

## **Audit & Governance Committee**

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**Date of Meeting:** 30 July 2020

**Report Title:** Maladministration Decision Notices from Local Government and Social Care Ombudsman – February – March 2020

**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 “the Ombudsman” when his investigations have found maladministration causing injustice to complainants. It also provides an update on the Ombudsman’s decision to resume normal activity on all casework from the 29<sup>th</sup> June 2020 following their decision suspend their casework on the 26<sup>th</sup> March 2020 as a result of the Coronavirus outbreak. The report details the decisions made between 1<sup>st</sup> February and 31<sup>st</sup> March 2020. There was 1 decision in which the Ombudsman found that there was maladministration causing injustice; the relevant department has actioned the recommendations and learned lessons from the investigation outcomes. It is not possible to report on any Decision Notices issued from April 2020 onwards, as the Ombudsman imposes a three month reporting embargo. Any decisions received after 31<sup>st</sup> March 2020 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. On the 26<sup>th</sup> March 2020, the Ombudsman took the decision to suspend all casework activity that demands information from, or action by, any local authority until further notice. Councils are still expected to respond appropriately to any complaints received during this time and to direct complainants to the Ombudsman service upon completion of the Council's complaints procedure.
- 5.6. This decision has allowed officers involved in responding to enquiries from the Ombudsman to concentrate on delivering vital frontline services. However, as of the 29<sup>th</sup> June 2020 the Ombudsman has resumed normal activities as it became increasingly clear that the current coronavirus crisis was unlikely to reach a definitive end point.
- 5.7. The Ombudsman has indicated that they will continue to be considerate of the Council's resource and are willing to negotiate an appropriate deadline to their enquiries in all cases.
- 5.8. During the period between 1<sup>st</sup> February and 31<sup>st</sup> March 2020 the Council received one Decision Notice in which the Ombudsman has concluded that

there has been maladministration causing injustice. The details of this case can be found in Appendix 1.

5.9. The complaint was in relation to the removal of hedgerow and was originally considered by the Council in August 2018. The Complainant raised concerns that the hedgerow had been unlawfully removed by a third party and that the Council's planning department had failed to take appropriate enforcement action to ensure the hedgerow's reinstatement. Following the response issued to the complainant in 2018, the complainant made contact again 12 months later requesting to escalate the complaint. The escalation request was rejected as it exceeded the 28 day limit and following the consideration of his further comments the circumstances had not changed which would have resulted in the Council reaching a different decision regarding the enforcement action.

5.9.1. The Ombudsman found no fault with the way in which the Council considered if the relevant Regulation applied and was satisfied that as the criteria was not met the Council had no duty to take the matter further. It also found no fault in respect of the decision to not accept the escalation request in 2019. However, the Ombudsman found fault as the response that was issued in 2018 had failed to inform the complainant of the 28 day limit to request the matter be escalated.

5.9.2. The Ombudsman made no recommendations as it was satisfied with the Council's acknowledgement of the omission and apology issued when the complaint escalation was considered in 2019. Nevertheless, the Council's Complaints team and the Planning department have discussed the matter to ensure that responding officers are reminded to use the appropriate response templates, which include the applicable closing paragraphs, when responding to complaints.

## **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 case outlined in this report the Council was not required to make a compensation payment.

### **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

February – March 2020

Service	Summary and Ombudsman's Final Decision	Agreed Action	Link to LGSCO Report	Action Taken	Measures Implemented	Lessons Learnt
<p style="text-align: center;">Planning Enforcement</p>	<p>Mr C complains the Council failed to take enforcement action about the removal of a hedgerow. He also says he was not advised about the complaints process.</p> <p>The Ombudsman has found no evidence of fault in respect of enforcement action taken. The Council did fail to advise Mr C about time restrictions on complaints. As a result the Ombudsman has upheld the complaint because of one fault by the Council but acknowledged there is no outstanding injustice.</p>	<p>No recommendation were made by the Ombudsman as the Council had already addressed the matter appropriately.</p>	<p><a href="https://www.lgo.org.uk/decisions/planning/enforcement/19-011-285">https://www.lgo.org.uk/decisions/planning/enforcement/19-011-285</a></p>	<p>No action taken as the LGSCO made no recommendations.</p>	<p>Reminder sent to complaint responding officers to ensure that the standard complaints closing paragraphs are used.</p>	<p>The need for better quality control when responding to complaints.</p>