

## **Audit & Governance Committee**

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**Date of Meeting:** 03 October 2019

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

**Senior Officer:** Jan Bakewell – Director of 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> May 2019 and 30<sup>th</sup> June 2019. There were 3 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 July 2019 onwards, as the LGSCO imposes a three month reporting embargo. Any decisions received after 30<sup>th</sup> June 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> May 2019 and 30<sup>th</sup> June 2019 the Council received 3 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. Special Educational Needs Complaint – The complaint was as a result of the way in which the Council considered an Education, Health and Care Plan (EHP) for a child. The complainant specifically criticised the Council for not consulting with her preferred choice of school and the delays in completing the assessment which meant that her son was out of school for prolonged period of time.
  - 5.6.1. The Ombudsman found fault as a result of the issues raised by the complainant. However, their investigation highlighted that although there was fault in the way in which the Council processed the EHP, the Council has since changed its procedures to ensure that the preferred school of applicants are consulted and that the child was not without education whilst he did not attend school.
  - 5.6.2. The required actions set by the ombudsman have been completed. In addition to this, the department has sought to learn from the criticisms

received by implementing a series of initiatives such introducing a tracking process where every child and young person is tracked from receipt of referral, through to the completion of a plan, the Head of Service and Director receive this on a weekly basis and challenge any delays that are identified.

- 5.7. Adult Social Care Complaint – The complaint was as result of the way in which the Council allowed the complainants mother to be discharged from her stay in hospital. The complaint specifically raised concerns that the Council informed him that the Consultant Neurologist supported the decision to discharge when this was not the case; and reduced his mother’s domiciliary care package at the last minute without discussing the change with the family.
  - 5.7.1. The Ombudsman concluded that the Council was at fault in telling the family the Consultant Neurologist supported the decision to discharge the complainant’s mother without properly outlining the conversation that the Council had with him. It also considered that the complainant and his family were caused distress by being not being informed earlier that that their mother’s care package would not be the four visits originally planned. However this was swiftly remedied at the time and as a result the Ombudsman did not recommend any further action as the Council had already taken appropriate action.
  - 5.7.2. The department has since reminded staff for the need to ensure that all communication with families are an accurate reflection of third party conversations and the importance of documenting all relevant conversations.
- 5.8. Waste and Recycling Complaint – The complaint was as a result of the way in which the Council considered reports of waste bins obstructing a garage and causing a nuisance.
  - 5.8.1. The Ombudsman concluded that the Council was at fault for not considering the matter inline with the powers granted under the Environmental Protection Act 1990, which grants the Council enforcement powers in instances such as this one.
  - 5.8.2. The department has since issued the apology and the payment as requested by Ombudsman. It has also appointed an officer to address the issues identified in the investigation with a view of reporting back to the Ombudsman of the action taken.

## **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 £200.

## **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

Email: [juan.turner@cheshireeast.gov.uk](mailto:juan.turner@cheshireeast.gov.uk)

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

May – June 2019

Service	Summary and Ombudsman's Final Decision	Agreed Action	Link to LGSCO Report	Action Taken	Lessons Learnt
<p style="text-align: center;">Special Education al Needs and Disabilities (SEND) Team</p>	<p>Ms M complained about her son, B's education. She is unhappy with her dealings with the Council which led to B attending School 1, a special school in a neighbouring council area, in 2016.</p> <p>B stopped attending School 1 in October 2017 and has not returned to school. Mrs M complains about the school B has missed and the delay in arranging a new school place for him.</p> <p>The Ombudsman concluded that there was delay by the Council amending B's Education, Health and Care (EHC) Plan. This delayed Ms M's right of appeal against the Council's decision B should attend School 2. However, there was a place available at School 2, and the Council</p>	<p>The Council agreed to apologise to Ms M and B for the two-term delay in amending B's EHC Plan.</p>	<p><a href="https://www.lgo.org.uk/decisions/education/special-educational-needs/18-011-623">https://www.lgo.org.uk/decisions/education/special-educational-needs/18-011-623</a></p>	<p>The SEND Team has issues an apology for the failings identified by the Ombudsman.</p>	<p>The need to consult with preferred choice of school and to ensure that ECH Plans are processed in line within statutory time frames.</p>

	provided home tuition when B did not take up the place.				
Adult Social Care Team	<p>Mr G complained about East Cheshire NHS Trust (the Trust) and Cheshire East Council (the Council) regarding issues surrounding his mother, Mrs H's hospital stay and discharge in 2017. In particular that the Council misinformed Mrs H's Family when she was discharged.</p> <p>The Ombudsman concluded that there was fault with the Council in relation to communication with the family. However, the Council has now provided a suitable response.</p>	No recommendations were made due to the Council having remedied the matter at the time of the complaint.	The Decision Notice is not currently available on the LGSCO website.	The department has issued reminders to staff to document all relevant conversations and to relay third party conversations.	The need to keep accurate records and to communicate effectively with families.

<p>Waste and Recycling Service</p>	<p>Mr C complained that the Council failed to prevent his daughter's neighbours from leaving their waste bins outside her house.</p> <p>The Ombudsman concluded that the Council was at fault for a failure to maintain the ability to enforce its powers under the Environmental Protection Act 1990. This caused injustice. The Council has agreed to pay Ms C a sum in recognition of the injustice caused and to take steps to take to remedy this failure before reporting back to the Ombudsman.</p>	<p>The Council has agreed to apologise to Mr C and Ms C for the inconvenience caused; and pay Ms D £200 in recognition of the distress and trouble caused.</p> <p>It has also agreed to appoint an existing staff member to address the problems suffered by Ms D to inform the Ombudsman and Ms D of what steps it has taken to control the problem, the effect these steps have had and what ongoing action it intends to take to control future breaches of the EPA both in this case and in others.</p>	<p>The Decision Notice is not currently available on the LGSCO website</p>	<p>The department has issued the apology and £200 payment to the complainant.</p> <p>The department has appointed an officer to address issues identified in the investigation and with a view of reporting back to the Ombudsman of the action taken.</p>	<p>The need to ensure that the Council considers reports of bins causing a nuisance in line with powers granted in the Environmental Protection Act 1990.</p>
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