

## **Audit & Governance Committee**

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**Date of Meeting:** 30 September 2021

**Report Title:** Maladministration Decision Notices from Local Government and Social Care Ombudsman – February – July 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> February and 31<sup>st</sup> July 2021. There were 6 decisions in which the Ombudsman found that there was maladministration causing injustice; the relevant departments are complying with the recommendations and have learned lessons from the investigation outcomes. It is not possible to report on any Decision Notices issued from August 2021 onwards, as the Ombudsman imposes a 6-week reporting embargo. Any decisions received after 31<sup>st</sup> July 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 there has been any resulting injustice to the complainant because of the maladministration.
- 5.3. In instances where maladministration with injustice is 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 investigation; this can have a significant damaging effect on the Council's reputation.
- 5.5. The number of referrals to the Ombudsman during 2020/21 is shown in the table below for reference and for comparison to the previous financial year.

	2020/21	2019/20
Number of Cases closed	79	112
Number of Decision Notices issued	64	73
Number of Cases Not Investigated	31	39
Number of Cases Not Upheld	12	12
Number of Cases Upheld	21	17
LGSCO Uphold Rate (Upheld vs Not Upheld)	68%	59%

- 5.6. During the period between 1<sup>st</sup> February and 31<sup>st</sup> July 2021 the Council received six 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. **Highways and Occupational Therapy Complaint** – The complainant raised concerns in March 2020 about the lack of progress with his application for a disabled parking bay submitted to the Council in 2018. This caused him to struggle to park near his home.

- 5.7.1. The Ombudsman concluded that there was fault in how the Council communicated with the complainant about his application for a disabled parking bay. This is because the Council failed to make it clear that the process of the application was subject to funding, failed to reply to emails and due to the significant delay in the Council carrying out the site assessment.
- 5.7.2. The Ombudsman recommended that an apology and a payment of £300 be issued. As part of the Ombudsman's investigation the Council confirmed that it was reviewing the disabled parking bay application process, improving communications between the Highways and Occupational Therapy team as well as improving the information available online to help streamline the process and manage the expectations of applicants which the Ombudsman welcomed.
- 5.7.3. The recommendations have been actioned and the Highways Team are working alongside Occupational Therapy, Blue Badges and Parking Services in finalising guidance notes and policy documents to provide an effective streamlined process for disabled parking bay applicants.
- 5.8. **Highways and Planning Complaint** – The complainant raised concerns in April 2019 about the Council's response to various matters connected to problems he reported with waterlogging and flooding of land forming part of his home. Specifically, that the Council has not resolved problems with water running off a neighbouring housing estate and by allowing surface water from the development to flow into a watercourse or ditch that crosses his land, and allowing further connections to the same, the Council has exacerbated problems caused by the watercourse being illegally connected to the local sewer network.
- 5.8.1. The Ombudsman found fault in the way in which the Council considered a review of the drainage serving the western boundary. When it considered evidence presented to it, that may affect the efficacy of the drain, the Council had not explained how or why these matters would not make a material difference to the drain's efficacy. Furthermore, after the Council made enquiries with the developer about part of the drain's construction and its gradient, it did not pursue the matter further despite not receiving a reply from the developer. Also, despite reports from the complainant and other nearby residents that the drain does not mimic the pre-development position, the council has not carried out checks to investigate what difference it has made before deciding if the drain is fit for purpose.
- 5.8.2. On issues with the watercourse the Ombudsman found no fault with the Council's decision not to utilise its discretionary enforcement powers as the investigator was of the view that the Council would not have legal power to act.

- 5.8.3. The Ombudsman recommended that the Council issue an apology and payment of £250 in recognition of the time and trouble the complainant has had to go through in seeking a resolution. It has also recommended that an independent drainage report is commissioned to investigate the flooding problems reported since the construction of the neighbouring housing development. The apology letter has been issued and payment has been offered to the complainant. The Council is in the process of commissioning the independent report and has updated the Ombudsman on the progress made so far.
- 5.9. **Safeguarding Complaint** – The complaint was considered in March 2020, when the complainant raised concerns that the care home at which her grandmother was a resident, took too long to call an ambulance prior to her passing, information about not attempting resuscitation (DNAR) was missing from her care file and the room had not been cleaned when a family member visited the care home the following day.
- 5.9.1. The Ombudsman concluded that although there was a delay in the care home calling an ambulance it was satisfied that staff had adhered to the policy in place and that appropriate steps were taken in the circumstances, therefore found no fault. However, it found fault in that the care home did not have a policy to regularly review its DNAR records and as it did not ensure that the room was clean when family visited the following day.
- 5.9.2. The Ombudsman recommended that the Council apologise and issue a payment of £300 to the complainant in recognition of the distress caused by the faults identified. When a council commissions another organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them. As such, even though the fault with the service was caused by the care home, the recommendations remain the responsibility of the Council to resolve. The Council has completed the recommendations and has also ensured that the care home now has a policy to regularly review its DNAR records and that changes were made to the approach in agreeing a mutual time for family members to attend after a resident has died.
- 5.10. **Special Educational Needs Complaint 1 and 2** – The complaint was originally considered in March 2020 when the complainant raised concerns about the level of service and delays in reviewing and issuing the Education, Health and Care Plans (EHCP) for both of his children.
- 5.10.1. The Ombudsman found the Council at fault in case 1 as it did not take prompt action to arrange an effective review of his son's EHCP before the requirement to conduct a review by 12 months even though Mr A had requested this in March 2019. Fault was also found with the way in which the review process

was conducted as the correct information was not presented to the panel to enable it to reach a decision on a specialist placement in late September and so the matter was returned to that panel with the relevant evidence in late October. This delay caused injustice in the form of avoidable uncertainty and frustration during this period. The Ombudsman also raised concerns about the Council's use of "interim reviews" that did not appear to have the status of a formal review. The requirements are simply that a formal review must be completed at least once every 12 months.

5.10.2. In case 2, the Ombudsman found fault as the Council failed to issue a finalised EHCP within the permissible twenty-week period. Instead there was a delay of nearly four months which caused the complainants daughter injustice as it delayed her receiving provision of the 25 hours a week support detailed in the final plan.

5.10.3. As a result, the Ombudsman recommended that the Council issue an apology to the complainant, a payment totalling £550 in recognition of the delays in conducting the review for his son and the delay in providing the correct paperwork to the panel, as well as a payment of £1600 to recognise the injustice caused to his daughter by the consequent four month delay in providing the additional SEN support detailed in the final plan.

5.10.4. The service has completed the recommendations and has updated their annual review process which no longer makes use of "interim reviews". The service has also increased the number staff within the service, updated the information which is available on the Council's website and conducted training to schools which will help to ensure reviews and plans are completed within the statutory timescales.

5.11 **Anti-Social Behaviour Team Complaint** – the complaint was originally considered in September 2020 when the complainants raised concerns with persistent noise, verbal abuse, and threats, threatening and intimidating behaviour and damage to their property from neighbours.

5.11.1 The Ombudsman found that the council was not at fault in how it dealt with two complaints of anti-social behaviour, but that it was at fault in how in dealt with the third complaint about a different neighbour.

5.11.2 The Ombudsman found that while the police decided that they could take very little action, the council did not consider whether it could have acted under its own powers. It also did not keep the complainants updated and did not close the case. The Ombudsman recognised that the council had already taken a number of measures to improve its services in light of this complaint. The service has completed the actions identified by the Ombudsman and issued an apology to the complainants in writing as well as a payment of £500.

## 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 £3500.

## **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: Alan Ward

Job Title: Compliance and Customer Relations Officer

Email: [alan.ward@cheshireeast.gov.uk](mailto:alan.ward@cheshireeast.gov.uk)

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

February – July 2021

	Summary and Ombudsman's Final Decision	Agreed Action	Link to LGSCO Report	Action Taken	Measures Implemented
Highways and Occupational Therapy Complaint	<p>Mr X complains the Council has not provided him with a disabled parking bay, despite agreeing he needs one more than 18 months ago. As a result, Mr X, who has increasingly poor mobility, struggles to park near his home.</p> <p>The Council is at fault for delay and failure to communicate with Mr X about his application for a disabled parking bay. The Council has agreed to apologise and pay Mr X £300.</p>	<p>The Council has agreed to issue Mr X with a decision by the end of February 2021.</p> <p>In addition, it has agreed to:</p> <ul style="list-style-type: none"> <li>• Apologise in writing.</li> <li>• Pay Mr X £300.</li> <li>• Update the Ombudsman on its progress on the improvements the Council is making within four months of the final decision.</li> </ul>	<p><a href="https://www.lgo.org.uk/decisions/transport-and-highways/parking-and-other-penalties/20-006-823">https://www.lgo.org.uk/decisions/transport-and-highways/parking-and-other-penalties/20-006-823</a></p>	<p>The disabled parking bay has been installed.</p> <p>Apology letter and payments have been issued.</p> <p>Update of improvement progress sent.</p>	<p>The service is in the process of reviewing and developing the policy and guidance documents for disabled parking bay applications.</p>
Highways and Planning Complaint	<p>Mr Q complains about the Council's response to various matters connected to problems he reports with waterlogging and flooding of land.</p> <p>The Ombudsman finds fault in how the Council has reviewed drainage arrangements serving a nearby housing development, agreed</p>	<p>The Council has agreed to issue Mr Q an apology and a payment of £250.</p> <p>The Council will commission an independent drainage report to investigate the flooding problems reported by Mr Q and others since the construction of the neighbouring housing development.</p>	<p><a href="https://www.lgo.org.uk/decisions/planning/enforcement/19-014-245">https://www.lgo.org.uk/decisions/planning/enforcement/19-014-245</a></p>	<p>The Apology letter has been issued and payments has been offered to the complainant.</p> <p>The Council is the process of commissioning the independent report and has updated the</p>	<p>The service has discussed the findings with officers and reminded them to ensure that enquiries are followed up on and to clearly document the reasoning behind a decision.</p>

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	<p>following an earlier complaint. We consider this fault has caused injustice to Mr Q (and others) in the form of ongoing uncertainty about whether more might be done to alleviate the problems he reports.</p> <p>The Council accepts this finding and has agreed action to remedy this injustice.</p>	<p>The Council will share that report with Mr Q and others affected and give its response within a further 20 working days of its receipt. Its response will consider whether in the event any recommendations are made and whether the Council proposes to take any action to carry those out or to encourage others to do so, including through use of its enforcement powers.</p>		<p>Ombudsman of the progress made so far.</p>	
<p>Safeguarding Complaint</p>	<p>Ms E complained that the care home where her late grandmother, Mrs F, was a resident took too long to call for an ambulance and her family before she died.</p> <p>She also complained there was a do not attempt resuscitation decision missing from Mrs F's file and her room was not cleaned the day after she died.</p> <p>The Ombudsman finds the Council at fault because there was no process in place to review the do not attempt resuscitation documentation and Mrs F's room was not cleaned after she died.</p>	<p>The Council will apologise to Ms E for the upset and distress caused by failing to have a proper process in place to review the DNAR documentation.</p> <p>In addition, it has agreed to Pay Ms E £300.</p>	<p><a href="https://www.lgo.org.uk/decisions/adult-care-services/residential-care/19-018-012">https://www.lgo.org.uk/decisions/adult-care-services/residential-care/19-018-012</a></p>	<p>Apology letter and payment has been issued.</p>	<p>The service has ensured that the care home now has a policies in place to regularly review its DNAR records and how family visit should be agreed following a resident's death.</p>

<p>Special Educational Needs Complaint 1</p>	<p>The Council was at fault in its handling of Mr A's request for an early review of X's Education, Health and Care Plan, in delaying taking action following the reviews in July and September 2019 and in further delaying before starting to consult alternative school provision for X after the SEN panel agreed to this in October 2019.</p> <p>The Council will apologise and make a payment to recognise the injustice these faults caused.</p>	<p>Within one month of the final decision on this complaint the Council will:</p> <ul style="list-style-type: none"> <li>• apologise to Mr A for the fault identified</li> <li>• pay Mr A £250 to recognise the avoidable frustration and uncertainty caused by the delay in arranging a review between April and July and in completing the agreed actions following the July review in August;</li> <li>• pay Mr A a further £150 for the further frustration caused by the delay in providing the correct paperwork to the panel to start seeking a new placement between September and October;</li> <li>• pay him a further £150 to the lost opportunity to have possibly secured a new school placement for X more quickly had the Council started its consultations with alternative schools more promptly after the decision was reached in October.</li> </ul>	<p><a href="https://www.lgo.org.uk/decisions/education/special-educational-needs/20-001-064">https://www.lgo.org.uk/decisions/education/special-educational-needs/20-001-064</a></p>	<p>Apology letter and payment has been issued.</p> <p>Policy and information has been reviewed and updated</p>	<p>The service has reviewed and updated their annual review process which no longer makes use of "interim reviews".</p> <p>They have also updated the information which is available on the Council's website and conducted training to schools which will help to ensure reviews and plans are completed within the statutory timescales.</p> <p>Increase of staff in the service.</p>
<p>Special Educational Needs Complaint 2</p>	<p>The Council delayed completing the assessment of X's special educational needs and issuing a final Education, Health and Care Plan. This caused her injustice as it delayed her receiving the additional</p>	<p>The Council will apologise for the delay in completing the assessment process. It will also pay Mr A £1600 to recognise the injustice caused by the consequent four month delay in providing the additional SEN support.</p>	<p><a href="https://www.lgo.org.uk/decisions/education/special-educational-needs/20-002-507">https://www.lgo.org.uk/decisions/education/special-educational-needs/20-002-507</a></p>	<p>Apology letter and payment has been issued.</p> <p>Policy and information has been reviewed and updated</p>	<p>The service has reviewed and updated their annual review process which no longer makes use of "interim reviews".</p> <p>They have also updated the information which is available on the Council's</p>

	<p>support she needed by four months.</p> <p>The Council will apologise and make a payment to recognise the injustice caused. It has already altered its processes to ensure that the faults identified do not happen in future.</p>				<p>website and conducted training to schools which will help to ensure reviews and plans are completed within the statutory timescales.</p> <p>Increase of staff in the service and an increase in the frequency of SEN panel meeting held.</p>
Anti-Social Behaviour Team	<p>The Ombudsman's final decision Summary: The Council is not at fault in how it dealt with two complaints of anti-social behaviour. The Council is at fault in how it dealt with Mr X and Ms Y's third complaint about a different neighbour. The Council has agreed to apologise and pay Mr X and Ms Y £500. The Council has already taken action to improve its service.</p>	<p>To remedy the injustice to Mr X and Ms Y from the faults I have identified, the Council has agreed to:</p> <ul style="list-style-type: none"> <li>• Apologise to Mr X and Ms Y in writing</li> <li>• Pay Mr X and Ms Y £500 in recognition of their avoidable uncertainty, distress and time and trouble.</li> </ul> <p>64. The Council should take this action within four weeks of my final decision.</p> <p>65. When we find fault causing injustice, the Ombudsman can recommend service improvements to make sure the same fault does not affect other people in future.</p>	<p><a href="https://www.lgo.org.uk/decisions/environment-and-regulation/antisocial-behaviour/20-009-360">https://www.lgo.org.uk/decisions/environment-and-regulation/antisocial-behaviour/20-009-360</a></p>	<p>Apology letter and payment has been issued.</p>	<p>In this case, the Council has already taken action to improve its services. This includes:</p> <ul style="list-style-type: none"> <li>• Improved its officers' access to IT systems to support good case management and record keeping.</li> <li>• Produced new policies which will <i>"outline the standards that members of the public...will expect from the Team"</i>.</li> <li>• Provided training to relevant staff about the new policies and what is expected in terms of prevention, investigation, and record keeping.</li> <li>• Provided training to relevant staff on unconscious bias. The Council says staff</li> </ul>

					<p>have requested further training about mental health and best practice, which it will provide.</p> <ul style="list-style-type: none"><li>• Set up a monthly meeting between the ASB and Environmental Protection teams to share information on joint cases and share good practice.</li></ul>
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