

Audit & Governance Committee

Date of Meeting: 28 January 2021

Report Title: Maladministration Decision Notices from Local Government and Social Care Ombudsman – September – October 2020

Senior Officer: David Brown – 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. The report details the decisions made between 1st September and 31st October 2020. There were 4 decisions in which the Ombudsman found that there was maladministration causing injustice; the relevant departments have actioned the recommendations and learned lessons from the investigation outcomes. It is not possible to report on any Decision Notices issued from November 2020 onwards, as the Ombudsman imposes a three month reporting embargo. Any decisions received after 31st October 2020 will be reported at a subsequent Audit & Governance meeting.

2. Recommendation

2.1. That the Committee notes the contents of this report.

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 with injustice are found, the Ombudsman will usually 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. The number of referrals to the Ombudsman during 2019/20 is shown in the table below for reference and for comparison to the previous financial year.

| | 2018/19 | 2019/20 |
|--|---------|---------|
| Number of Cases closed | 116 | 112 |
| Number of Decision Notices issued | 78 | 73 |
| Number of Cases Not Investigated | 38 | 39 |
| Number of Cases Not Upheld | 14 | 12 |
| Number of Cases Upheld | 14 | 17 |
| LGSCO Uphold Rate (Upheld vs Not Upheld) | 50% | 59% |

- 5.6. During the period between 1st September and 31st October 2020 the Council received four 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.
- 5.7. **Development Management** – The Council considered two complaints in April 2019 about the way in which a planning application was considered. The complainants raised concerns that the Council granted planning permission for two new homes on land next to their properties without considering the impact on them. Both complainants were also dissatisfied that the Council had

also approved a landscaping condition relating to the development before the deadline for comments from the public.

- 5.7.1. The Ombudsman found fault as it was their view that the Council had misinterpreted the plans and relationship between the new homes and the property of one of the complainants; the Council's failure to properly address this issue has caused unnecessary time and trouble for the complainant. Furthermore, in considering the impact on a nearby historic building, the Council failed to explain why it was of the view that there were no heritage issues. Whilst this fault did not cause either complainant injustice it has contributed to the unnecessary time and trouble they experienced. The Ombudsman also concluded that although there is no requirement in law to notify neighbouring properties about an application to discharge conditions on a planning permission, as the Council had advertised a date by which comments could be received on its website, it should not have made a decision before the advertised deadline as this gave the complainants a reasonable expectation that comments could be made and would be considered.
- 5.7.2. As a result, the Ombudsman recommended that the Council issue apologies to the complainants and payments of £250 and £150 in recognition of the avoidable distress caused by the faults identified. It also recommended that staff be reminded of the need to consult with conservation and heritage officers, where appropriate, and the need to record their reasoning for reaching a view on material planning considerations, particularly where these have been raised in comments made by members of the public. Additionally, the Council should ensure that decisions on Condition Discharge applications are not taken before the advertised deadline has passed.
- 5.7.3. The service has completed these recommendations and has reminded all staff to be aware of the issues raised in these complaints. This has included a specific reference to recognising the need to consult with heritage colleagues when heritage matters are raised in representations and a wider reminder to make sure that all material considerations raised in comments are considered (as advised by the Ombudsman). In addition, Officers have been advised to not determine discharge of condition applications ahead of the published last date for comments. A technical solution is being investigated so that this date does not appear on the website to avoid confusion for the public.
- 5.7.4. **Adult Social Care** – The complainant raised concerns in July 2019 that the Council and the South Cheshire Clinical Commissioning Group (CCG) had failed to provide an appropriate replacement care package after the appointed care provider had incorrectly stopped providing section 117 aftercare for her daughter. The complainant also raised concerns that she has had her own respite requests refused despite being the full-time carer for her daughter after the section 117 aftercare was stopped.

- 5.7.5. The Ombudsman concluded that the care provider was within its rights to stop providing care, as the care provider has a duty to protect its staff from the inappropriate behaviour displayed by the complainant's daughter. It also concluded that the Council had reacted appropriately to the events that led the care provider withdrawing its services. However, it found the Council at fault as, once the aftercare was stopped, it should have held a formal section 117 review with the Trust and/or the CCG before it decided to withdraw the support workers. As a result, the daughter received little support engaging in activities in the community which the Ombudsman concluded was further fault by the Council. The Ombudsman also found the Council at fault for not reviewing the complainant's needs as a carer following the withdrawal of her daughter's aftercare. This missed opportunity caused the complainant and her daughter uncertainty and injustice.
- 5.7.6. The Ombudsman recommended the Council apologise to the complainant and her daughter for the uncertainty caused and that payments of £400 and £200 respectively be issued, in recognition of the Council's fault. It also recommended the Council completes a review of the daughter's aftercare to ensure a comprehensive review of her health and social care needs as well as completing a review of the complainant's needs as a carer. The Ombudsman also asked the Council to ensure that commissioned organisations are fully informed when they are providing section 117 aftercare on the Council's behalf and that it ensures it has a joint record with the CCG for members of the public who receive section 117 aftercare in its area.
- 5.7.7. The required actions set out by the Ombudsman have since been completed. Furthermore, discussions are underway with the CCG and Cheshire West and Chester (CW&C's) with regard to the sharing of section 117 information. As although a local agreement has been implemented with the CCG in accordance with the Ombudsman's recommendations, a wider policy will require CW&C's agreement to provide consistency across the CCG footprint.
- 5.8. **Special Educational Needs Complaint** – The complaint was originally considered in September 2019 when the complainant was dissatisfied with the delay by the Council in providing her daughter with suitable education when she stopped attending school due to her anxiety. The complainant also raised concerns that the tuition package that was put in place was insufficient.
- 5.8.1. The Ombudsman found the Council at fault as it delayed arranging tuition whilst it was trying to find an alternative school that could offer a permanent placement. However, the Ombudsman also concluded that the Council had appropriately considered the needs of the complainant's daughter when it offered the tuition package and found no fault with the Council's actions in the setting of this package.
- 5.8.2. In order to address the injustice caused by the Council's fault, the Ombudsman recommended that it pays the complainant £500 to be used for

the educational benefit of her daughter in recognition of education she missed before the tuition package was in place. It also requested for confirmation that her EHCP had been amended accordingly.

5.8.3. The service has actioned and completed these recommendations. Furthermore, steps have been taken in the last nine months to improve the annual review process. This has involved coproducing a new process, guidance and paperwork with the parent carer forum, alongside this schools have undertaken training on using the portal which has helped to speed up the process.

5.8.4. Local provision is also being expanded, through the SEND sufficiency and capital investment programme to ensure that more school places are available within the Local Authority to ensure reduction of drift and delay with identifying provision. Additionally, there are now dedicated SEND tutors within our medical needs team in order to support with short term provision.

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 in this report the Council was required to make compensation payments totalling £1500.

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:

Name: Juan Turner

Job Title: Compliance and Customer Relations Officer

Email: juan.turner@cheshireeast.gov.uk

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

September – October 2020

| Service | Summary and Ombudsman's Final Decision | Agreed Action | Link to LGSCO Report | Action Taken | Measures Implemented | Lessons Learnt |
|------------------------|---|--|--|--|--|--|
| Development Management | <p>Mr X & Ms Y complained the Council granted planning permission for a development next to their respective homes without considering local planning policies.</p> <p>There is fault in the way the Council considered the planning application. It failed to properly consider the impact on their respective homes and a local historic building.</p> <p>The Council should apologise to both Mr X and Ms Y as well as pay £150 and £250 respectively to recognise the unnecessary time and trouble this matter has caused them.</p> | <ul style="list-style-type: none"> • Pay Mr X and Ms Y £150 and £250 respectively to acknowledge the unnecessary time and trouble that has been caused as a result of the fault. • The Council should also ask its conservation and heritage officer to provide their comments on the development in terms of the impact on the historic building. If the officer identifies any issues the Council should consider whether it might be possible to negotiate amendments to the plans or to mitigate the impact of any harm through any conditions which have not yet been discharged. • Remind officers of the need to consult with conservation and heritage officers where appropriate. • Remind officers of the need to records their reasons for reaching a view on material planning considerations, particularly where these have | <p>https://www.lgo.org.uk/decisions/planning/planning-applications/19-006-558</p> <p>&</p> <p>https://www.lgo.org.uk/decisions/planning/planning-applications/19-012-719</p> | <p>Both payments and apology letters have been issued.</p> <p>The Conservation and Heritage officer have been consulted who concluded that further action was not necessary.</p> <p>Reminders to Staff have also been issued.</p> <p>The service is currently exploring if changes can be made to the Website as needed.</p> | <p>All staff advised of the issues raised and reminders in respect of material considerations.</p> <p>Technical solution being to remove the unnecessary date from the website is pending.</p> | <p>General reminder to maintain the attention to detail required for consideration of applications.</p> <p>Need to manage expectations from the service.</p> |

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| | | <p>been raised in comments made by members of the public. The Council may find the Ombudsman's guidance on officer reports useful.</p> <ul style="list-style-type: none"> • Explore whether it is possible to advertise on the Council's website that condition discharge applications may be determined before the deadline for comments has passed. If this is not possible the Council should ensure decisions are not taken before the deadline has passed. | | | | |
| Adult Social Care | <p>Mrs M complains on behalf of her daughter, Miss G, that Sagecare Care Limited stopped providing section 117 aftercare to Miss G due to her stalking behaviours.</p> <p>Mrs M says Cheshire East Council (the Council) and South Cheshire Clinical Commissioning Group (the CCG) have not provided a replacement care package.</p> <p>The Ombudsmen find Sagecare Limited did not act with fault when it ended Miss G's support after she harassed staff.</p> <p>However, Cheshire East Council missed the opportunity to carry out a</p> | <ul style="list-style-type: none"> • Apologise to Miss G and Mrs M for the uncertainty caused by not completing a formal section 117 review with the Trust/CCG, before it decided to withdraw Miss G's support workers. • Pay Mrs M and Miss G £400 and £200 respectively, to recognise the impact of the Council's fault. • Introduce a process to ensure when it commissions organisations to provide section 117 aftercare on its behalf, it explains what section 117 is, and why it is asking that organisation to provide it. • Complete a formal section 117 review of Miss G's aftercare needs under the CPA. The | <p>https://www.lgo.org.uk/decisions/adult-care-services/other/19-015-215</p> | <p>Apology letters and payments have been issued.</p> <p>Commissioning contracts have been updated to ensure that organisations are fully informed on the care they are being asked to undertake.</p> <p>Both the needs of the Complainant and the daughter have been reviewed.</p> <p>A joint record has been developed with the CCG to account for any service user receiving</p> | <p>Section 117 Aftercare responsibilities and legislation has been added to the general training needs of all Adult Social Workers to reduce risk of future failures.</p> <p>Providers of care under section 117 Aftercare Arrangements to have a greater understanding of their responsibilities.</p> <p>The Social Worker involved in this case has an action plan in place and must evidence</p> | <p>Clearer guidance in general Adults services is required when using legislation not used routinely by workers.</p> <p>Closer partnership working needed with the CCG when reviewing s117 Aftercare arrangements where the care is funded solely by the Council.</p> |

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| | <p>formal section 117 review with a local NHS Trust and/or South Cheshire Clinical Commissioning Group, before it decided against reinstating that support.</p> <p>That fault caused Miss G and her mother, Mrs M, uncertainty which the Council should remedy.</p> | <p>Council should approach the Trust and the CCG to attend that review to complete a comprehensive review of Miss G's health and social care needs.</p> <ul style="list-style-type: none"> • Carry out a review of Mrs M's needs as carer. The Council should also review its processes to ensure it carries out reviews of carers assessments in accordance with the Care Act 2014 and Care and Support Statutory Guidance. • the Council and CCG should work together to ensure it has a joint record of who receives section 117 aftercare in its area. | | <p>section 117 aftercare in the area.</p> | <p>improvements in this area of practice.</p> | |
| <p>Special Educational Needs</p> | <p>Mrs X complained the Council failed to ensure her daughter, Y, received suitable alternative education when she was unable to attend mainstream school due to her anxiety.</p> <p>There was fault when the Council did not arrange tuition for Y for several weeks after it became aware she was no longer attending school. The Council has agreed to pay Mrs X £500 in recognition of the injustice Y suffered.</p> | <p>The Council has agreed to pay Mrs X £500 to remedy the injustice Y experienced when she missed out on education between May and September 2019. The money should be used as Mrs X feels best for Y's educational benefit.</p> <p>The Council has also agreed to confirm it has amended Y's EHC plan.</p> | <p>https://www.lgo.org.uk/decisions/education/special-educational-needs/19-010-135</p> | <p>The payment has been issued and the EHC plan been amended.</p> | <p>An interim annual review team has been set up to provide an increase in capacity with processing annual reviews.</p> <p>The annual review process and guidance has been reviewed and all paperwork has been updated and shared on the Council's webpages.</p> | <p>Ensure suitable alternative education provision is in place for pupils who are not attending school sooner.</p> <p>Ensure that change of placements are progressed efficiently</p> |

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| | | | | | <p>Improved case management systems and protocols are in place which ensures that SEND Keyworkers are alerted when pupils are not attending school</p> <p>Dedicated SEND tutors within the medical needs team to support with short term provision and support has been introduced.</p> <p>Local provision is being expanded, through the SEND sufficiency and capital investment programme to ensure that more school places are available within the LA to ensure reduction of drift and delay with identifying provision.</p> | |
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