

Audit & Governance Committee

Date of Meeting: 14 March 2019

Report Title: Maladministration Decision Notices from Local Government and Social Care Ombudsman – September – November 2018

Senior Officer: Daniel Dickinson – Acting Director of Legal Services

1. Report Summary

1.1. This report provides an update on the Decision Notices issued by the Local Government and Social Care Ombudsman (LGSCO) when their investigations have found maladministration causing injustice to complainants. This report details the decisions made between 1st September 2018 and 30th November 2018 only. There were three decisions in which the LGSCO found that there was maladministration causing injustice; the relevant departments have taken the recommended actions and learned lessons from the investigation outcomes. It is not possible to report on any Decision Notices issued from December 2018 to February 2019, as the LGSCO imposes a three month reporting embargo. Any decisions received after 30th November 2018 will be reported at a subsequent Audit & Governance meeting.

2. Recommendation

2.1. That the Committee notes the contents of this report and makes any further response it considers appropriate.

3. Reasons for Recommendation

3.1. The Terms of Reference for the Audit & Governance Committee include seeking assurance that customer complaint arrangements are robust and that recommendations agreed with the LGSCO are being implemented.

4. Other Options Considered

4.1. This is not applicable.

5. Background

- 5.1. The Local Government Act 1974 established the Local Government and Social Care Ombudsman (LGSCO). It empowers the Ombudsman to investigate complaints against councils and adult social care providers and to provide advice and guidance on good administrative practice. Once a complainant has exhausted the Council's Complaints procedure, their next recourse, should they remain dissatisfied with the Council's response, is to contact the LGSCO.
- 5.2. The LGSCO will assess the merits of each case escalated to them and seek clarification from the Council as necessary before making the decision to investigate a complaint. Once the LGSCO decides to investigate, they will try to ascertain if maladministration has occurred and whether or not there has been any resulting injustice to the complainant as a result of the maladministration.
- 5.3. In instances where maladministration and injustice is found, the LGSCO will make non-legally binding recommendations which they consider to be appropriate and reasonable. Although not legally binding, refusal to accept the LGSCO's recommendation will trigger a Public Report. A Public Report is a detailed account of the complaint, outlining the failures by the Council in this particular investigation; this can have a significant damaging effect on the Council's reputation.
- 5.4. During the period between 1st September 2018 and 30th November 2018 the Council received three Decision Notices in which the LGSCO have concluded that there has been maladministration causing injustice. The details can be found in Appendix 1.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. There are no legal implications flowing directly from the content of this report.

6.2. Financial Implications

- 6.2.1. If fault causing injustice is found, the Council can be asked to pay compensation to a complainant, the level of which is determined on a case by case basis with costs met from the budget of the relevant council service which is found to be at fault. In the period being reported, the Council was required to make compensation payments totalling £750.

6.3. Policy Implications

- 6.3.1. Adherence to the recommendations of the LGSCO is key to ensuring that customers have objective and effective recourse should they be unhappy with the way in which the Council has responded to their complaint.

6.4. Equality Implications

6.4.1. There are no equality implications flowing directly from the content of this report.

6.5. Human Resources Implications

6.5.1. There are no HR implications flowing directly from the content of this report.

6.6. Risk Management Implications

6.6.1. There are no Risk Management Implications

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People/Cared for Children

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. There are no direct implications to Ward Members.

8. Access to Information

8.1. Please see appendix 1.

9. Contact Information

9.1. Any questions relating to this report should be directed to the following officer:

Name: Juan Turner

Job Title: Compliance and Customer Relations Officer

Email: juan.turner@cheshireeast.gov.uk

**Appendix 1 - LGSCO Decisions where maladministration with
injustice has taken place September – November 2018**

Service	Summary and Ombudsman's Final Decision	Agreed Action	Link to LGSCO Report
Special Educational Needs (SEN) Team	<p>Mrs X complained about how the Council dealt with her son's Education, Health and Care (EHC) needs assessment. Mrs X said the Council did not assess her son, Y, in line with the relevant law and guidance. It did not complete the assessment on time, failed to consult with the relevant professionals and did not properly communicate its decision. Mrs X also argued the Council failed to engage with her and Y or take their views into account as it should.</p> <p>There is fault with how the Council has dealt with Mrs X's son's EHC needs assessment. However, the Council has apologised for these issues which was considered a suitable remedy for the injustice caused.</p> <p>No action requested as an apology had already been issued</p>	N/A	https://www.lgo.org.uk/decisions/education/special-educational-needs/17-010-734
Special Educational Needs (SEN) Team	<p>The complainant, Mrs. X, complained about the Council's delays and failure to follow correct procedure, preparing her daughter's Education, Health and Care Plan (EHCP). The Council took too long, did not consult with Mrs X's preferred choice of school and failed to ensure delivery of educational provision set out in Z's final plan for a year.</p> <p>The Council agreed to apologise and offer to commission an independent review of the impact of loss of provision and pay for appropriate catch-up. It had agreed to pay Z £500 as a token recognition of the impact on her. It had agreed to also pay Mrs X £250 as a token recognition of her time and trouble.</p>	<ul style="list-style-type: none"> • Apologise to Mr and Mrs X for wrongly refusing to consult with School 1 as part of the development of Z's EHC plan • Offer to commission independent research to evaluate the impact on Z of missing out on 12 months of support from an EKLAN trained key worker. • Pay Z £500 as a token recognition of the distress and loss of service that resulted from its failure to ensure delivery of part of her EHC plan. She could use this for her educational benefit. • Pay Mrs X £250 to remedy the time and trouble she had to go to. • Ensure that staff are trained on the requirement to complete EHC plans within 20 weeks and to ensure parental preferred schools are consulted in line with the Code's requirements. 	https://www.lgo.org.uk/decisions/education/special-educational-needs/18-002-801

<p>Ground Maintenance</p>	<p>Mr T complained that the Council failed to maintain public land near his home and keep it free from refuse and fly-tipping waste. Mr T said this situation remains ongoing and that the Council is in breach of its statutory duties by failing to keep the land free of waste. Mr T said he had had no choice but to clear the waste himself.</p> <p>The Ombudsman found fault with the Council's failure to act on information the complainant provided about waste and litter on Council land adjoining his home. This caused the complainant unnecessary inconvenience and frustration. The Council agreed to remove waste from the site and monitor the situation to see whether further action is needed.</p>	<ul style="list-style-type: none"> • Apologise for the inconvenience and frustration caused to him by its failure to act on information provided about litter on the site near. • Arrange a site visit, to include Mr T, to identify any remaining waste. The Council will then arrange for this to be removed. • Monitor the site for a period of three months. • The Council will write to Mr T and the Ombudsman with the results of this monitoring. This should include details of any further action it proposes to take to ensure the land is maintained in accordance with the Council's duties under the Act. 	<p>https://www.lgo.org.uk/decisions/other-categories/land/17-017-313</p>
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