

## **BRIEFING REPORT**

### **Audit and Governance Committee**

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<b>Date of Meeting:</b>	10 March 2022
<b>Report Title:</b>	Maladministration Decision Notices from Local Government and Social Care Ombudsman – December 2021 to January 2022
<b>Report of:</b>	David Brown, Director of Governance & Compliance

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#### **1. Purpose of Report**

- 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> December 2021 and 31<sup>st</sup> January 2022. There were two 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 the end of January 2022 onwards, as the Ombudsman imposes a 6-week reporting embargo. Any decisions received after 27<sup>th</sup> January 2022 will be reported at a subsequent Audit & Governance meeting.

#### **2. Executive Summary**

- 2.1. During the period between 1<sup>st</sup> December 2021 to 31<sup>st</sup> January 2022 the Council received two 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.

#### **3. Background**

- 3.1. 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.

**3.2.** 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.

**3.3** 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.

**3.4** 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.

#### **4. Briefing Information**

##### **4.1. Highways complaint**

The complainant originally complained in March 2020 which concerned the discharge of highways water onto his property and that this may affect his septic tank. A Stage 1 complaint response was issued in April 2020 which detailed among other things the affect that recent storms had had on the highways system across the borough and that his particular flooding was not a priority at that time.

**4.1.2** The complainant was not happy with this response and his complaint was escalated to Stage 2. He had suffered further flooding due to a blocked Drain. It was stated that the council intended to undertake more regular gully maintenance going forward in rural areas.

**4.1.3** The complainant took his complaint to the Ombudsman who found fault with the council's communication with the complainant and recommended some service improvements.

##### **4.2. Special Educational Needs Complaint**

The complainant originally submitted her complaint in October 2020 which concerned the lack of an Annual Review and lack of provision specified in her daughter's Education, Health and Care Plan (EHCP) which included

Speech and Language Therapy (SALT), Access to counselling sessions and development of independent life skills. A Stage 1 complaint response was issued in December 2020 which upheld the complaint and stated “the Local Authority has failed to follow the statutory processes and meet the statutory timescales for X’s annual review, in line with expectations set out in the SEND Code of Practice” and “there are elements of X’s provision, around SALT, support services and independent life skills, that she is not currently receiving.

- 4.2.2** The complainant remained unhappy following the Stage 1 response including because an action had not been completed and requested a review at Stage 2 of the complaints procedure. This was issued in January 2021. It noted that the provision of SALT was on ongoing process with a review scheduled in January 2021.
- 4.2.3** The complainant subsequently took her complaint to the Ombudsman who upheld her complaints about lack of provision and recommended an apology, a compensation payment for the missed provision and service improvements.

## **5. Implications**

### **5.1. Legal**

- 5.1.1.** There are no legal implications flowing directly from the content of this report.

### **5.2. Finance**

- 5.2.1.** 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 **£2500** (SEN complaint).

### **5.3. Human Resources**

- 5.3.1** There are no HR implications flowing directly from the content of this report.

<b>Access to Information</b>	
Contact Officer:	Alan Ward, Complaints Officer Alan.ward@cheshireeast.gov.uk 01270 686200
Appendices:	Appendix 1 – see below
Background Papers:	

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

December 2021 to January 2022

	Summary and Ombudsman's Final Decision	Agreed Action	Action Taken	Measures Implemented
Highways	<p>Decision Date: 9 Dec 2021</p> <p>Mr D complained the Council failed to take preventive action when he reported a blocked drain. We find the Council was at fault for its communication with Mr D. The Council apologised for this when it responded to Mr D's complaint. It has also agreed to carry out service improvements to prevent a reoccurrence of the fault.</p> <p>Mr D complained the Council failed to take preventive action when he reported a blocked drain. He says the Council's failure to act in a timely manner led to the flooding of his grounds and septic tank.</p> <p>Link to LGSCO Report  <a href="#">21_001_585 - Local Government and Social Care Ombudsman</a></p>	<p>By 8 February 2022, the Council agreed to provide evidence that it has:</p> <p>Created a dedicated adverse weather webpage that acts as a central hub where customers can get advice, information and support before, during and after periods of adverse weather.</p> <p>Produce written guidance for staff working on the adverse weather desk to support them with signposting customers to appropriate resources. This will enable them to provide consistent and accurate response to enquiries.</p>		<p>We have created a Teams group where spreadsheets for each weather event are stored. The contents of the spreadsheets have been standardised, which means all data for each incident is now collected and maintained in the same way. The spreadsheet is shared with key Highways staff to allow them to update the contents, and viewing access has been given to senior managers and our colleagues in the Customer Centre and the out of hours team so that they can monitor the events 24 hours a day.</p> <p>Instructions have been given to the Customer Centre and out of hours about how to use the information provided in the spreadsheet, which explains when they should call through different enquiries and how to update customers at first point about any known issues. Guidance has also been provided for the commonest enquiries received during</p>

				<p>adverse weather, including where to signpost customers to third parties.</p> <p>We have explored developing a dedicated web page for Highways incidents with our Web team, who have suggested that we may wish to consider liaising with other services to consider creating a hub for all council services impacted by poor weather and other major events.</p> <p>In the meantime, we have ensured our winter maintenance and flooding pages are up to date with the latest general information - as these are the most useful pages during periods of poor weather - and we will continue to issue specific updates about storms via our social media channels until a web page format can be agreed.</p>
Special Educational Needs Complaint	<p>Decision Date: 17 Dec 2021</p> <p>Mrs X complains the Council failed to ensure her daughter, B, received certain special educational provision set out in her Education, Health and Care Plan. She complains the Council failed to complete the annual review of the Plan within the statutory</p>	<p>The Council has offered £300 to Mrs X and B for the stress and anxiety caused by the delay in issuing the final amended EHC Plan. I consider this a suitable financial remedy for the injustice caused by this.</p> <p>However, I do not find this fully remedies the injustice Mrs X and B have experienced because of the fault identified above. Within four weeks of my decision, the Council has, therefore, agreed to:</p> <p>a) apologise in writing to Mrs X and B for the fault causing injustice;</p>	<p>Payment of £2500 made and an apology letter from the acting Director of Education and 14-19 Skills dated 17 January 2022 issued.</p>	<p>Service Improvements are due to be implemented by 17 March 2022.</p>

	<p>timescales. The Ombudsman has decided to uphold Mrs X's complaint. Because of this fault, Mrs X was caused distress and uncertainty, and B missed out on certain provision. To remedy the injustice, the Council has agreed to apologise, make Mrs X and B a payment, and take action to prevent similar failings in the future.</p> <p>Link to LGSCO Report:  <a href="#">20 014 516 - Local Government and Social Care Ombudsman</a></p>	<p>b) make a payment to Mrs X, on behalf of B, of £150 for the uncertainty caused between 23 March to 31 July 2020 (see paragraph 59 above). This payment is in line with the Ombudsman's published guidance on remedies; and,</p> <p>c) make a payment to Mrs Y, on behalf of B, of £2,050 for the loss of SALT, independent life skills provision and support from a specialist ASD college one day per week (made up of £800 for autumn term 2020, £650 for spring term 2021 given SALT provision began in February 2021, and £600 for summer term 2021). This is in line with the Ombudsman's guidance on remedies, which states: where fault has resulted in a loss of educational provision, we will usually recommend a remedy payment of between £600 to £1,800 per term to acknowledge the impact of that loss.</p> <p>The Council has confirmed that it has already made the following service improvements because of Mrs X's complaint: reminded relevant staff about adhering to statutory guidance on the EHC Plan process, and shared learning about the case with relevant staff members involved in the complaint and at managers meetings.</p> <p>However, within three months of my decision, the Council has also agreed to make the following service improvements:</p> <p>a) remind relevant staff members about the specific statutory timeframes for completing the annual review process. This should include information on the timeframes for completing the process when the Council</p>		
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		<p>intends to amend an EHC Plan (see paragraphs 16 to 19 above);</p> <p>b) develop a procedure to ensure that, where it appears a child or young person is not receiving the provision set out in their EHC Plan, robust action is taken without delay;</p> <p>c) review its complaints handling process to ensure clear information is given to staff on assessing injustice when fault is found and awarding appropriate remedies for this. The Council should consider including a reference to the Ombudsman's published guidance on remedies in the guidance; and,</p> <p>d) share this decision with relevant staff.</p>		
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