

Audit & Governance Committee

Date of Meeting: 17 January 2022

Report Title: Maladministration Decision Notices from Local Government and Social Care Ombudsman – August to November 2021

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 August and 30th November 2021. There were 5 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 December 2021 onwards, as the Ombudsman imposes a 6-week reporting embargo. Any decisions received after 30th November 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 1st August and 30th November 2021 the Council received five 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. **Licensing Complaint** – The complainant raised concerns in August 2020 about the failure to investigate noise nuisance and to take action to prevent the noise nuisance from events at a neighbouring property. The complainant claimed that they had suffered the noise nuisance for years and that the council had failed to carry out a full investigation. This has caused the complainants severe anxiety and stress.

- 5.7.1. The Ombudsman concluded in August 2021 that there was fault in how the Council dealt with the noise issue. They found that the council was at fault for (a) failing to issue a valid Noise Abatement Notice (b) failing to promptly progress action on breaches of the licence and (c) failing to respond to her reports made in January 2021.
- 5.7.2. The Ombudsman recommended that an apology and a payment of £450 be issued. The Ombudsman also recommended that the council review its practices to ensure that the Environmental Protection (EP) Team make objections to future Temporary Event Notices (TENs) from the venue where appropriate; proper checks are made about the relevant party to be named on the Noise Abatement Notice; officers act on accepted breaches of licence and progress them without delay; and ensure reports received are acknowledged and actioned.
- 5.7.3. The recommendations have been actioned. With regards to future TENs from the premises these are now allocated to a senior officer and the EP Team Leader will review all responses before they are sent. With regards to the checks made for statutory notices the EP team has got a peer review process in place for all notices which must be checked and signed off by a senior officer prior to service. With regards to breaches of the licence these will be dealt with in accordance with the Council's Enforcement Policy as and when the complaint of a breach is made to the team. With regards to future complaints or reports received the EP Team Leader has requested that when any reports are received regarding this premises that he is made aware so that he can manage any responses to ensure they are all done within the service response times.
- 5.8. **Special Educational Needs Complaint 1** – The complainant raised concerns in September 2020 about her son's Education, Health and Care Plan (EHCP). These related to lack of support for her son and the EHCP not being up to date.
- 5.8.1. The Ombudsman upheld the complaint and found the complainant's son lost out on provision he was entitled to. This caused frustration and uncertainty for the complainant and her son.
- 5.8.2. As a result, the Ombudsman recommended that the Council issue an apology to the complainant, a payment totalling £2200 to recognise his lost special educational needs provision; as well as a payment of £250 to recognise the uncertainty of not knowing what further provision could have been made available for him had the Council made reasonable endeavors during the period his college was closed due to the Covid-19 Pandemic. They also recommended that the council reimburse Mr Y for the laptop he had bought. In addition they recommended a payment of £250 to the complainant to recognise the time and trouble she was out to in pursuing the complaint.

5.8.3. The service has completed the recommendations and made the payments.

5.9 **Children's Social Care Complaint** – the complainant originally raised concerns in February 2019 relating to the actions of a social worker removing his child from his care and how he feels he has been treated. He claimed that this led to his relationship with his child being damaged and caused distress to himself due to the way he feels he has been profiled.

5.9.1 The Ombudsman found that there was some fault which caused injustice to the complainant, however, the council had already apologised and put in place the recommendations from the Children's Stage 2 investigation and Stage 3 review panel.

5.9.2 The Ombudsman did not consider that the Stage 2 investigation or Stage 3 review panel were flawed as maintained by the complainant. The failings in the case related to poor communication with the complainant and failing to include his views in Child Protection Conferences and Core Group Meetings and to supply him with minutes of those meetings.

5.9.3 The Ombudsman concluded that "I do not consider the failings identified by the IO [Investigating Officer – Stage 2] had any impact on the Council's decision to move Z to Ms Y's care following the safeguarding allegations received".

5.10 **Special Educational Needs Complaint 2** – the complainant submitted a complaint in July 2020 about the delay in securing Speech and Language Therapy for her son which was detailed in his EHCP. She also complained about the transport arrangements that were put in place for her son which she deemed unsuitable.

5.10.1 The Ombudsman found that the council had delayed in arranging the Speech and Language Therapy provision and this caused an injustice to the complainant's son Between September 2020 and May 2021.

5.10.2 The Ombudsman recommended a financial payment to acknowledge the injustice caused by the lack of Speech and Language Therapy. They recommended a payment of £1500 to remedy the missed therapy and a payment of £150 to remedy the distress and frustration experienced by the complainant because of the council's faults. They also recommended that work was carried out with the NHS to prevent delays occurring for the same reason in future. The actions have all been completed.

5.11 **Special Educational Needs Complaint 3** – the complainant submitted a complaint in June 2020 about the delay in issuing an EHCP in respect of her son following a SEND Tribunal.

5.11.1 The Ombudsman found that the council had delayed in assessing and issuing an EHCP Plan for the complainant's son; failed to ensure his school made the provision set out in his EHCP and delayed in complying with a consent order.

As a result, he did not receive sufficient support for his special educational needs which will have disadvantaged him.

5.11.2 The Ombudsman recommended a payment of £1000 to acknowledge he did not receive sufficient support for his special educational needs as a result of the delays and failure to ensure the school delivered the provision set out in his EHCP. It would be for the complainant to decide how best to use these monies for her son's educational benefit. They also recommended a payment of £300 to the complainant to acknowledge the distress and avoidable time and trouble caused to her. These payments have been made.

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 £6674

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: Complaints Officer
Email: alan.ward@cheshireeast.gov.uk

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

August - November 2021

| | Summary and Ombudsman's Final Decision | Agreed Action | Link to LGSCO Report | Action Taken | Measures Implemented |
|-----------|---|--|---|--|---|
| Licensing | The Ombudsman found fault on Mrs H's complaint against the Council about it failing to: make representations to a review committee; object to Temporary Events Notices; communicate with her properly; issue a valid Noise Abatement Notice; ensure there were no delays; consider evidence. The agreed action remedies the injustice caused. | The Council agreed to carry out the following action within 4 weeks of the final decision on this complaint: a) Send Mrs H a written apology for its failures to: issue a valid Noise Abatement Notice; promptly progress action on breaches of the licence; respond to her reports made in January 2021. b) Pay £450 to Mrs H for the distress the identified fault caused. c) Review its practices to ensure: EPT will make objections to future TENS from the venue where appropriate; proper checks are made about the relevant party to be named on the Noise Abatement Notice; officers act on accepted breaches of licence and progress them without delay; ensure reports received by EPT are acknowledged and actioned. d) Make sure the Council keeps Mrs H regularly updated of key progress on | https://www.lgo.org.uk/decisions/environment-and-regulation/noise/20-005-989 | Apology letter and the payment have been made. | The Service has reviewed its practices following this complaint and as recommended by the Ombudsman. These include - EPT will make objections to future TENS from the venue where appropriate; proper checks are made about the relevant party to be named on the Noise Abatement Notice; officers act on accepted breaches of licence and progress them without delay; ensure reports received by EPT are acknowledged and actioned. |

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| | | compliance by the venue with the licence conditions. Final | | | |
| Special Educational Needs Complaint 1 | We upheld Miss X's complaint about the Council's handling of her son's education, health and care plan. Her son, Mr Y, lost out on provision he was entitled to. Miss X and Mr Y also experienced frustration and uncertainty due to faults by the Council. The Council agreed to apologise to Mr Y and Miss X and make a payment to recognise their distress and time and trouble. | <p>Within one month of the final decision, to remedy the injustice caused, the Council will:</p> <ul style="list-style-type: none"> • apologise to Mr Y and Miss X for the faults identified in this investigation; • pay Mr Y £2,200 to recognise his lost special educational needs provision from September 2019 to the end of January 2021; • pay Mr Y a further £250 to recognise the uncertainty of not knowing what further provision could have been made available for him had the Council made reasonable endeavours during the period College A was closed in response to COVID-19; • pay Miss X £250 to recognise the time and trouble she was put to in pursuing this complaint; and • reimburse Mr Y for the cost of the laptop he bought (£574) <p>The Council will also issue a reminder to staff about the timescales for issuing an amended final plan following a decision from the SEND tribunal.</p> | https://www.lgo.org.uk/decisions/education/covid-19/20-008-527 | Apology letter and the payment have been made. | A reminder has been issued to all SEND staff about the timescales to be adhered to for issuing an amended plan following a decision from a SEND Tribunal. |

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| Children's Social Care | Mr X complains about the treatment he received from children's services and the Council's decision to remove his child from his care. There was some fault by the Council which caused injustice to Mr X, however the Council has apologised and put in place the recommendations from the children's social care statutory complaints procedure which is a suitable remedy. | No further action required as the council had already put in place the recommendations from the Stage 2 investigation. | https://www.lgo.org.uk/decisions/children-social-care-services/other/20-012-812 | None from the Ombudsman investigation. | Following the Stage 2 investigation the council distributed guidance to social care staff about: a. The need to ensure reviews of written agreements are recorded on file. b. Clarifying who is responsible for notifying a parent they are excluded from Child Protection Conferences and meetings. c. The need to ensure any decision to exclude a parent from conferences and meetings is clearly recorded, communicated to the parent and reviewed. In addition, the Council should make arrangements for excluded parents to have their views heard and these meetings |
| Special Educational Needs Complaint 2 | Mrs X complained the Council failed to secure the provision of the Speech and Language Therapy (SaLT) assessment specified in her son, Mr S's, Education, Health and Care Plan and delayed putting into place transport arrangements to college which then proved to be unsuitable. The Council was at fault when it delayed in ensuring the SaLT assessment took place. | Within one month of the date of the final decision, the Council agreed to: pay Mrs X, on behalf of Mr S, £1,500 to remedy the speech and language therapy he missed out on. This should be used as she feels best to support his social and educational needs. In coming to this figure, I have taken into consideration, and used, different tariffs to acknowledge the changes made by the Coronavirus Act 2020 to | https://www.lgo.org.uk/decisions/education/covid-19/20-009-764#point6 | Apology letter and the payment have been made. | Information supplied to LGO on 5.11.2021 to confirm the work carried out to avoid future delays in securing assessments for Speech and Language Therapy. As a result of the review, regular (weekly) meetings are scheduled to include representatives from the LA's SEND service, the Designated Clinical Officer (DCO) from the NHS and |

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| | <p>This caused Mrs X and Mr S an injustice. The Council should make a financial payment to recognise this. There was no fault in the transport arrangements the Council put into place or the timing of those arrangements.</p> | <p>the Council's duty to secure the provision in Mr N's EHC Plan. pay Mrs X £150 to remedy the distress and frustration she experienced by the Council's faults. Within three months of the date of the final decision the Council agreed to provide evidence of the work it has carried out with the school and relevant part of the NHS to prevent delays occurring for the same reasons in future</p> | | | <p>colleagues from Social Care to enable informed decisions to be made, focussing on the needs of the child/young person. Therefore, should a similar circumstance occur again, we are able to identify the need to commission alternative services sooner within this process.</p> |
| <p>Special Educational Needs Complaint 3</p> | <p>Mrs X complains about how the Council dealt with a Education, Health and Care Plan for her son. The Council is at fault as it delayed in assessing and issuing an Education and Health Care plan for Y, failed to ensure his school made the provision set out in his Education, Health and Care Plan and delayed in complying with a consent order. This disadvantaged Y as he did not receive support for his special educational needs. Mrs X was also caused significant distress and put to avoidable time and trouble. The Council has</p> | <p>That the Council will: a) Make a payment of £1000 for Y to acknowledge he did not receive sufficient support for his special educational needs as a result of the delays and failure to ensure the school delivered the provision set out in his EHC plan and this will have disadvantaged him. It will be for Mrs X to decide how best to use these monies for Y's educational benefit. b) Make a payment of £300 to Mrs X to acknowledge the distress and avoidable time and trouble caused to her. 39. The Council should take action set out at a) and b) above within one month of my final decision.</p> | <p>https://www.lgo.org.uk/decisions/education/special-educational-needs/20-002-969</p> | <p>Apology letter and the payment have been made.</p> | <p>In response to the Ombudsman's Draft Decision they were advised of a number of improvements that have been made to the SEND Service since this complaint was submitted.</p> <ul style="list-style-type: none"> • a permanent appointment has been made to the role of SEND Tribunals Officer with effect from mid-July 2021 and this is having a positive impact on parent/carers and the SEND Service. • the outcome of the OFSTED re-inspection that was conducted in May 2021 evidences the improvements that have been made. The inspection letter refers to services having been transformed. |

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| | <p>agreed to remedy the injustice to Mrs X and Y by making payments of £300 and £1000 respectively to them.</p> | | | | <p>This reflects the significant improvement in timeliness and quality of new plans and improvements in the quality of existing plans. We know that by early 2020, 'almost every needs assessment was completed within 20 weeks, compared to less than one in six in 2018' which was also highlighted in the inspection letter.</p> <ul style="list-style-type: none"> • In our parent carer survey from January 2021, 70% were satisfied with how their education health and care plan described their child's needs and how they should be met, compared with a 56% satisfaction rate in 2020. • Importantly, Ofsted and CQC 's report states that 'the local area is not resting on its laurels' and is very clear that 'addressing this significant weakness has been, and still is, a journey'. |
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