

Audit & Governance Committee

Date of Meeting: 12 March 2020

Report Title: Maladministration Decision Notices from Local Government and Social Care Ombudsman – September – November 2019

Senior Officer: Jan Bakewell – Director of Governance and Compliance

1. Report Summary

1.1. This report provides an update on the Decision Notices issued by the Local Government and Social Care Ombudsman “the Ombudsman” when his investigations have found maladministration causing injustice to complainants. This report details the decisions made between 1st September 2019 and 30th November 2019. There were 7 decisions in which the Ombudsman 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 2019 onwards, as the Ombudsman imposes a three month reporting embargo. Any decisions received after 30th November 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 Ombudsman 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. 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 Ombudsman.
- 5.2. The Ombudsman 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 Ombudsman 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 Ombudsman will make non-legally binding recommendations which they consider to be appropriate and reasonable. Although not legally binding, refusal to accept the Ombudsman's recommendation(s) will trigger a Public Report.
- 5.4. A Public Report is a detailed account of the complaint, outlining the failures by the Council in the particular investigation; this can have a significant damaging effect on the Council's reputation.
- 5.5. During the period between 1st September 2019 and 30th November 2019 the Council received 7 Decision Notices in which the Ombudsman has concluded that there has been maladministration causing injustice. The details of these cases can be found in Appendix 1.
- 5.6. Special Educational Needs Complaint 1 – The complaint was as a result of the way in which the Council handled the complainant's request for an Education Health and Care Plan (EHCP) assessment for her son. The complainant specifically raised concerns that there was an unreasonable delay in finalising the EHCP, in requesting a Speech and Language Therapy (SALT) assessment, which in the complainant's view, meant that the EHCP was therefore flawed; she also stated that two Council officers involved in writing the plan made inappropriate and unprofessional comments during meetings with her.
 - 5.6.1. The Ombudsman found the Council was late in issuing the EHCP and, as a result, this delayed the complainant's son from starting school named in the plan with the provisions he was entitled to receive. They recommended that

the Council make a payment of £2800 to the family in recognition of the provisions the complainant's son missed out on and the distress caused by the delay. The Ombudsman did not investigate the issues relating to the SALT assessment and did not make comment as to whether or not the EHCP was flawed, as the complainant had exercised her right to appeal the decisions reached through the SEN Tribunal Service. The Ombudsman also did not investigate the concerns raised about the Council officers' comments as it could not elaborate further on the Council's findings about its staff.

- 5.6.2. The required actions set out by the Ombudsman have since been completed. The department have addressed the issues and findings of the Ombudsman by implementing a restructure of the service and staffing, which has moved from a reliance on a high proportion of agency staff to permanent appointments. There has been a move to a locality model within the SEND team, with the recruitment of a manager for each locality, to provide increased management oversight of keyworkers and individual casework and ensure that all families and schools have a designated person as a direct link. The department now have clear and robust trackers in place that are updated and reviewed weekly to support timeliness across all areas.
- 5.7. Special Educational Needs Complaint 2 – The complainant raised concerns with delays in completing an ECHP for her daughter. She also raised concerns that the Council had failed to adhere to proper procedure by not including all the reports she wanted listed in the plan, the Council failed to ensure that the provisions in the plan were being consistently delivered and failed to ensure that all professionals involved worked sufficiently closely together.
 - 5.7.1. The Ombudsman found no fault in the way in which the Council communicated or shared information with professionals and was satisfied the Council had taken sufficient steps to ensure the provisions were being delivered correctly. However, the Ombudsman found fault as the Council was late in issuing the ECHP, which could have been avoided. The recommendation was that an apology be issued to the complainant for the distress caused by the delay.
 - 5.7.2. The required action set out by the Ombudsman has since been completed. The department have addressed the issues and findings of the Ombudsman by introducing clear and robust tracking documents that are updated and reviewed weekly by the locality managers and the Head of Service to support timeliness of plans at each stage.
- 5.8. Special Educational Needs Complaint 3 – The complainant was dissatisfied with the Council's failure to provide education to her son for a two month period in 2017, as well as failing to properly update his EHCP.

- 5.8.1. The Ombudsman concluded that the Council was at fault for having caused undue delays at several points throughout the EHCP assessment process, which resulted in the complainant's son not receiving education for a two month period, which caused unnecessary distress and uncertainty to the family. The Ombudsman recommended that the Council apologise and issue a payment of £1150 to the family in recognition of the injustice caused.
- 5.8.2. The required actions set out by the Ombudsman have been completed. In addition to the restructure and tracking documentations referenced in point 5.6.2, the department has also identified a member of staff with responsibility for attending multi agency meetings that monitor children missing education.
- 5.9. Child in Need / Child Protection Complaint 1 – The complaint was as a result of the Council's decision to start child protection proceedings and the way in which this process was handled. Particular concerns were raised by the complainant about the way in which the Council worked with health professionals and the Council's failure to properly consider the special educational needs of the children. The complainant also alleged that staff stopped access to the complaints process by saying that the complainant was at risk of losing the children if further complaints were made.
 - 5.9.1. The Ombudsman found no fault with the Council's decision to start child protection proceedings and with the way in which it worked with health professionals. They also found no fault with the way the Council considered the special educational needs of the children and were not able to find evidence that staff had stated that the complainant was at risk of losing the children if further complaints were made. However, the Ombudsman found the Council at fault when the complainant's case was transferred to a new social worker. There was a delay between the previous social worker and the new social worker making contact with the complainant, which caused avoidable distress to the complainant, due to not being able to access help and advice when it was needed. The Council was also found at fault for the way information was shared with the complainant. The Council should have responded to the complainant's request to have extra time to consider the reports and minutes from meetings and explained what adjustments it was making or its reasons for not making an adjustment. The Ombudsman recommended that the Council issue an apology and payment of £500 in recognition of the fault identified and the distress caused.
 - 5.9.2. The department has completed the recommendations set out by the Ombudsman. They have reminded staff of the importance of ensuring appropriate arrangements are made with a service user when a social worker is changed. They have also refreshed their Recording Policy, circulating this to all frontline staff, and reminding relevant staff of the importance of recording when documents are shared, so there is a clear record of when and how this was done, and of the importance of sharing documents within the timescales set out in its policies.

- 5.10. Child in Need / Child Protection Complaint 2 – The Complainant raised concerns about the way in which the Council handled a child protection case involving her daughter, in particular that an inexperienced social worker was leading on the case. She says there was no proper basis for starting a child protection and that the social worker had misreported information. She also complains the Council wrongly made referrals to the Office for Standards in Education, Children’s Services and Skills (Ofsted) and the Disclosure and Barring Service (DBS). She says the Council’s actions caused emotional harm to herself and her daughter, and affected her career, causing financial loss.
- 5.10.1. The Ombudsman concluded that there was no fault in the way in which the Council decided to initiate the child protection process or that the social worker had misreported information. It also found no fault with the referrals that were made to both Ofsted and the DBS or that it had caused the complainant financial loss. However, it found fault as a result of delays in sharing reports and minutes of meetings with the complainant and criticised the Council’s record keeping of when these were shared. As a result the Ombudsman recommended that a payment of £200 be issued in recognition of the frustration caused by the complainant not being able to challenge the contents of reports and minutes of meetings. The Ombudsman also found fault that, although the Council did not have to use the children’s statutory complaints process, having started this process, it should have continued it to the end. The Ombudsman also found fault with the Council for not ensuring that the lead social worker for the child protection case was an experienced social worker, but noted that, under the circumstances, the injustice caused was not significant.
- 5.10.2. The department has completed the recommendations set out by the Ombudsman. They have also reminded staff of the recording policy expectations, which outlines when minutes should be shared following a meeting and recording that the minutes have been shared. Team and Service Managers have also been reminded of the importance of ensuring that social workers are suitably experienced, based on prior work experience, before a Child Protection case is assigned a Social Worker. The department has also since developed and introduced an Advanced Practitioner role within frontline Social Worker Teams, whose role is also to support those less experienced and assist with their practice and development, offering an additional layer of support and experience.
- 5.11. Development Management Complaint – The Complainant was unhappy about the impact a telecommunication mast may have on her health and amenity. She specifically raised concerns that the Council did not protect the

public, when it considered an application for a telecommunications mast on land near her home.

- 5.11.1. The Ombudsman found the Council at fault because, although it had refused the permitted development proposal, the Council had failed to notify the developer within the permissible time limit to oppose the proposal, and thereby losing planning control of the site. Because of this, the developer can now erect a mast which, in the Council's view, is harmful to the public amenity.
- 5.11.2. The Ombudsman has recommended that the Council review its procedures to ensure that this sort of issue does not re-occur, that the Council ensures that officers are aware of the practices and procedures and that it updates the public records explaining why the development is lawful despite its planning concerns. As a result, the department has reminded all officers of their responsibilities in ensuring that decisions are not only made but also dispatched to the applicants within the 56 day period. There is an understanding of this process and procedure for all staff, including those who have recently joined the Authority. A public file note has been placed on the Council's website and the decision updated, so it is clear that the development could go ahead. Negotiations with the developer on the actual site have concluded, albeit there may still be further discussions about the suitability of an alternative location.
- 5.12. Trading Standards – The complainant was unhappy with the way in which the Council considered his report about a rogue trader which caused him distress and outrage. He specifically complained about the lack of enforcement action by the Council following his report and that he had been misinformed via a third party, Citizens Advice Consumer Service (CACS), who he thought were acting on behalf of the Council.
 - 5.12.1. The Ombudsman found no fault with Council's decision making process and concluded that the Council could not be criticised for the actions of CACS, as the Council does not commission or contract them to provide consumer advice to members of the public and, therefore, they fall outside the jurisdiction of the Ombudsman to investigate. As such, the Council could not have misinformed the complainant. Nevertheless, the Ombudsman was of the view that the information on the Council's website and the Trading Standards policy did not sufficiently detail the relationship between CACS and the Council, or how the information received from CACS would be processed.
 - 5.12.2. The service has made changes to the web pages, making it clear that CACS is not a service commissioned by Cheshire East (nor any other LA) and that Citizens Advice is a wholly separate organisation. The service has also

made it clear how it will respond and use the different types of referral paths from CACS. Changes have also been made to reflect the same in the Team's Enforcement Policy. Furthermore, this clarification instruction has been passed onto all Local Authority Trading Standards services in the region in a recent executive meeting. The main lesson learnt is to ensure relationships with other partners, organisations and enforcement bodies are clearly described in any communications with the public.

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 cases outlined, the Council was required to make compensation payments totalling £4650.

6.3. Policy Implications

6.3.1. Adherence to the recommendations of the Ombudsman 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:

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Appendix 1 - Ombudsman Decisions where Maladministration with Injustice has Taken Place

September – November 2019

Service	Summary and Ombudsman's Final Decision	Agreed Action	Link to LGSCO Report	Action Taken	Measures Implemented	Lessons Learnt
<p style="text-align: center;">Special Education Needs Complaint 1</p>	<p>Miss B complains about the Council's handling of her request for an Education, Health and Care Plan (EHCP) for her son.</p> <p>The Ombudsman found the Council took too long to issue the final Plan. This meant Miss B's son did not receive special educational provisions he should have received. The Council has agreed to make payments to Miss B and her son to put right the injustice they suffered.</p>	<p>Within two months of the final decision, the Council shall:</p> <ul style="list-style-type: none"> • Pay £2,500 for the educational or social benefit of the child in recognition of the missed special educational provision he should have received from February to May 2018 and from September to November 2018. • Pays £300 for the distress the complainant has suffered because of the Council's delay issuing the EHCP and the missed special educational provisions. • Write to the complainant and the Ombudsman with an update on the action the Council is taking to address the timeliness and quality of 	<p>https://www.lgo.org.uk/decisions/education/special-educational-needs/18-012-621</p>	<p>The department has issued the update letter apologising for the failings identified by the Ombudsman. The payments have also been processed.</p> <p>The department has carried out a restructure of the service and staffing to ensure there is the right capacity within the service and there is increased management oversight of keyworkers.</p> <p>The department have also introduced clear and robust trackers are updated and</p>	<p>The department has carried out a restructure of the department and recruited permanent staff.</p>	<p>To ensure that ECH Plans are processed and finalised in line within statutory time frames.</p>

		EHCP's.		reviewed weekly by managers and the Head of Service to support timeliness of plans at each stage.		
Special Educational Needs Complaint 2	<p>Mrs X complained the Council delayed finalising her daughter's Education Health and Care Plan (EHCP), and failed to ensure the provision outlined in it was delivered.</p> <p>The Ombudsman found the Council at fault for not issuing the final EHCP within the statutory timescales and should apologise. However, there was no fault found in the delivery of the provision detailed in the plan.</p>	<p>Within one month of the final decision, the Council shall:</p> <ul style="list-style-type: none"> • Write to the complainant apologising for the failure to issue a final EHCP within the statutory timescales. 	<p>https://www.lgo.org.uk/decisions/education/special-educational-needs/19-002-127</p>	<p>The department has issued the update letter apologising for the failings identified by the Ombudsman.</p> <p>The department has carried out a restructure of the service and staffing to ensure there is the right capacity within the service and there is increased management oversight of keyworkers.</p> <p>The department have also introduced clear and robust trackers are updated and reviewed weekly by managers and the Head of Service to</p>	<p>The department has carried out a restructure of the department and recruited permanent staff.</p>	<p>To ensure that ECH Plans are processed and finalised in line within statutory time frames.</p>

				support timeliness of plans at each stage.		
Special Education Needs Complaint 3	<p>Miss X complains the Council failed to provide education to her son over a two month period and failed to update his Education and Health Care Plan (EHCP), causing loss of education, stress and financial loss.</p> <p>The Ombudsman found the Council at fault for not updating the EHCP within the statutory timescales. The Council has agreed to apologise, make payments to the complainant and to provide guidance to staff.</p>	<p>Within one month of the final decision the Council shall:</p> <ul style="list-style-type: none"> • Apologise to the Complainant • Pay £800 in recognition of the loss of education for the child; • Pay £250 for the distress and uncertainty suffered by the child and his family; • Pay £100 to the complainant for the time and trouble in bringing the complaint; • Provide training to staff to ensure they are aware of and follow guidance in the SEND Code of Practice 2015. 	<p>https://www.lgo.org.uk/decisions/education/special-educational-needs/18-017-713</p>	<p>The department has issued the apology letter and the payments have also been processed. Staff training has also been developed to ensure that guidance in the SEND Code of Practice 2015 is followed.</p> <p>Also the department has identified a member of staff with responsibility for attending multi agency meetings that monitor children missing education in order to ensure that children and young people who are missing education are supported back into education as quickly as possible.</p>	<p>The department has carried out a restructure of the department and recruited permanent staff.</p>	<p>To ensure that ECH Plans are updated and processed in line within statutory time frames.</p>

<p>Children in Need / Child Protection Complaint 1</p>	<p>The complainant complained about the Council's decision to start child protection proceedings and the way it handled this.</p> <p>The Ombudsman found no fault with the decision to start child protection proceedings. However it found the Council at fault for the way in which it communicated and shared information with the complainant. It also found fault for the delay the complainant experienced in getting access to help and support. The Ombudsman recommended that the Council issue an apology and payment in recognition of the distress caused.</p>	<p>Within one month of the final decision the Council shall:</p> <ul style="list-style-type: none"> • Apologise to the Complainant • Pay £500 in recognition of the loss of education for the child; <p>Within three months it shall:</p> <ul style="list-style-type: none"> • Issue a reminder to relevant staff of the importance of recording when and how information is shared and that documents are shared within the timescales set out in its policies. 	<p>Not being published on the Ombudsman's website.</p>	<p>The department has issued the apology letter and processed the payments. The reminder to staff has also been issued.</p> <p>The department has reminded all staff of the importance of good and timely communication with families in building relationships. It has refreshed the Recording Policy, circulated this to all frontline staff, and reminded staff of the importance of recording when documents are shared. As well as the importance of sharing documents within the timescales set out in its policies.</p> <p>Management oversight is in place to ensure that timely</p>	<p>The department has refreshed their Recording Policy and circulated this to frontline staff.</p>	<p>To ensure that records are correctly updated to demonstrate when minutes/documenta tion has been shared.</p>
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				action is taken for children, including when there is a change of worker.		
Children in Need / Child Protection Complaint 2	<p>Mrs X complains about the Council's handling of her daughter's child protection case, which she says caused avoidable distress to her and her daughter.</p> <p>The Ombudsman found fault for having appointed an inexperienced social worker to lead the child protection process, not sharing reports and minutes in accordance with its policies and refusing a stage 3 panel.</p> <p>The Ombudsman recommended that the Council issue an apology and payment in recognition of the distress caused.</p>	<p>Within one month of the final decision the Council shall:</p> <ul style="list-style-type: none"> • Apologise to the Complainant • Pay £200 in recognition of the frustration caused because she could not challenge the contents of reports and meetings. <p>Within three months it shall:</p> <ul style="list-style-type: none"> • Review its processes to ensure it complies with the requirements of the Children's statutory complaints process • Remind relevant staff of the importance of recording when and how information is shared 	<p>https://www.lgo.org.uk/decisions/childrens-care-services/child-protection/18-010-925</p>	<p>The department has issued the apology letter and processed the payment. A review of the Children's Statutory complaints process has been carried out.</p> <p>The department has reminded all staff of the importance of good and timely communication with families in building relationships. It has refreshed the Recording Policy, circulated this to all frontline staff, and reminded staff of the importance of recording when documents are shared. As well as the importance of sharing</p>	<p>The department has refreshed their Recording Policy and circulated this to frontline staff. They have also developed a new role within the team to help support less experienced staff, assisting with their practice and development.</p>	<p>To ensure that records are correctly updated to demonstrate when minutes/documentation has been shared. Also to ensure that Social Workers are suitably experienced when assigned Child Protection Cases.</p>

				<p>documents within the timescales set out in its policies.</p> <p>Team and Service Managers have also been reminded of the importance of ensuring that social workers are suitably experienced, based on prior work experience, before a Child Protection case is assigned a Social Worker.</p> <p>The department has also since developed and introduced an Advanced Practitioner role within frontline Social Worker Teams, whose role is also to support those less experienced and assist with their practice and development.</p>		
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<p>Planning</p>	<p>Mrs X complained about the impact a telecommunication mast might have on her health and amenity because the Council failed to control a prior notification planning application it intended to refuse.</p> <p>The Council accepts it was at fault and has agreed to review its practices and update its records.</p>	<p>Within three months from the final decision, the Council will carry out the following actions to remedy the complaint and report back its findings to the Ombudsman.</p> <p>It will ensure:</p> <ul style="list-style-type: none"> • its processes are robust, so it can ensure the fault found here does not recur and prior notification decision notices are received within the 56-day time limit; • its officers understand its practices and procedures relating to prior notification applications; • its public record is updated so that it shows the reasons why development on the site is lawful, despite its planning concerns <p>If the Council has not completed the remedy or finished its negotiations within a three month time limit, it may provide an</p>	<p>https://www.lgo.org.uk/decisions/planning/planning-applications/19-005-127</p>	<p>The department has reviewed its processes. It has reminded staff and discussed the issue during a Team meeting. It has also updated the public record (website) clarifying why the development is permissible.</p>	<p>The department has reviewed its processes.</p>	<p>To ensure that Determination Applications are processed within their 56 day deadline.</p>
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		update and request an extension.				
Trading Standards	<p>Mr X complains the Council failed to act against a rogue trader, causing him distress.</p> <p>The Ombudsman finds procedural fault by the Council, but cannot say this affected its decision not to take action.</p> <p>The Council has agreed to amend its enforcement policy.</p>	<p>Within three months of the decision the Council shall:</p> <ul style="list-style-type: none"> • Amend its enforcement policy to make clear what information it will take into account in deciding whether or not to investigate a Trading Standards complaint. 	<p>https://www.lgo.org.uk/decisions/environment-and-regulation/trading-standards/18-010-906</p>	<p>The department has updated its Enforcement Policy.</p>	<p>The service has made changes to the its web pages and documentation to clearly define the relationship between Citizens Advice Consumer Service and clarified how it will respond and use the different types of referral paths from CACS.</p>	<p>To ensure relationships with other partners, organisations and enforcement bodies are clearly described in communications with the public.</p>