

## **Audit & Governance Committee**

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**Date of Meeting:** 11 March 2021

**Report Title:** Maladministration Decision Notices from Local Government and Social Care Ombudsman – November 2020 – January 2021

**Senior Officer:** David Brown – 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. The report details the decisions made between 1<sup>st</sup> November 2020 and 31<sup>st</sup> January 2021. 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 February 2021 onwards, as the Ombudsman imposes a 6-week reporting embargo. The length of the embargo was recently changed by the Ombudsman from 12 weeks (3 months) to 6 weeks. Any decisions received after 31<sup>st</sup> January 2021 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 1<sup>st</sup> November 2020 and 31<sup>st</sup> January 2021 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. **Special Educational Needs Complaint 1** – The complaint was originally considered in March 2019 when the complainant raised concerns that the Council had failed to notify her of its decision not to reassess her son’s Education Health and Care Plan (EHCP) and when it changed this decision it significantly delayed issuing the EHCP at every stage of the process. As a result, the complainant felt that she was pressured into Elective Home Education for her son which in her view left him without appropriate education for a period of nine months. This caused the complainant distress and anxiety.
- 5.7.1. The Ombudsman found no fault in the Council’s actions which lead to the complainant opting for Elective Home Education. It further concluded that the Council took reasonable steps in ensuring the education provided was appropriate and provided support to both the complainant and her son during this period. However, the Ombudsman found fault as the Council failed to complete the annual review, update the EHCP and issue a finalised version within the statutory timescales. The delay caused the complainant and her family distress and put them to significant time and trouble in pursuing the delivery of suitable provision.
- 5.7.2. As a result, the Ombudsman recommended that the Council issue an apology to the complainant and payments totalling £650 in recognition of the avoidable distress caused by the faults identified. The service has completed these recommendations and have taken steps on the past 12 months to make improvements to the annual review process, including coproducing processes, guidance and documentation that is now available on the Council’s website. They have led training for schools/settings on how to use the online portal to improve the timeliness of completing documentation in line with statutory timeframes.
- 5.7.3. The service has taken steps to improve the monitoring of individual cases by the introduction of a live tracking system, with weekly meetings to ensure clear management oversight of all cases.
- 5.7.4. **Special Educational Needs Complaint 2** – The complainant raised concerns in November 2019 that the Council had failed to issue a draft EHCP for her son, as ordered by the SEND Tribunal. This meant her son had lost out on educational support he would have been entitled to. She also complained that the Council has not made reasonable adjustments in light of her dyslexia, which has caused delay and frustration.
- 5.7.5. The Ombudsman concluded that the Council was at fault as it had failed to issue the ECHP within the statutory timescale. However, it was satisfied that the child was receiving support as he had the benefit of a school SEND support plan throughout this period and later, when change of school took place which helped to meet his support needs. Nevertheless, the lack of a plan

meant that the Council and the new school tended to be reactive to the child's needs and it also led to a delay in the child receiving OT treatment sessions which he was entitled to. The Ombudsman also concluded that, although the Council has made reasonable adjustments in light of the complainant's disabilities, it has not always done so in a timely manner. This added to the delays and frustration caused, which is fault.

- 5.7.6. The Ombudsman recommended the Council apologise to the complainant and that additional payments totalling £400 be issued, in recognition of the frustration and injustice caused. It also recommended the Council completes a review of its procedures to ensure that staff are aware of their obligations under the Equality Act 2010 when considering whether adjustments to the way they communicate with service users are needed and that these be recorded appropriately.
- 5.7.7. The required actions set out by the Ombudsman have since been completed. Furthermore, over that last 18 months the service has also had significant investment and has undergone a restructure, with the appointment of SEND Locality Managers, SEND Keyworkers, SEND Plan Writers and Business Support staff. This has ensured a stable workforce since January 2020, although there will always be some turnover in staffing. The service reports that there is now a full complement of SEND Team staff and is committed to improve the service they provide to parents/carers, children and young people in receipt of their service.
- 5.7.8. Steps have also been taken to improve the monitoring of individual cases with the introduction of a live tracking system, with weekly managers meetings to ensure clear management oversight of all cases including an Interim SEND Tribunal Manager, to provide key leadership in Tribunal case management. There has also been an introduction of a tribunal tracking system, to ensure that all actions, themes, and learning are monitored; to ensure resolution, timeliness, learning and development.
- 5.7.9. Also, the service has recently launched the first phase of the wider SEND training and development programme, which focuses on understanding SEND and positive communication and relationships. Throughout this training many aspects are covered and specifically discusses the use of reasonable adjustments.
- 5.8. **Community Enforcement complaint** – The complaint was originally considered in March 2019 when the complainant made contact with the Council following the uplift of his vehicles which were deemed to have been abandoned. He complained that the Council had incorrectly uplifted his vehicles as they had not been abandoned and this led to one of them being destroyed without his agreement.

- 5.8.1. The Ombudsman found no fault with the Council's assessment that both vehicles qualified as abandoned noting that the vehicles had been without an MOT since 2013 and 2017 and where parked on the public highway. However, the Ombudsman found fault as the Council was unable to confirm to the Police that it had removed the vehicles. This caused the complainant uncertainty as to the location of his vehicles. Furthermore, despite agreeing a date by which the complainant could collect one of the vehicles (Car A) and inspect the contents of the other (Car B), Car B was incorrectly disposed of prior to this agreed date. The Ombudsman concluded that this error was fault but acknowledged that the Council had already offered a suitable remedy for this error when it originally considered the complaint.
- 5.8.2. The Ombudsman recommended that the Council apologise and that it issues the payment of £100 it had originally offered in recognition of the lost opportunity to inspect the belongings within Car B. The service has actioned and completed these recommendations. The service has also implemented a new share point system with contact centre staff which allows them to view a list of vehicles that are currently in storage which is updated on a regular basis. Furthermore, a single point of contact has been assigned with the 3<sup>rd</sup> party company responsible for the removal, storage, release and disposal of abandoned vehicles which now includes extra checks.
- 5.9. **Cheshire East Consultation Service (ChECS) Complaint** – The Complaint was originally considered in February 2020 and was in relation to the Council not informing the complainant of an incident involving the complainant's child in 2018 whilst in the care of the other parent.
- 5.9.1. The Ombudsman concluded that the Council was at fault for failing to communicate appropriately in response to the allegations made by the complainant and the incident involving the child. However, the Ombudsman found no evidence of significant injustice and that the apology issued by the Council through its complaints process was an appropriate remedy. As a result, the Ombudsman made no recommendation as it was satisfied with the action already taken by the Council.
- 5.9.2. Nevertheless, the service has since issued reminders to the relevant staff of the importance of prompt communication with the appropriate parties involved to avoid similar instances from occurring and reiterated what is expected in every contact made with ChECS.

## **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 £1150.

### **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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Job Title: Compliance and Customer Relations Officer

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

November 2020 – January 2021

Service	Summary and Ombudsman's Final Decision	Agreed Action	Link to LGSCO Report	Action Taken	Measures Implemented	Lessons Learnt
Special Educational Needs Complaint 1	<p>Mrs C complained about delay by the Council in issuing her son's Education Health Care Plan following a review and reassessment.</p> <p>Mrs C also says that the Council has failed to acknowledge that she was forced into Elective Home Education. We find the Council failed to, complete an annual review of the Plan in 2018, inform Mrs C of its reassessment decision in a timely manner and there was a significant delay in issuing a final Plan.</p> <p>We have found no further fault by the Council.</p>	<p>Apologise to Mrs C for the faults I have identified and the injustice this has caused.</p> <p>Pay £150 for the failure to complete the annual review in June 2018 and the uncertainty this caused.</p> <p>Pay £100 for the delay in issuing a reassessment decision letter.</p> <p>Pay £400 for the delay in issuing the final EHCP and the distress and uncertainty this cause.</p>	Not yet published by the LGSCO	Apology letter and payments have been issued.	<ul style="list-style-type: none"> <li>• Increased permanent SEND Team capacity, with increased management oversight of staff, and a locality model way of working.</li> <li>The process of reviewing and maintaining EHCPs has been improved within the last twelve months;</li> <li>•The appointment of an interim Annual Review Team, to provide an increase in capacity with processing annual reviews.</li> <li>•Annual review timeliness is supported by a new annual review tracking system which is reviewed weekly.</li> </ul>	<ul style="list-style-type: none"> <li>•Ensure that EHCP's are reviewed, amended and progressed in a thorough and timely manner, in line with statutory and local guidance.</li> <li>•Ensure that EHC needs assessments/ reassessments are carried out in a thorough and timely manner, in line with statutory and local guidance.</li> <li>•Ensure regular and joined up monitoring of SEND and EHE cases, with management oversight, and input from the Attendance and Out of School Team.</li> </ul>



					<ul style="list-style-type: none"> <li>• Settings have undertaken training on using the online portal, which has helped to speed up the annual review process.</li> </ul>	
Special Educational Needs Complaint 2	<p>Mrs X complained about the Council's delay in issuing an Education, Health and Care plan for her son and says he missed out on support as a result. She also complained the Council had failed to make reasonable adjustments for her dyslexia, which caused her frustration and added to the delays.</p> <p>The Council was at fault for a delay in issuing the plan and a failure to make reasonable adjustments in a timely way in view of Mrs X's disabilities. The Council should apologise and make a payment to Mrs X for the injustice caused.</p>	<p>Apologise to Mrs X for the delay in issuing a final EHC plan for S, and for not making reasonable adjustments in a timely way in light of her disability</p> <p>Pay £500 for the frustration caused, and the additional time and trouble she was put to. Pay £100, for the benefit of the child, to remedy the injustice to him caused by the delay in receiving the OT treatment sessions set out in the EHC plan;</p> <p>The Council has already paid £200 for the delay and this can be offset against the sum recommended so it only needs to pay a further £400.</p> <p>The Council will, within three months of the date of the final decision, review its processes to ensure:</p> <p>Staff understand the importance of considering whether adjustments to the way it communicates with service users are needed to meet its</p>	<p><a href="https://www.lgo.org.uk/decisions/education/special-educational-needs/19-014-516">https://www.lgo.org.uk/decisions/education/special-educational-needs/19-014-516</a></p>	<p>Apology letter and payment has been issued.</p> <p>Policies and procedures have been reviewed.</p>	<ul style="list-style-type: none"> <li>• Training and Development programme has been launched, which specifically addresses the understanding of obligations under the Equality Act 2010 and how reasonable adjustments agreed are recorded on internal systems so all relevant staff are aware of them.</li> <li>• Further training has also been introduced which includes: parental perspectives, EHCPs and the SEND Code of Practice, complaints and Tribunals, amongst other subjects.</li> <li>• There has been an introduction of a tribunal tracking system, to ensure</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that there is clear leadership for Tribunal cases.</li> <li>• Ensure that there is a regular and joined up approach to each Tribunal case.</li> <li>• Ensure that there is tracking and monitoring for Tribunal cases, including actions and timeliness.</li> <li>• Ensure that there is learning and development taken from each Tribunal case.</li> <li>• Ensure that reasonable adjustments are considered, acted upon, recorded and shared in a timely manner.</li> </ul>

		obligations under the Equality Act 2010; and ensure that reasonable adjustments agreed are properly recorded so all relevant staff are aware of them.			that all actions, themes and learning are tracked and monitored; to ensure resolution, timeliness, learning and development.	• Ensure regular, person-centred and transparent communication with families
Community Enforcement Complaint	<p>Mr X complained the Council took two of his cars it thought he had abandoned. Mr X says he managed to collect one car from the Council but it had already destroyed the second car.</p> <p>The Council has acknowledged it should not have destroyed the second car before Mr X had a chance to review the contents. The Council offered £100 for the injustice of the lost opportunity to collect the second car and items inside.</p> <p>The Ombudsman considers this offer is suitable to reflect the Council's fault and the injustice caused.</p>	<p>The Council will within one month:</p> <p>Issue an apology in writing; and Pay £100 to reflect the lost opportunity to inspect his possessions contained within one of his vehicles.</p>	<a href="https://www.lgo.org.uk/decisions/transport-and-highways/other/19-019-737">https://www.lgo.org.uk/decisions/transport-and-highways/other/19-019-737</a>	Apology letter and payment has been issued.	<p>Sharepoint site set up with the Council's contact centre, allowing them to view vehicles that have been removed by the authority.</p> <p>Improved communication with 3rd party company responsible for removal and storage/destruction of vehicles.</p>	Communication between Community Enforcement team, contact centre and 3rd party company required improvements.
Cheshire East Consultation Service (ChECS) Complaint	The complainant raised concerns that the Council failed to properly investigate concerns and failed communicate appropriately throughout the investigation.	No recommendations were made as the Ombudsman concluded that the apology already issued by the Council was an appropriate remedy.	Not yet published by the LGSCO	Reminder issued to staff.	Reminder issued to staff to ensure 'expectations' of any contact made with ChECS are properly managed.	All parties with Parental Responsibility should be spoken to following contact being made.

	<p>The Council is at fault for failing to inform the complainant about the incident and provide timely updates the concerns raised.</p> <p>The Council has apologised for this, which in our view is an appropriate remedy. We have seen no further evidence of fault by the Council.</p>					
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