

Cabinet

10 September 2020

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 for the financial year 2019/20.

1. Executive Summary

- 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 the year 2019/20 (Appendix) and provides more detail in relation to the themes identified by the upheld cases and action the Council is taking to target key areas (section 4).

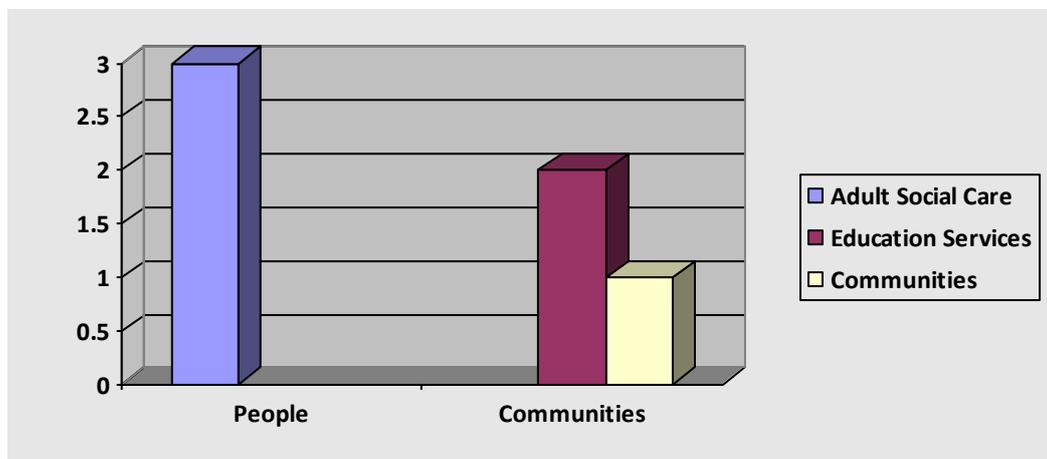
2. Upheld decisions in 2019/20 and completion of remedies

- 2.1 In the financial year 2019/20, 47 complaints and enquiries were received by the LGSCO in respect of Warwickshire County Council. The breakdown of the areas these related to was as follows:
 - 2.1.1 Adult Social Care = 17
 - 2.1.2 Corporate & other services = 5
 - 2.1.3 Education & Children's Services = 17
 - 2.1.4 Environmental Services & Public Protection & Regulation = 1
 - 2.1.5 Highways & Transport = 5
 - 2.1.6 Planning & Development = 1
 - 2.1.7 Other = 1
- 2.2 In this period the LGSCO made 46 decisions (which includes a number of decisions in respect of complaints received by the LGSCO in the previous year). Of these 46 decisions, the LGSCO decided that:

- 2.2.1 1 complainant was given advice and signposted back to complaint handling;
- 2.2.2 1 complaint was incomplete or invalid;
- 2.2.3 20 complaints were referred back to the Council for local resolution;
- 2.2.4 16 complaints were closed after initial enquiries were made with the Council; and
- 2.2.5 8 complaints were the subject of full LGSCO investigations.

2.3 Of the 8 cases investigated, 6 complaints were upheld and 2 were not upheld, giving the Council an uphold rate of 75%. This is higher in percentage terms than the average for similar local authorities in this period (66%) but appears to be much lower in terms of the actual number of upheld decisions (the range for similar authorities being 12-26). The upheld rate should also be viewed in the context of the overall number of decisions made by the LGSCO in this period and the method of calculation. The LGSCO figure of 75% calculates the percentage against the number of complaints investigated (i.e. 6 upheld from 8 investigated). Whereas, the percentage of upheld decisions calculated in respect of **all** decisions made in respect of Warwickshire by the LGSCO was 13% for Warwickshire (6 upheld and 40 no adverse findings) out of 46 decisions made).

2.4 The table below illustrates the breakdown of complaints upheld by area:



2.5 The LGSCO's Review of Local Government Complaints 2019-20 which was published at the end of July 2020 reports that across Local Government:

- 2.5.1 They are finding fault more often: they upheld 61% of complaints that were investigated in detail, up from 58% last year.
- 2.5.2 They uphold the highest proportion of complaints about education and children's services (72%).
- 2.5.3 Councils are putting things right more often. In 13% of upheld cases, the LGSCO found that councils had already offered a suitable remedy, up from 11% last year.

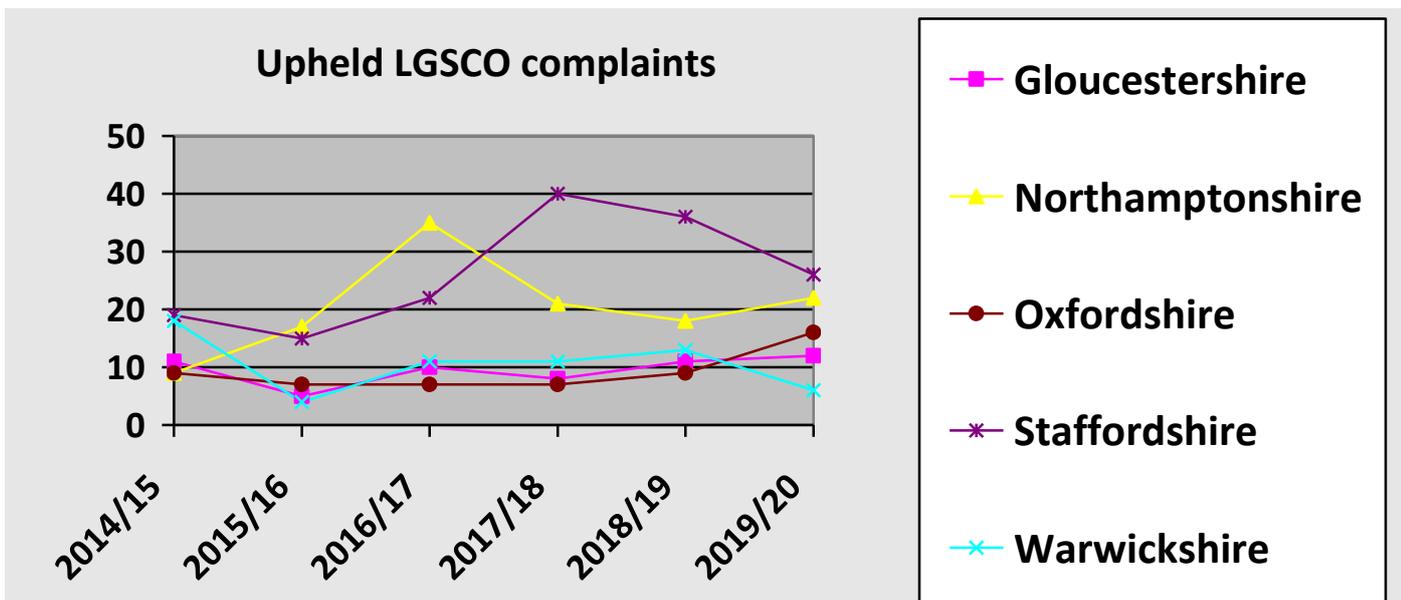
- 2.5.4 They recommended 1,629 service improvements, up 12% on the previous year.
- 2.5.5 Compliance with their recommendations remains high at 99.4%.
- 2.6 The Review also highlights that the LGSCO published 63 public interest reports during the year 2019/20 and that over a third of these reports were about education and children's services, with several demonstrating failings across the sector to properly provide Education, Health and Care (EHC) plans. In response to the significant number of investigations the LGSCO has carried out and the uphold rate in relation to this area (sitting at 91% for the year) they published a third focus report on the issue. This urges all councils with responsibilities for EHC plans to learn from the experiences of the families and children highlighted in the report. The focus report has been shared with relevant colleagues in Education Services. Only one of the complaints notified to the Council in 2019/20 related to an EHC plan and a final decision is still to be made by the LGSCO on this complaint. None of the complaints that were upheld in 2019/20 related to EHC plans.
- 2.7 The Review also confirms the LGSCO's view that fixing complaints one by one is short-sighted and ultimately serves as a lost opportunity to spot wider lessons and do better, noting that single complaints offer great potential to prevent problems reoccurring and to improve services for others - hence their recommendations focus both on remedying individual injustice and achieving wider service improvements. The LGSCO made 12% more service improvement recommendations across Local Government in 2019/20.
- 2.8 In terms of the actions that this Council agreed to take to remedy fault found by the LGSCO in 2019/20:
- 2.8.1 In 4 cases a financial remedy has been agreed. The total of the payments made in respect of all four cases was £8,492.75
- 2.8.2 In 2 cases the Council agreed to issue guidance to staff to ensure they are properly following the School Admissions Code and government guidance when determining applications for summer-born children to be educated outside of their normal age group. The Council also agreed to review other cases to ensure they had been made in accordance with government guidance and if not to re-make those decisions. The Council has completed both of these actions although is having ongoing correspondence with the LGSCO about this matter.
- 2.8.3 In 1 case the Council agreed to provide training to social care staff on the Mental Capacity Act. This action is currently being progressed.
- 2.8.4 In 1 case the Council agreed to write off some social care charges totalling £104.15.
- 2.9 The LGSCO's Annual Letter includes details about compliance with agreed remedies. This shows that out of the 6 compliance outcomes for the period between 1 April 2019 to 31 March 2020, the Council has a compliance rate of 100%.

2.10 Officers in Legal Services monitor the implementation of remedies and continue to work closely with the implementing officers to encourage timely completion of remedies. Where it is not possible to do so because of events outside of our control, the Council communicates with the LGSCO to see whether the agreed remedy, or the timescale, can be reviewed. This has sometimes been necessary during the emergency period caused by the covid-19 pandemic due to the pressure on workloads of those involved in preparing the responses.

3. Comparison to previous years and other local authorities

3.1 By way of comparison to last year, the number of upheld complaints has decreased by 7 and no formal Reports were issued against the Council in 2019/20.

3.2 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 can be seen on the graph below and includes those for other similar size County Councils as a comparison:



3.3 Earlier this year, the LGSCO paused all case work in response to the exceptional operational challenges faced by local authorities and care providers as a result of the Covid-19 pandemic. Without a clear end point to the pandemic in sight, the LGSCO now acknowledges that services must adapt and continue to be delivered within this new reality. Following consultation with local authorities, the LGSCO has resumed its casework and is now taking new complaints again. To support local authorities the LGSCO has issued guidance on good administrative practice and handling complaints during the Covid-19 crisis.

4. Themes from upheld complaints and actions being taken to target key areas

- 4.1 The largest number of upheld complaints in any single area for WCC were in relation to Adult Social Care where there were 3 upheld complaints. All 3 complaints related to issues with care packages arranged by the Council. This included issues about:
- 4.1.1 The actions of the commissioned provider and how they had dealt with a complaint made on behalf of a customer;
 - 4.1.2 Miscommunication about the cost of a short-term care package; and
 - 4.1.3 Not considering a customer's capacity when arranging a care package and whether they would benefit from the support of an advocate throughout the support planning process.
- 4.2 The service area with the second highest number of upheld complaints was Education Services, where the LGSCO upheld 2 complaints. Both of the upheld complaints related to the way the Council considered applications for summer-born children to be educated outside of their normal age group.
- 4.3 The remaining upheld complaint related to the way the Council dealt with a Penalty Charge Notice.
- 4.4 Following last year's LGSCO review letter, work was undertaken to improve the way that adult social care complaints are dealt with and improvements had been made to the process around Education Health and Care Plans. Although there were upheld complaints in both Adult Social Care and Education Services, they were much lower in number to the previous year and not specifically in those areas where improvements had been made. Given the nature of these cases and the fact that many can be reported in one year and determined in the next, it is also possible that some of the determinations made this year relate to incidents that occurred before the improvements were made.
- 4.5 Colleagues from Legal Services and the Customer Relations Team continue to work on an action plan to ensure that the Council learns from complaints and acts pro-actively in response to LGSCO complaint outcomes, Focus Reports and Annual Reports. Work on this has been delayed during the Covid-19 pandemic. However, this work will recommence shortly, and the plan will be shared with Corporate Board.

5. Reporting upheld complaints

- 5.1 Performance in relation to LGSCO complaints is one of the Council's Corporate Health Measures. For 2019/20 we had a target of no more than 13 upheld decisions (which included upheld Information Commissioner/Tribunal decisions and Judicial Reviews). This target was not exceeded in 2019/20. There were 6 upheld LGSCO complaints and 1 partially upheld Information

Commissioner Office's decision. There were no adverse Judicial Review decisions.

- 5.2 For 2020/21 the target has been reduced to no more than 10 adverse decisions either from the LGSCO, the Information Commissioner/Information Tribunal or a court in a Judicial Review case. It is considered important that the Council continues to improve and thus the target has been lowered from last year, whilst taking into account that the Covid pandemic is likely to have had a perceived effect upon service delivery in some sectors in the short term which may translate into additional complaints. In setting the target, whilst we look at how many upheld decisions there were in previous years, there is recognition that the level can vary from year to year and therefore whilst we have lowered it to reflect the improvement we recognise that it could be unrealistic to lower it too much. Looking at figures from other County Councils, the number of upheld complaints for Warwickshire in 2019/20 was low.
- 5.3 As at the end of Q1 there has been one upheld decision in the financial year 2020/21 which is in relation to the Children & Families service area. At the time of writing there is also 1 draft decision from the LGSCO upholding a complaint in relation to Education Services. In addition to the number of upheld complaints, in 2020/21 the percentage of remedies completed to the satisfaction of the LGSCO is also being reported, with the target being 100%. This target is being met as at the end of Q1.
- 5.4 In addition to this annual report to Cabinet, individual cases where there has been a significant finding of maladministration (usually by way of a formal Report from the LGSCO) are also reported to Cabinet on an individual basis. There were no such reports issued in 2019/20.
- 5.5 Separately, where there are recommendations of ex gratia payments to be made above £1000, there is a requirement under the Constitution for approval from the Regulatory Committee. There was one case falling into this category in 2019/20.

6. Looking to the future

- 6.1 In his Annual Letter the LGSCO states that whilst his office has not investigated many complaints against this Council this year, there has been delay in responding to almost three quarters of the LGSCO's enquiries by the Council (five out of seven cases). He has asked the Council to reflect on this and take steps to improve its response times.
- 6.2 The Council does not currently collect data on response times to the LGSCO as these vary from case to case and the wide variety of timescales set make it impractical to do so. We are also not provided with details from the LGSCO about which specific matters the referenced delays relate to, so it is difficult to review instances of delay. However, officers dealing with LGSCO complaints

will be reminded to ensure that timescales are adhered to where possible and where not, ensure the LGSCO investigator is kept up to date and new timescales are agreed.

- 6.3 Officers in Legal Services who coordinate responses to the LGSCO and assist with the agreement of remedies and report on the implementation of them will continue to work with implementing officers across the Council to improve our practices in this area. In addition, as mentioned above, an action plan is being developed to ensure that the Council continues to learn from its complaints.

7. Financial Implications

- 7.1 Financial implications of the decisions have been included within the body of the report.

8. Environmental Implications

- 8.1 None

Appendix

LGSCO Annual Letter and appendices

Background Papers

None

	Name	Contact Information
Report Author	Sioned Harper	sionedharper@warwickshire.gov.uk Tel: 01926 412921
Assistant Director	Sarah Duxbury	sarahduxbury@warwickshire.gov.uk Tel: 01926 412090
Lead Director	Rob Powell	robpowell@warwickshire.gov.uk Tel: 01926 412045
Lead Member	Cllr Kam Kaur	cllrkaur@warwickshire.gov.uk Tel: 07985 251851

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

Local Member(s): None

Other members: Cllrs Warwick, Singh Birdi, Falp, Boad and O'Rouke