

Resources and Fire & Rescue Overview and Scrutiny Committee

Ombudsman Outcomes Update

24 June 2020

1. Recommendation

That the Committee considers and comments upon the performance in relation to the outcomes of Local Government and Social Care Ombudsman complaints during 2019/20 and Information Commissioner complaints.

2. Executive Summary

1. The report is brought to the Committee to consider the end year performance as part of our performance reporting arrangements. This report precedes the annual letter from the Local Government and Social Care Ombudsman (LGSCO) which is generally received in the summer and presented to Cabinet in the early autumn.
2. There were 7 adverse decisions in the financial year 2019/20. 6 were upheld complaints by the LGSCO and 1 was a partially upheld complaint by the Information Commissioner's Office (ICO). There were no successful Judicial Reviews against the Council
3. For the equivalent period last year there had been 16 adverse findings made against the Council by these bodies. This represents an overall reduction in adverse findings of circa 56%.
4. Of the 6 LGSCO upheld complaints, 2 related to deferred entries to school and 1 concerned a parking fine. The remaining 3 upheld complaints were in respect of adult social care and related to care packages (including the fees charged). In respect of the education complaints, the Council agreed to apologise for its error and review the decisions. It also agreed to review its processes for considering applications for deferred entry to school.
5. In respect of the upheld adult social care complaints, in one case the Council agreed to make a payment of £1,000.00 to the complainant and make decisions in respect of where the complainant lived involving the complainant and his advocate and support him to move. The Council also agreed to train Social Care and staff on the Mental Capacity Act. In the second case, the Council agreed to pay the complainants £250 and refund them for the 19 days of respite that was not available to their daughter. In the third case, the

LGSCO decided that the Council had already remedied the fault when it waived the care fees.

6. There was one partially upheld ICO/Information Tribunal decision in the financial year 2019/20 compared to 3 in the previous financial year (2018/19). This related to a large request for information in relation to an Education matter. This complaint was only partially upheld because although statutory timescales were missed for responding to the request, the data was provided. In respect of this complaint no remedial action was required by the Council although we continue to make every effort to respond to requests within the statutory timeframes.
7. Complaints by their nature are case and fact specific. However, this reduction in upheld ICO complaints is positive and supports the case for continuing to focus on information management within the organisation and a drive to improve compliance which has been facilitated by new training materials currently being rolled out across the organisation.
8. In addition it is also useful to note that in the financial year 2019/20 we had 43 referrals (for the purposes of this report we consider a referral to be a referral by a complainant to LGSCO, ICO and Information Tribunal and for Judicial Review (the serving of a letter before action). This compares to 55 in the previous financial year (2018/19).
9. In order to ensure that we can continue this level of improvement moving forward significant work has been undertaken to review policies and procedures in respect of customer complaints, and a revised complaints policy has recently been approved by Cabinet. The focus of this work will be on resolving complaints at the earliest stage possible, minimising the number of matters referred to the various external bodies and thus the risk of an adverse decision.
10. Additional work has also been undertaken between legal and customer services to promote LGSCO guidance and lessons learned from cases nationally with Assistant Directors and relevant staff. In this way, we can ensure a measure of learning across the authority, which will ensure colleagues have the tools and experience necessary to deal with matters as and when they arise. Additional support and training around complaints was also offered to members as part of a Member Development session organised by Democratic Services. That session focused in particular on the role of members in complaint scenarios and gave guidance on how members can support constituents without conflicts arising. A representative of the Ombudsman attended that session and was particularly complimentary about the approach and attitude of both members and officers to complaints and complaints learning.

Impact of COVID-19

11. The Local Government & Social Care Ombudsman (LGSCO) has now restarted some existing investigations with councils who have indicated they

have capacity to work with them, which includes WCC. Their existing casework with care providers remains suspended.

12. As a result of Covid-19 and pressures on authorities and care providers, the Ombudsman suspended all casework activity that demanded information from, or action by, those organisations in March to allow the sector to concentrate on their response to the crisis.
13. Currently, new complaints continue to be suspended and the LGSCO has said that they will only take on new complaints once they are confident that both they and those they investigate have the resources to handle them. The LGSCO helpline is open daily on a trial basis but only for general advice about the complaints process and whether the LGSCO is the right organisation to help. In May, the LGSCO issued further guidance for Local Authorities on dealing with complaints during the pandemic. This advice can be summarised as:
 - Although complaint handling capacity will probably be reduced for a time, it is important authorities can still deal effectively with the most serious and high-risk issues that are brought to them.
 - Inform – be realistic with complainants about timescale for responses and keep them updated.
 - Consider – try to avoid blanket delays – consider each claim on its merits and if you need to prioritise complaint responses consider what the impact of the delay will be on complainant.
 - Explain – Delays and deviations from process are considered understandable at this time but make sure you can explain the reason for any delay/deviation to the complainant. Document your reasons.
 - Plan for a return to normal in complaint handling, making sure the crisis does not turn into longer term erosion of the organisation’s capacity to listen to concerns.
14. We are starting to consider whether re-starting of activity by the LGSCO will place greater demand on particular service areas and those supporting them (such as customer complaints and legal) so that we can plan appropriately for this area of work starting to increase back to pre-Covid levels.

Future direction

15. Prior to Covid, the LGSCO has been clear that he wants to change the conversation from numbers of complaints to the outcomes that are achieved through complaints, in particular how improvements to local authority’s processes can be made following complaints. This is reflected in the data the LGSCO now collects and publishes on local authorities. An interactive map detailing the data on all local authorities in England is available on the LGSCO’s website.
16. The Council also now monitors the percentage of remedies that are put in place as agreed with the LGSCO following an adverse decision and in the financial year 2019/20 implemented 100% of the remedies agreed with the

LGSCO to the satisfaction of the LGSCO. In the previous financial year (2018/19) in 100% of cases the LGSCO was satisfied that the Council had successfully implemented the LGSCO recommendations which compared to an average of 99% in similar authorities.

17. The LGSCO has also started reporting how many complaints local authorities have satisfactorily remedied prior to the LGSCO becoming involved to give local authorities credit for when they have put things right. In the previous financial year (2018/19), the LGSCO found that in 15% of upheld cases the Council had provided a satisfactory remedy before the complaint reached the Ombudsman. This compared to an average of 9% in similar authorities.
18. In relation to information request complaints, if an individual who requests information is unhappy with the information provided, they can refer the matter to the ICO. In the last financial year 2019/20 the Council was aware of 3 new investigations commenced by the ICO in this period. Out of these complaints 1 was not upheld by the ICO and we are still waiting for a decision from the ICO on the other 2. In the same period the ICO partially upheld one complaint (received in the previous financial year 2018/19) and did not uphold 3 complaints (2 received in the previous financial year 2018/19 and the one received in 2019/20 referred to above). In the financial year 2020/21 to the date of writing the Council has not been advised of any new complaints being investigated and is just waiting for decisions from the ICO on the 2 complaints submitted in the previous financial year (2019/20). Thereafter the right of redress is to the Information Tribunal. Very few matters reach the Tribunal stage. In the last 2 years 1 Council matter has been decided by the Tribunal and the complainant's argument was upheld.
19. As part of the ongoing review of effective working within the Council we will shortly be commencing a process review looking at how information requests are undertaken and whether improvements can be made to further drive down delay and improve customer satisfaction.

3. Financial Implications

- 3.1 None – update report.
- 3.2 The financial position in respect of individual adverse decisions is covered in the annual report to Cabinet.

4. Environmental Implications

- 4.1 None

5. Supporting Information

- 5.1 None

6. Timescales associated with the decision and next steps

6.1 None

Appendices

1. None

Background Papers

1. None

	Name	Contact Information
Report Author	Sioned Harper, Nichola Vine	sionedharper@warwickshire.gov.uk, nicholavine@warwickshire.gov.uk
Assistant Director	Sarah Duxbury	sarahduxbury@warwickshire.gov.uk
Lead Director	Rob Powell, Strategic Director for Resources	robpowell@warwickshire.gov.uk
Lead Member	Councillor Kam Kaur, Portfolio Holder for Customer and Transformation	cllrkaur@warwickshire.gov.uk

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

Councillor Kam Kaur