

## **Audit & Governance Committee**

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**Date of Meeting:** 30 July 2019

**Report Title:** Maladministration Decision Notices from Local Government and Social Care Ombudsman – March – April 2019

**Senior Officer:** Catherine Parkinson – Interim Director Governance and Compliance

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### **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 his investigations have found maladministration causing injustice to complainants. This report details the decisions made between 1<sup>st</sup> March 2019 and 30<sup>th</sup> April 2019. There were 2 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 May 2019 onwards, as the LGSCO imposes a three month reporting embargo. Any decisions received after 30<sup>th</sup> April 2019 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.
- 5.4. 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.
- 5.5. During the period between 1<sup>st</sup> March 2019 and 30<sup>th</sup> April 2019 the Council received 2 Decision Notices in which the LGSCO have concluded that there has been maladministration causing injustice. The details can be found in Appendix 1.
- 5.6. The first planning complaint outlined in the appendix was as a result of planning permission being granted for a housing scheme which required ground levels to be raised to accommodate the drainage scheme. The complainant raised concerns about elements of waterlogging on his property which the Council sought to intervene on and resolve through discussions with the developer.
- 5.7. The Ombudsman raised concerns over the discharge of conditions application and that through a lack of clear communication, the Council allowed the drain installation to proceed with permission on the basis it was thought it was helping the perceived problem, when in fact the flood risk team were not satisfied with the design of the drainage system.
- 5.8. The required actions set by the ombudsman have already taken place. In addition to this, the planning department have sought to learn from the

criticisms received by discussing the outcome of the Ombudsman's investigation at team meetings and reminding officers of the need to be more mindful of land levels on developments and for the need to adopt a more co-operative approach with the Council's flood risk management team with particular regard to the discharge of planning conditions applications.

- 5.9. The second planning complaint outlined in the appendix was as a result of a planning application which was first submitted in 2015 as an outline scheme (approved in 2016), with subsequent reserved matters and amendments considered in 2017.
- 5.10. The Ombudsman criticised the Council for failing to make relevant information available for consideration. Fault was also found as a result of the Council having provided incorrect advice and for failing to consider the complainants concerns of overshadowing that the development would cause.
- 5.11. In addition to completing the recommendations set by the Ombudsman, the planning department has reminded their officers of the need to ensure reports and conditions are clearly written and justifications are clearly presented. Due to the age of the original application, the issues identified regarding the availability of information on the Council's website were resolved some time ago in late 2015.
- 5.12. It is worth noting that these two cases represent a very small percentage of the applications considered by the Council. In 2018 Cheshire East Council handled 6154 applications (of all types) and it continues to remain one of the busiest planning authorities in the country. Only Cornwall, Wiltshire, Westminster, Birmingham and Leeds determined more applications during the same period.

## **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. The cost of such compensation is paid for by the service at fault. In the period being reported, the Council was required to make compensation payments totalling £700.

### **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.

### **6.10. Climate Change Implications**

- 6.11. There are no direct implications to climate change.

## **7. Ward Members Affected**

- 7.1. There are no direct implications for 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

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## Appendix 1 - LGSCO Decisions where Maladministration with Injustice has Taken Place

March – April 2019

Service	Summary and Ombudsman's Final Decision	Agreed Action	Link to LGSCO Report	Action Taken	Lessons Learnt
Planning	<p>Mr Q complained about the impact of a housing development.</p> <p>The Ombudsman upholds his complaint, finding the Council was inattentive when it allowed the developer to raise land levels next to the boundary of his home. This may have contributed to waterlogging along that boundary.</p> <p>The Ombudsman also considered that the Council failed to consider adequately the developer's proposed solution. These matters have caused Mr Q distress including uncertainty. The Council has agreed a series of actions to remedy this injustice.</p>	<p>The Council has agreed to</p> <p>a) Apologise to Mr Q accepting the findings of this investigation; and</p> <p>b) Pay Mr Q £500 in recognition of his injustice.</p> <p>c) It will aim to complete a review of the drain on the western boundary of the site. In the event the Council is unable to complete its review in 40 working days it will write to Mr Q monthly to update him on progress.</p> <p>d) The Council has agreed to write to Mr Q to explain if it is satisfied with the land drain installed on the western boundary once the review is complete.</p> <p>e) Before signing off any drainage works as satisfactory it has agreed that its actions in this case will be reviewed by a senior manager with no previous involvement in the complaint.</p> <p>f) The Council will also write to other</p>	<p><a href="https://www.lgo.org.uk/decisions/planning/enforcement/17-018-884">https://www.lgo.org.uk/decisions/planning/enforcement/17-018-884</a></p>	<p>The Planning Team have concluded their review and notified the complainant of the outcome as well as other interested residents.</p> <p>It has also issued an apology letter along with the £500 payment to the complainant.</p>	<p>The need to be mindful of land levels on developments and for the need to adopt a more co-operative approach with the Council's Flood Risk Management Team</p>

		residents who have been affected by drainage issues on the western boundary.			
Planning	<p>Mrs K, complained about the Council's handling of planning applications for the development of a nearby site adjacent to a conservation area.</p> <p>The Ombudsman found fault on the part of the Council with regards to its handling of an outline planning application.</p> <p>However, the Ombudsman considered it unlikely on balance of probabilities that the outcome would have been different even if the Council had acted without fault. The Council has agreed to take action to address the distress and inconvenience caused to the complainant by its fault.</p>	<p>The Council has agreed to write to Mrs K to apologise for:</p> <p>Failing to make relevant information available for consideration by objectors and the planning committee as part of its consideration of the outline planning application in this case.</p> <p>Providing her with incorrect and contradictory information about the conditions attached to the outline planning approval.</p> <p>Failing to properly consider whether the development would result in overshadowing of her property.</p> <p>The Council has agreed to pay Mrs K £200 in recognition of the distress and inconvenience caused to her by this fault.</p>	<a href="https://www.lgo.org.uk/decisions/planning/planning-applications/17-002-394">https://www.lgo.org.uk/decisions/planning/planning-applications/17-002-394</a>	<p>The Planning Team has issued an apology for the failings identified by the Ombudsman and made the £200 payment to the complainant.</p>	<p>The need to ensure reports and conditions are clearly written and justifications are clearly presented.</p>