

## Cabinet

10 October 2017

### Local Government & Social Care Ombudsman – Annual Review and Summary of Upheld Complaints

#### Recommendation

That Cabinet receive and comment on the annual review and summary of upheld complaints issued by the Local Government and Social Care Ombudsman in the financial year 2016/17.

#### 1.0 Background

- 1.1 Each year the Local Government and Social Care Ombudsman (LGSCO) produces a review letter which contains a summary of statistics on the complaints made about the Council for the year ended 31 March.
- 1.2 This report attaches a copy of the LGSCO's letter for 2016/17 (Appendix 1) and provides more detail in relation to the themes identified by the upheld cases (section 4). Reporting the LGSCO's findings to Cabinet aligns with the guidance recently provided by the new Ombudsman, Michael King, on the reporting of cases of maladministration to members.

#### 2.0 Upheld decisions in 2016/17

- 2.1 In the financial year 2016/17 56 complaints and enquiries were received by the LGSCO in respect of Warwickshire County Council. Out of the 57 decisions made by the LGSCO in this period (which includes a number received in the previous year) only 15 were subject to a detailed investigation and of these:

- 11 complaints were upheld; and
- 4 were not upheld.

This means that the Council has an upheld rate of 73% in respect of those complaints (15 in total) subjected to detailed investigation by the LGSCO. Whilst this seems high and some other comparator councils have a lower upheld rate, as mentioned later in this report, the number of upheld complaints about the Council is relatively low, compared to that of other comparator councils.

- 2.2 42 out of the 57 decisions made by the LGSCO in respect of the Council in this period did not require detailed investigations by the LGSCO and the

majority were referred back for local resolution or closed after initial enquiries were made. These figures can be seen in the table attached to the LGSCO's letter at Appendix 1.

2.3 All upheld complaints related to People Group cases and of these 10 were made in Statements of Reasons (where the Ombudsman is satisfied with the action the authority has taken or proposes to take and it would not be appropriate to issue a report). 1 Report was issued, which was reported to Regulatory Committee on 7<sup>th</sup> March 2017 who approved a payment of £2,000 to the complainant along with an apology; both of which were sent to the complainant around 14<sup>th</sup> March. As also required, a public notice was placed by the Council in respect of this Report in the Coventry Telegraph on 21<sup>st</sup> June 2017.

2.4 In 2 of the 11 upheld cases, the LGSCO found maladministration but causing no injustice. The themes from the 11 upheld are set out in section 4 below.

### **3.0 Comparison to previous years and other local authorities**

3.1 By way of comparison to previous years, the number of upheld complaints in 2016/17 is higher than last year but a reduction on the two previous years. Whilst there will be various reasons for the year on year variation in the number of upheld complaints, this data can be useful as a general guide to see how the Council is performing when it comes to complaints. The number of upheld complaints in previous years was as follows:

<b>Financial Year</b>	<b>Number of complaints upheld by the LGSCO</b>
2015/2016	4
2014/2015	18
2013/2014	19

3.2 Comparing the number of adverse decisions to other similar size or types of councils, the number of upheld complaints about the Council is at the lower end of the spectrum (the range across 10 comparator councils is between 6 and 37 upheld decisions). In addition, the number of the 11 upheld complaints that had already been satisfactorily remedied by the Council prior to LGSCO involvement was 5 which is high compared to other comparator councils who ranged between 0 and 3 of their upheld decisions.

### **4.0 Themes from upheld complaints and awareness raising**

4.1 In respect of the 11 upheld cases, there were 3 made in respect of Children's Services and 8 in respect of Adult Social Care and Support (1 being in relation to Strategic Commissioning).

4.2 The main themes identified from these upheld complaints and the actions arising are:

- Failures to adequately undertake assessments

This included assessments of needs for care and support in Adult Social Care, financial assessment in Adult Social Care, the lack of a proper assessment in relation to residency payments in Children's Safeguarding and not properly assessing the financial support that Special Guardians were entitled to in Children's Safeguarding. In many of these cases the LGSCO found that the Council had already taken adequate remedial action, but these findings demonstrate the importance of ensuring that we are undertaking our duties in a proper and timely manner to ensure that individuals obtain the support and assistance to which they are entitled.

- Delays in dealing with enquiries and complaints

This included dealing with a complaint about an assessment in Children's Safeguarding and in undertaking a review of needs for a residential care home in Adult Social Care which led a family to believe their mother might be placed in the home of her choice, when the placement was not appropriate. The LGSCO found in one of the complaints the delays had not caused significant injustice. In another it found there had and requested a payment and apology. In one Adult Social Care case, the LGSCO found that the Council had delayed considering all the options to meet the customer's needs and had not undertaken specific capacity assessments in relation to enabling a customer to move out of residential care into independent living. The LGSCO issued a formal Report to the Council (referred to above in 2.3). These findings demonstrate the importance of good communications with customers and partners and managing expectations appropriately.

- The Council remains responsible for the actions of commissioned providers

2 cases concerned the actions of commissioned providers. Both were in relation to Adult Social Care with 1 relating to missed and cancelled domiciliary care packages and the other to a care home being unable to locate the care records of the complainant's late mother. These findings demonstrate that whilst the Council can delegate the provision of services to external providers, it remains responsible for the quality and provision of the services and therefore needs to ensure that these arrangements are properly monitored and managed. In both these cases the LGSCO found that the Council and providers had already taken steps to remedy the situation and improve procedures to avoid similar issues in the future.

4.3 The LGCSO usually produces a report summarising the key themes across all local authorities, but this has not yet been produced at the time of writing. From other information that the LGCSO has published throughout the year, there seems to be an increasing number of social care related complaints not

just in Warwickshire but nationally. There is also a focus in commissioned care and partnership arrangements on ensuring that the body which is ultimately accountable for delivery of the service, or which is contacted by the complainant, takes responsibility for complaint resolution.

- 4.4 Officers have arrangements in place to ensure that the themes identified from our own cases and more widely from other LGSCO cases, are shared across the organisation as necessary so that lessons can be learnt and we will continue to keep these arrangements under review.

## 5.0 Reporting upheld complaints

- 5.1 Our performance in relation to LGSCO complaints is one of the Council's key performance indicators. We have a target of no more than 10 upheld decisions in each financial year. Performance against this target is reported quarterly to Cabinet as part of our standard reporting arrangements.
- 5.2 In addition to this, we will present the LGSCO's annual report to Cabinet on an annual basis and summarise the findings of the upheld complaints.
- 5.3 Specific, individual cases where there has been a significant finding of maladministration would be dealt with separately with a report coming to Cabinet on a case by case basis.
- 5.4 Separately, where there are recommendations of ex gratia payments to be made above £1000, there is a requirement for approval from the Regulatory Committee.

## Appendices

Appendix – LGSCO Annual Letter

## Background Papers

None

	<b>Name</b>	<b>Contact Information</b>
Report Author	Sioned Harper	<a href="mailto:sionedharper@warwickshire.gov.uk">sionedharper@warwickshire.gov.uk</a> Tel: 01926 412921
Head of Service	Sarah Duxbury	<a href="mailto:sarahduxbury@warwickshire.gov.uk">sarahduxbury@warwickshire.gov.uk</a> Tel: 01926 412090
Joint Managing Director	David Carter	<a href="mailto:davidcarter@warwickshire.gov.uk">davidcarter@warwickshire.gov.uk</a> Tel: 01926 412564
Portfolio Holder	Cllr Kam Kaur	<a href="mailto:cllrkaur@warwickshire.gov.uk">cllrkaur@warwickshire.gov.uk</a> Tel: 07985 251851

The report was circulated to the following members prior to publication:

Local Member(s): N/A

Other members: Boad, Kaur, O'Rourke, Timms, Birdi

20 July 2017

*By email*

David Carter  
Joint Managing Director  
Warwickshire County Council

Dear David Carter,

### **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](http://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](http://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:** Warwickshire 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
26	0	2	18	3	7	0	0	0	56

## Decisions made

Decisions made				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate	Total
4	1	23	14	4	11	73%	57

### 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.

### Complaints Remedied

by LGO	Satisfactorily by Authority before LGO Involvement
6	5