number of complaints received by the LGSCO about county councils; and was similarly the best performing County Council in relation the lowest percentage of upheld cases among similar sized authorities. Our aspiration is still to ensure that people are satisfied with the Council's own investigations and that where the Ombudsman does become involved, there is no finding that the Council could not have found for itself.
22. Accordingly, the outcomes of the Ombudsman's report indicate that the Council could achieve improvements to its own approach to complaints. For instance through:

- a. Improvement in considering suitable remedies for complaints;
- b. greater visibility for the Council's senior management team on issues, outcomes and learning;
- c. refreshed training on best practice complaints-handling for staff and managers investigating complaints;
- d. rigorous intervention, as appropriate, from the Monitoring Officer's staff and senior managers during the life of a complaint and during any Ombudsman investigation.

Legal, financial and staffing implications

23. There are no legal, financial or staffing implications arising from this report.

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

	Nature of decision	Remedy required by the LGSCO and fulfilled
1	<p><u>Summary:</u></p> <p>19004582 (Adult Social Care)</p> <p>The Council failed to carry out timely reviews of Mrs X's husband's support plan. As a result of this, the Council did not identify sooner that Mrs X was not taking the respite which it had identified she needed.</p>	<p>Financial redress of £500: Avoidable distress/time and trouble, Procedure or policy change/review</p> <p>Service improvement: The Council has agreed to provide the LGSCO with a copy of an action plan it has put in place which aims to ensure all people in receipt of long-term support are offered an annual review.</p>
2	<p><u>Summary:</u></p> <p>19006856 (Children's Social Care)</p> <p>Ms X complained about the Council's handling of a safeguarding referral and its delay in responding to her complaint. She says this caused her anxiety and stress. The Council was at fault for not telling her the outcome of its investigation and for a delay in responding to her complaint.</p>	<p>Apology and further detailed information and advice was given.</p>
3	<p><u>Summary:</u></p> <p>19010444 (Children's Social Care)</p> <p>Mr X complains about the Council's handling of his complaints following child protection enquiries about his child. There was delay in the Council's response to Mr X's stage three complaint and completion of resulting recommendations. The Council has agreed to apologise and make a payment to Mr X for avoidable uncertainty and distress caused by its handling and the delay. While the Council appears to have completed the recommendations made</p>	<p>Apology. Financial redress of £400: Avoidable distress/time and trouble</p>

	Nature of decision	Remedy required by the LGSCO and fulfilled
	during the complaints process, it was never able to achieve the outcomes Mr X was seeking.	
4	<p><u>Summary:</u></p> <p>19012746 (Children's Social Care)</p> <p>The complainant says the Council failed to provide alternative education for her son while he was out of school. The Council says the school provided suitable education but following a failure by the school to set work the Council arranged for tutors before identifying a place at a school preferred by the complainant. The Council apologised for the delay in providing tutors. The Ombudsman finds the Council acted without fault in following the procedure for issuing an Education Health and Care (EHC) Plan. However, the Ombudsman finds the Council at fault for failing to follow up the lack of provision by the school earlier and delay in appointing tutors.</p>	<p>Apology. Financial redress of £300: Avoidable distress/time and trouble, Provide training and/or guidance.</p> <p>Service improvement: The Council has also agreed to share with its officers this final decision</p>
5	<p><u>Summary:</u></p> <p>19012782 (Adult Social Care)</p> <p>Mrs X complained the Council-commissioned care home failed to provide her late mother, Mrs Y, with suitable care. She says the poor care caused her mother to have a fall which resulted in a hospital admission. She also said the care home's record keeping was inadequate. The care home, acting on behalf of the Council, is at fault. There is no evidence poor care caused Mrs Y's fall, but there is evidence of poor record keeping and poor communication. This caused Mrs X uncertainty over what happened and whether Mrs Y was receiving appropriate care.</p>	<p>Apology given.</p>

	Nature of decision	Remedy required by the LGSCO and fulfilled
6	<p><u>Summary:</u></p> <p>19013820 (Blue badge but recorded under Adult Social Care)</p> <p>Mrs X complains that the Council did not properly consider her application for a blue badge. This meant she put significant time and trouble both into pursuing an application which was wasted, and her complaint about this. The Ombudsman finds the Council at fault in the way it considered her application.</p>	<p>Apology given. Financial redress of £250: for voidable distress and the time and trouble involved. The Council's procedure/policy was reviewed.</p> <p>Service improvement: The Council has agreed to ensure it considers all Blue Badge applications in line with the guidance, with detailed recording of this, and of its decisions</p>
7	<p><u>Summary:</u></p> <p>20002153 (Children's Social Care)</p> <p>Mr X complained the Council took too long to issue his daughter's, Y's, Education Health and Care plans and failed to arrange alternative education for her after she could not attend school because of health problems. We find the Council was at fault causing Y to miss 25 weeks of education and causing voidable distress for Mr X and his family.</p>	<p>Financial redress of £250: for avoidable distress/time and trouble. Provide information/advice. Provide training and/or guidance. Procedure or policy change/review.</p> <p>Service improvement: The Council will remind relevant staff that unofficial exclusions are unlawful, and provide guidance on actions to take if they become aware a school has unofficially excluded a pupil. The Council will review how it identifies children to whom it may have duties under Section 19 of the Education Act., especially where children are 'otherwise' not accessing education, and ensure relevant staff are trained on the actions to take if they become aware a child is not accessing education. The Council will review its policy on children unable to attend school due to medical needs, particularly around the standard of evidence required, to ensure the policy has full regard to current guidance and legislation.</p> <p>NOTE: whilst the LGSCO did not consider the Council remedied the complaint, and did pay Mr X £1,900 to reimburse him for</p>

	Nature of decision	Remedy required by the LGSCO and fulfilled
		<p>the autism support service fees he has paid, the investigator would not have suggested such a payment as employing this support service was a choice he made as a parent. However, the investigator would have made a recommendation for Y's missed education which would have been for a similar amount. Because the Council has already paid £1,900, the investigator did not recommend a further payment for the lost education. This positive outcome recognises the importance of considering a remedy as part of the council's own complaints processes.</p>