

## **Audit and Governance Committee**

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<b>Date of Meeting:</b>	26 May 2022
<b>Report Title:</b>	Maladministration Decision Notices from Local Government and Social Care Ombudsman – January to March 2022
<b>Report of:</b>	David Brown, Director of Governance & Compliance
<b>Report Reference No:</b>	AG/21/21-22
<b>Ward(s) Affected:</b>	ALL

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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 20<sup>th</sup> January 2022 and 29<sup>th</sup> March 2022 and the actions of the responsible services to address the cause of the complaints and lessons learned. It is not possible to report on any Decision Notices issued from the end of March 2022 onwards, as the Ombudsman imposes a 6-week reporting embargo. Any decisions received after 29<sup>th</sup> March 2022 will be reported at a subsequent Audit & Governance Committee meeting.

### **2. Executive Summary**

- 2.1.** During the period between 20<sup>th</sup> January 2022 to 29<sup>th</sup> March 2022 the Council received three 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. Recommendations**

3.1. See Appendix 1.

### **4. Reasons for Recommendations**

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

The complainant originally complained in September 2020 at which point, due to previous correspondence received, their issue was escalated to a Stage 2 complaint. The complaint concerned the ownership of, and lack of maintenance of a culvert and a ditch which resulted in the complainant's land being flooded. A Stage 2 response letter was issued to the complainant on 6 October 2020 which confirmed among other things that the culvert under the highway was the responsibility of the Council but that the ditch was the responsibility of private landowners. It also noted that there was no record of serious flooding at this location.

4.1.2 The complainant was dissatisfied with the Stage 2 response and took their complaint to the Ombudsman who found fault with the Council's communication with the complainant and recommended some service improvements.

4.1.3 The Ombudsman found that the Council had failed to properly investigate the blocked culvert. It had also given the complainant inconsistent information about whether he was subject to Special Contact Measures or not. The Council accepts that the responsibility for the culvert that runs under the highway in front of the complainant's home lies with Cheshire East Highways. The culvert that continues from the highway under the public space is the responsibility of Cheshire East Council and is maintained by the Facilities Team. This culvert was subject to a blockage which was cleared in October 2020. An apology was issued to the complainant.

4.1.4 In relation to the issue of Special Contact Measures the Council has confirmed that during the time being complained about, the complainant was not subject to formal Special Contact Measures, although he was designated a single point of contact for his enquiries, but this was a decision taken by the service. The complainant has also been asked to provide details of any specific 'reasonable adjustments' that he needs when communicating with the Council.

#### **4.2. Special Educational Needs and Disabilities (SEND) Complaint**

The complainant originally submitted their complaint in January 2020 which concerned the delays in completing an Education, Health & Care Plan (EHCP) in respect of their son, and poor communication from the SEND Team. A

Stage 1 complaint response was issued on 10 February 2020 which upheld the complaints.

- 4.2.2** In July 2020 the complainant requested that their complaint be escalated to Stage 2 due to lack of progress and communication from the SEND Team. Although, several months had passed since the initial complaint response, given the lack of progress it was agreed that this complaint should move to Stage 2. A Stage 2 response was issued on 29 July 2020, which again upheld the complaints about a lack of communication from the SEND Team.
- 4.2.3** The complainant subsequently took their complaint to the Ombudsman who upheld the complaints about delays and lack of communication and recommended an apology, a compensation payment for the missed provision and service improvements.
- 4.2.4** An apology was issued to the complainant. The service improvements recommended were reminders to be issued to staff in procedural matters relating to Elective Home Education and Education Other Than at School. The reminder was issued in March 2022.

#### **4.3** Highways Complaint

- 4.3.1** The complainant originally submitted their complaint in October 2020. This concerned flooding outside their property. A Stage 1 response was issued on 19 October 2020.
- 4.3.2** In May 2021 the complainant escalated their complaint to Stage 2. The Stage 2 response was issued on 26 May 2021. This identified that the location might benefit from further drainage investigation but that it was not a priority for work within the borough.
- 4.3.3** The complainant subsequently took their complaint to the Ombudsman who found that the Council did not take proper action in responding to her complaint about the flooding problem on the carriageway outside her property.
- 4.3.4** The Council agreed to the recommendation from the Ombudsman to complete the investigation work into the flooding outside the complainant's property within 2 months. This was completed in April 2022 and confirmed that any blockage in the drains outside the property had now gone. An apology was issued to the complainant.

#### **4.4** **Comments from SEND and Highways Services**

##### **4.4.1** **SEND**

The areas raised as concerns relate to the periods mainly between 2018-2022, since this time the service has made significant changes to systems and processes. We have clear and robust systems in place at all stages starting from when a needs assessment request is submitted.

There has been an increase in the SEND Team capacity across all levels of staffing to ensure that we are able to continue to sustain and further improve the service. However, increased demand in requests for needs assessment continues to put pressure on the service. This is a national issue and recognised in the proposed changes in the SEND system in the recently published green paper

Following our Ofsted re-inspection in 2021 the SEND service has continued to review and improve systems and processes to ensure there is increased management oversight and regular casework meetings to make sure timely decisions and support is in place.

We have a training programme in place for all staff to access which includes both internal and external training/workshops this has ensured that all staff have access to the most relevant and up to date knowledge, skills and training required for their role.

The SEND service has developed strong working relationships with wider children's services teams to ensure they are working closely. Regular meetings with the attendance and out of school team take place in relation to those children who have an EHCP who are electively home educated (EHE)/educated other than at school (EOTAS)/or have medical needs so cannot attend school, to ensure multi agency plans of support are in place and that tuition is provided if children are not attending education to minimise the likelihood of injustice. Additional capacity is currently being put in place to support children on a plan that are EHE or EOTAS.

#### **4.4.2 Highways**

The Service is currently reviewing the way that it engages with its customers. As well as an in-depth review of its processes and undertaking regular customer journey audits to ensure quality and timeliness of responses, it is also investing money into additional customer focussed resource to compliment the improvements to systems and processes. Continual improvements are being driven at a service level through the corporate Customer Experience project and with the benefit of additional oversight and monitoring via performance indicators of that part of the customer journey delivered by the Council's Highways Services provider.

This is in conjunction with forging closer working relationships with the Council's Customer Services team, seeking guidance on a case-by-case basis to avoid similar issues arising in the future wherever practicable.

The service has developed and implemented a robust process for the administration of all remaining open Ombudsman cases, including a tracker, to ensure that any investigations are undertaken, any agreed actions are fulfilled, and responses returned to the LGSCO all within an agreed timeframe.

In addition, and as part of new governance processes developed, the service now updates its Risks and Issues Register to include details of all Ombudsman investigations where maladministration causing injustice to complainants is identified, providing more visibility within the Highway Service and as a route for escalation where appropriate.

## **5. Other Options Considered**

5.1. Not Applicable

5.2. Not Applicable

5.3. Not Applicable

## **6. Background**

6.1. 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.

6.2. 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.

6.3. 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.

6.4. 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.

## **7. Consultation and Engagement**

Not Applicable

## **8. Implications**

**8.1. Legal**

8.1.1. There are no legal implications flowing directly from the content of this report.

**8.2. Finance**

8.2.1. 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 **£1200**.

**8.3. Policy**

8.3.1. Not Applicable

**8.4. Equality**

8.4.1. Not Applicable

8.4.2. Not Applicable

**8.5. Human Resources**

8.5.1. Not Applicable

**8.6. Risk Management**

8.6.1. Not Applicable

**8.7. Rural Communities**

8.7.1. Not Applicable

**8.8. Children and Young People/Cared for Children**

8.8.1. Not Applicable

**8.9. Public Health**

8.9.1. Not Applicable

**8.10. Climate Change**

8.10.1. Not Applicable

<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:	N/A

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

January 2022 to March 2022

	Summary and Ombudsman's Final Decision	Agreed Action	Action Taken	Comments from Service
Highways Complaint 1	<p>Decision Date: 20 Jan 2022</p> <p>Mr X complained the Council failed to accept responsibility for maintaining a blocked culvert on land near his home. Mr X also complained the Council failed to acknowledge his disability or his need for reasonable adjustments under the Equality Act. The Ombudsman found there was fault causing injustice when the Council failed to properly investigate the blocked culvert, when it gave inconsistent information about special contact measures, and when it failed to properly engage with Mr X about his disability.</p> <p><a href="#">20 009 100 - Local Government and Social Care Ombudsman</a></p>	<p>Within four weeks of the final decision, the Council agreed to:</p> <ul style="list-style-type: none"> <li>• Apologise to Mr X for the failings I have identified.</li> <li>• Set out plans for how it intends to address the issues experienced around its SCM policy.</li> <li>• Reach out to Mr X to understand his disability and what reasonable adjustments he would like the Council to make in future.</li> <li>• Instruct its insurers to consider Mr X's claim for damage floodwater caused to his home. If necessary, the Council's insurers should appoint a suitably qualified expert to assess the damage and determine its cause.</li> </ul> <p>Decision Statement 11</p> <ul style="list-style-type: none"> <li>• Pay Mr X the sum of £600 to recognise the distress its faults caused. This is made up of £300 for not properly investigating the flooding problems over several years, £150 for failing to properly follow its SCM policy, and £150 for failing to properly engage with him about his disability.</li> </ul>	<p>An apology letter was issued to the complainant on 17 February 2022. This apologised for the issue over who was responsible for the culvert; our failure to engage with him with regards to his disability and the confusing and inconsistent information he received about whether or not he was subject to any special contact measures.</p> <p>Our claims handlers have also been in contact with the complainant with regards to progressing his claim and a payment of £600 has been made to him.</p> <p>The complainant has provided a list of what reasonable adjustments he expects the council to make when communicating with him but these are actually</p>	<p>All recommended actions have been completed by the service.</p> <p>Claims handlers continue to seek evidence from the resident relating to floodwater damage.</p>

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			standards that we would apply to how we communicate with any customer, rather than specific reasonable adjustments.	
Special Educational Needs Complaint	<p>Decision Date: 8 Feb 2022</p> <p>Summary: Ms X complained about fault and delay in the way the Council provided support for her child's special educational needs and care needs. We cannot say that on the balance of probabilities her child missed out on education, but the fault did cause uncertainty and distress as to whether the outcome might have been different, which is in itself an injustice. Recommendations for an apology, financial payment and service improvements are made.</p> <p><a href="#">20 013 619 - Local Government and Social Care Ombudsman</a></p>	<p><b>Within four weeks of the final decision</b></p> <p>78. The Council will apologise to Ms X and Y for the fault I have identified.</p> <p>79. The Council will pay Ms X £500 for the distress and uncertainty caused to her and Y as a result of the faults identified.</p> <p><b>Within two months of the final decision</b></p> <p>80. The Council will remind officers:</p> <ul style="list-style-type: none"> <li>• To discuss, record and action requests for professional advice made by parents during EHC needs assessments. If the Council decides a parent request for advice is not a 'reasonable request' under Special Educational Needs and Disability Regulations 2014, Regulation 6, it should provide a decision in writing giving reasons.</li> <li>• That parents can withdraw from home education at any time and officers should discuss this fully with parents and consider whether the case should be referred to colleagues, for example school admissions or officers responsible for children missing from education or who have medical needs.</li> <li>• That advice about the criteria for EHC assessments or EOTAS should not depart from the legal tests set out in legislation and statutory guidance.</li> </ul>	<p>An apology letter was issued to the complainant on 7 March 2022. This apologised for the delays in the EHC needs assessment process and for the shortcomings in the advice provided by SEND staff.</p> <p>The payment of £500 has been issued to the complainant.</p> <p>A reminder was issued to all staff on 7 March 2022.</p>	<p>The areas raised as concerns relate to the periods mainly between 2018-2022, since this time the service has made significant changes to systems and processes. We have clear and robust systems in place at all stages starting from when a needs assessment request is submitted.</p> <p>There has been a further increase in the SEND Team capacity across all levels of staffing to ensure that we are able to continue to sustain and further improve the service.</p> <p>Following our re-inspection the SEND service has continued to review and improve systems and processes to ensure there is increased management oversight and regular casework meetings to make sure timely decisions and support is in place.</p> <p>We have a training programme in place for all staff to access which includes both internal and</p>

				<p>external training/workshops this has ensured that all staff have access to the most relevant and up to date knowledge, skills and training required for their role.</p> <p>We have developed our links across wider teams to ensure we are working closely with managers and staff across education, we have regular meetings with the attendance and out of school team in relation to those children who have an EHCP who are EHE/EOTAS/medical needs to ensure multi agency plans of support are in place.</p>
Highways Complaint 2	<p>Decision Date: 14 Feb 2022</p> <p>Summary: Miss X complained the Council did not take proper action in response to her complaint about a flooding problem on the carriageway outside her property. The Council was at fault because it delayed completing an investigation. This caused Miss X uncertainty, frustration and time and trouble. The Council has agreed it will apologise to Miss X and pay her £100 for the frustration, time and</p>	<p>Within one month of the final decision, the Council has agreed to apologise to Miss X and pay her £100 for the frustration, time and trouble the matter has caused her. Within two months of the final decision, the Council has agreed it will complete its investigation and inform Miss X of the outcome and the action it proposes to take. The Council will also inform us of the outcome and the action it proposes to take.</p>	<p>The payment has been made to the complainant and an update has been provided to her following investigation and jetting work.</p>	<p>All recommended actions have been completed by the service.</p> <p>Since the closure of the case by the Ombudsman, we have made further contact with the customer following on from a recent site visit and provided a comprehensive update.</p>

	<p>trouble the matter has caused her. The Council will also complete its investigation and inform Miss X of the outcome and the action it proposes to take.</p> <p><a href="#">21 006 817 - Local Government and Social Care Ombudsman</a></p>			
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