

**The Local Government Ombudsman's
Annual Review**

Hertfordshire County Council

**for the year ended
31 March 2009**

The Local Government Ombudsman (LGO) provides a free, independent and impartial service. We consider complaints about the administrative actions of councils and some other authorities. We cannot question what a council has done simply because someone does not agree with it. If we find something has gone wrong, such as poor service, service failure, delay or bad advice, and that a person has suffered as a result, the Ombudsmen aim to get it put right by recommending a suitable remedy. The LGO also uses the findings from investigation work to help authorities provide better public services through initiatives such as special reports, training and annual reviews.

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Section 1: Complaints about Hertfordshire County Council 2008/09

Introduction

This annual review provides a summary of the complaints we have dealt with about Hertfordshire County Council. We have included comments on the authority's performance and complaint-handling arrangements, where possible, so they can assist with your service improvement.

I hope that the review will be a useful addition to other information your authority holds on how people experience or perceive your services.

Two appendices form an integral part of this review: statistical data for 2008/09 and a note to help the interpretation of the statistics.

Changes to our way of working and statistics

A change in the way we operate means that the statistics about complaints received in 2008/09 are not directly comparable with those from 2007/08. Since 1 April 2008 the new LGO Advice Team has been the single point of contact for all enquiries and new complaints. The number of calls to our service has increased significantly since then. It handles more than 3,000 calls a month, together with written and emailed complaints. Our advisers now provide comprehensive information and advice to callers at the outset with a full explanation of the process and possible outcomes. It enables callers to make a more informed decision about whether putting their complaint to us is an appropriate course of action. Some decide to pursue their complaint direct with the council first.

It means that direct comparisons with some of the previous year's statistics are difficult and could be misleading. So this annual review focuses mainly on the 2008/09 statistics without drawing those comparisons.

Enquiries and complaints received

The bulk of the 104 enquiries received by our Advice Team concerned education (39), children and family services (23) or transport and highways (19). These contacts led to 64 complaints which were forwarded to the investigative team and 24 complaints were passed back to the Council as premature, because you had not had a reasonable opportunity to consider the matter first. In the other cases we gave advice.

Almost half (30) of the complaints we investigated concerned education. Most of these (18) were about school admissions. (Because the governors are the admission authority for foundation and voluntary-aided schools, complaints about these are not included in these figures, even where your Council arranges appeals on behalf of the school.) The other education complaints were equally split between special educational needs and school transport. Children and family services were the subject of 13 complaints and there were 10 about transport and highways (notably highway management).

Complaint outcomes

Decisions were made on 69 substantive complaints last year (some of which were received in the preceding year).

We did not issue any formal reports at the end of investigations against your Council, but we did conclude 16 complaints as 'local settlements'. A local settlement is a complaint where, during the course of our investigation, a council takes or agrees to take some action that we consider to be a satisfactory response to the complaint. In 2008/09, 27.4% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements. In your case local settlements comprised 29% of such complaints, so this was very close to the norm. A total of £10,200 was paid in compensation during the year. There have also been changes to procedures agreed as a result of the investigation of complaints and I am grateful that proposals from my staff in this regard have been accepted positively.

There were 14 complaints made to me which were outside my jurisdiction to investigate. Several of these related to claims of negligence in highway matters causing personal injustice or damage to vehicles. These are usually matters that should be decided by the courts. Another complained of money wasted on road schemes across the County, but I do not have powers to consider complaints about spending decisions affecting all or most residents in the area. A further complaint was about events in 2004: I may not normally look at matters if a complaint is not made to me about them within 12 months. In this case, the complainant had indicated in 2004 that a complaint would be made, but this was not pursued, I therefore considered that the matter was not within my jurisdiction.

Sometimes, though the Council may be at fault, I use my discretion not to pursue an investigation because there is no significant injustice to the complainant: this year there were six such cases. There were a further 26 complaints where I found no or insufficient evidence of fault by the Council to justify further investigation. It is of note that 13 of these were about school admissions; many of these complaints were about the outcome of a school admission appeal, rather than how the appeal was conducted. It is not my role to comment on the merits of appeal panel decisions properly made, only on the process by which decisions are reached.

Decisions by service area

Education

I made decisions on 34 education complaints.

School Admissions

Twenty two decisions concerned school admissions complaints. There is a statutory right of appeal against the admission authority's decision, so we normally consider school admission complaints after an appeal has been heard by the independent appeal panel. Last year three resulted in local settlements.

Two local settlements related to applications for a school place for special medical or social reasons. In both cases the parents felt that their situation had not been properly considered by the panel of officers which considered the applications. In response to the complaints, these two cases were reviewed and places were offered. Some improvements were made to information for parents but the statutory Admissions Code now places more specific and stringent requirements on parents regarding the objective evidence needed when putting forward special medical or social reasons why their child should be admitted to a school.

In another case, the parents at the appeal were asked about their child's place on a waiting list for admission to a school. One of the parents was also asked about their attitude to class size, as the parent was a teacher. Neither of these questions should have been asked because the answer was not relevant to the appeal. The statutory Admissions Appeal Code prohibits appeal panels from taking account of where a child has been placed on a waiting list. There was thus doubt that the hearing had been fair. The child was offered a place at the school. Improvements in the training of appeal panel members were proposed, and my staff subsequently took part in their training.

Sometimes other cases result in favourable outcomes or service improvements. In one such case I used my discretion not to pursue matters further because the child was offered a place by the school's governors. Here, a parent had completed the school's supplementary application but not the Council's application form. Schools were instructed to check both had been completed, but the instructions were unclear. The parent applied immediately they realised the omission, but the application was treated as late and the child was not given the place which would otherwise have been provided. I suggested measures to clarify procedures.

Special Educational Needs

Three of the five decisions on complaints concerning children's special educational needs were outside my jurisdiction because of the right to take matters to an independent tribunal (SENDIST) which it was reasonable to expect the complainants to use. But in one case this remedy was not available: the parents had asked the Council to change the school named in their child's statement of special educational needs to a private school. There was some delay by the Council in considering the parent's request, but they remained unclear what they wanted to do when an out of county placement was offered. I considered matters could best be resolved by the Council and the parents exploring matters together. This was agreed.

The second complaint was about a short delay in providing a child with the home tuition that had been agreed. I asked the Council to make a modest (£150) payment of compensation for this.

School Transport

Five complaints about school transport were decided in the year, only one of which was upheld. This was about a child whose parents were wrongly informed that free home to school transport would be available, but the Council's policy was applied correctly and their child did not qualify. The Council's decision was reviewed on discretionary grounds, but remained unchanged. During the course of my investigation the Council reviewed the situation again, and decided that the previous decision to refuse transport had been unreasonable. Transport was provided and the family sought no further redress.

In response to this complaint and others, we have suggested that there are improvements which should be made in the information given to parents and in the conduct of reviews. I am grateful for the positive way in which this has been accepted by your Council.

Children and Family Services

Decisions were made on 13 children and family services complaints, including six where a local settlement was reached.

Four of the settled complaints related to child protection issues, of which two concerned the child protection register. In one, I considered the appropriate way to address the complainant's concerns about the registering and deregistering of their children was to put the matter through the statutory complaints procedure, which had been bypassed. In the other, the complainants were concerned about the Council's actions in putting their children's names on the register; removing the children from their home; inadequate contact arrangements and other issues. I found the Council had grounds to take action, but that it failed to put in place proper arrangements for contact and delayed in addressing complaints (and temporarily lost a file). I concluded the Council should pay compensation for the distress caused by the fault and for the time and trouble spent pursuing matters.

One of the other child protection complaints concerned the Council's failure, for 8 months, to arrange contact so that the complainant (whose contact with their child was required to be supervised) could see their child. The main issue in the remaining case was the complainants' belief that they were being blamed for their daughter's failure to abide by the terms of a child protection plan concerning their granddaughter, and that in some way they were being held responsible. I did not find fault here, or that the complainants' concerns were justified, but I did consider the complainants should be paid a small sum in compensation for distress caused by its delays in dealing with their complaints and for delays in providing some information.

A severely disabled child was at the heart of one of the other complaints. There was a failure to make provision for the child to leave hospital after a major operation, which meant that the child remained in hospital much longer than necessary, missing a landmark birthday. This caused considerable stress and anguish to the family, which could have been avoided. Your Council agreed to make a cash payment to the family and also gave a personal apology to the child. Importantly for others, changes in procedures have been implemented so that parents generally are given more involvement in decisions about care packages.

The final local settlement concerned delay of about a year in assessing the needs of a disabled child, and the parents' needs as the child's carers. The Council neither met the needs of the child, nor did it provide respite care to assist the parents. There was also a subsequent failure to deal properly with the parents' complaint about matters. In response to the complaint to me, your Council agreed to carry out the assessment and provide respite care. A payment of £3,500 was also paid to recognise the injustice caused and to allow the parents to purchase additional support for the family.

Adult Care Services

There were decisions on six complaints about adult care services: no fault was found in two and local settlements were agreed in four.

In one case, a complaint was made about the care received following the complainant's discharge from hospital. Not all the complainant's expectations, such as the provision of a ground floor extension, were justified by the occupational therapist's assessments. But there was some delay in carrying out those assessments and in preparing proper care plans. I could not say what would have happened without the delay, as the evidence suggested the complainant had cancelled assessments (though this was denied), but I considered the time and trouble and distress and inconvenience to which they were put warranted £500 in compensation.

In another case involving an occupational therapist (and other bodies), the assessment included a specialist piece of equipment which was provided but which nurses caring for the complainant considered inappropriate and unnecessary. The complainant was liable for the cost of the equipment. The Council agreed to pay the complainant £4,350 for the cost of the equipment and its removal, and the distress caused to the complainant and their immediate family.

The third local settlement involved delay in funding works which meant the complainant's access to the first floor of their home was impeded. The simple settlement here was an apology and the provision of funds. And another simple settlement was waiving the interest charged on an invoice for home care charges where the complainant had been told that no interest would be payable. Charges were also clarified. Your Council was reminded of the importance of giving clear written information about financial consequences at the point that someone enters a care home. Such information should be personal; I do not consider that general information booklets should be relied upon.

Liaison with the Local Government Ombudsman

The average time taken by the Council to reply to our written enquiries was 29.3 days, which is a little in excess of the time target, but a slight improvement on the previous two years. The number of written enquiries made has increased from 27 to 38 over those two years, perhaps reflecting the general increase in complaints about school admission appeals where it is usual to seek a written response to the complaint.

Looking more closely at the figures, there were six cases where the response time was 40 days or more; in one case it was 71 days. All of these were about either Special Educational Needs or Children and Family Services. It would seem that improvements in these areas would have a significant impact on the overall performance in responding to my staff, so I shall be pursuing this matter with you further. Quicker responses to my enquiries would allow more timely outcomes for complainants.

I was pleased that one of your staff attended one of the seminars which were organised by this office for link officers. I hope she found it useful and that other officers are able to take part in future events.

I also note that in November 2008 my staff contributed to training (referred to above) which the Council provided to refresh and update staff involved in school admission appeals, and members of appeal panels, covering issues such as changes in the statutory school admissions and admission appeal codes. I understand that this was generally regarded as being a useful exercise. My staff would be happy to take part in similar future events.

Training in complaint handling

Part of our role is to provide advice and guidance about good administrative practice. We offer training courses for all levels of local authority staff in complaints handling and investigation. All courses are presented by experienced investigators. They give participants the opportunity to practise the skills needed to deal with complaints positively and efficiently. We can also provide customised courses to help authorities to deal with particular issues and occasional open courses for individuals from different authorities.

I have enclosed some information on the full range of courses available together with contact details for enquiries and bookings.

Conclusions

I welcome this opportunity to give you my reflections about the complaints my office has dealt with over the past year. I hope that you find the information and assessment provided useful when seeking improvements to your Council's services.

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June 2009

Section 2: LGO developments

Introduction

This annual review also provides an opportunity to bring councils up to date on developments – current and proposed – in the LGO and to seek feedback. It includes our proposal to introduce a ‘statement of reasons’ for Ombudsmen decisions.

Council First

From 1 April 2009, the LGO has considered complaints only where the council’s own complaints procedure has been completed. Local authorities have been informed of these new arrangements, including some notable exceptions. We will carefully monitor the impact of this change during the course of the year.

Statement of reasons: consultation

The Local Government and Public Involvement in Health Act 2007 made provision for the LGO to publish statements of reasons relating to the individual decisions of an Ombudsman following the investigation of a complaint. The Ombudsmen are now consulting local government on their proposal to use statements of reasons. The proposal is that these will comprise a short summary (about one page of A4) of the complaint, the investigation, the findings and the recommended remedy. The statement, naming the council but not the complainant, would usually be published on our website.

We plan to consult local authorities on the detail of these statements with a view to implementing them from October 2009.

Making Experiences Count (MEC)

The new formal, one stage complaint handling arrangement for adult social care was also introduced from 1 April 2009. The LGO is looking to ensure that this formal stage is observed by complainants before the Ombudsmen will consider any such complaint, although some may be treated as exceptions under the Council First approach. The LGO also recognises that during the transition from the existing scheme to the new scheme there is going to be a mixed approach to considering complaints as some may have originated before 1 April 2009. The LGO will endeavour to provide support, as necessary, through dedicated events for complaints-handling staff in adult social care departments.

Training in complaint handling

Effective Complaint Handling in Adult Social Care is the latest addition to our range of training courses for local authority staff. This adds to the generic Good Complaint Handling (identifying and processing complaints) and Effective Complaint Handling (investigation and resolution), and courses for social care staff at both of these levels. Demand for our training in complaint handling remains high. A total of 129 courses were delivered in 2008/09. Feedback from participants shows that they find it stimulating, challenging and beneficial in their work in dealing with complaints.

Adult Social Care Self-funding

The Health Bill 2009 proposes for the LGO to extend its jurisdiction to cover an independent complaints-handling role in respect of self-funded adult social care. The new service will commence in 2010.

Internal schools management

The Apprenticeship, Skills, Children and Learning Bill (ASCL) 2009 proposes making the LGO the host for a new independent complaints-handling function for schools. In essence, we would consider the complaint after the governing body of the school had considered it. Subject to legislation, the new service would be introduced, in pilot form, probably in September 2010.

Further developments

I hope this information gives you an insight into the major changes happening within the LGO, many of which will have a direct impact on your local authority. We will keep you up to date through LGO Link as each development progresses but if there is anything you wish to discuss in the meantime please let me know.

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June 2009

Appendix 1: Notes to assist interpretation of the statistics 2008/09

Introduction

This year, the annual review only shows 2008/09 figures for enquiries and complaints received, and for decisions taken. This is because the change in the way we operate (explained in the introduction to the review) means that these statistics are not directly comparable with statistics from previous years.

Table 1. LGO Advice Team: Enquiries and complaints received

This information shows the number of enquiries and complaints received by the LGO, broken down by service area and in total. It also shows how these were dealt with, as follows.

Formal/informal prematures: The LGO does not normally consider a complaint unless a council has first had an opportunity to deal with that complaint itself. So if someone complains to the LGO without having taken the matter up with a council, the LGO will usually refer it back to the council as a 'premature complaint' to see if the council can itself resolve the matter. These are 'formal premature complaints'. We now also include 'informal' premature complaints here, where advice is given to the complainant making an enquiry that their complaint is premature. The total of premature complaints shown in this line *does not include* the number of resubmitted premature complaints (see below).

Advice given: These are enquiries where the LGO Advice Team has given advice on why the Ombudsman would not be able to consider the complaint, other than the complaint being premature. For example, the complaint may clearly be outside the Ombudsman's jurisdiction. It also includes cases where the complainant has not given enough information for clear advice to be given, but they have, in any case, decided not to pursue the complaint.

Forwarded to the investigative team (resubmitted prematures): These are cases where there was either a formal premature decision, or the complainant was given informal advice that their case was premature, and the complainant has resubmitted their complaint to the Ombudsman after it has been put to the council. *These figures need to be added to the numbers for formal/informal premature complaints (see above) to get the full total number of premature complaints. They also needed to be added to the 'forwarded to the investigative team (new)' to get the total number of forwarded complaints.*

Forwarded to the investigative team (new): These are the complaints that have been forwarded from the LGO Advice Team to the Investigative Team for further consideration. The figures may include some complaints that the Investigative Team has received but where we have not yet contacted the council.

Table 2. Investigative Team: Decisions

This information records the number of decisions made by the LGO Investigative Team, broken down by outcome, within the period given. **This number will not be the same as the number of complaints forwarded from the LGO Advice Team** because some complaints decided in 2008/09 will already have been in hand at the beginning of the year, and some forwarded to the Investigative Team during 2008/09 will still be in hand at the end of the year. Below we set out a key explaining the outcome categories.

MI reps: where the LGO has concluded an investigation and issued a formal report finding maladministration causing injustice.

LS (local settlements): decisions by letter discontinuing our investigation because action has been agreed by the authority and accepted by the Ombudsman as a satisfactory outcome for the complainant.

M reps: where the LGO has concluded an investigation and issued a formal report finding maladministration but causing no injustice to the complainant.

NM reps: where the LGO has concluded an investigation and issued a formal report finding no maladministration by the council.

No mal: decisions by letter discontinuing an investigation because we have found no, or insufficient, evidence of maladministration.

Omb disc: decisions by letter discontinuing an investigation in which we have exercised the Ombudsman's general discretion not to pursue the complaint. This can be for a variety of reasons, but the most common is that we have found no or insufficient injustice to warrant pursuing the matter further.

Outside jurisdiction: these are cases which were outside the Ombudsman's jurisdiction.

Table 3. Response times

These figures record the average time the council takes to respond to our first enquiries on a complaint. We measure this in calendar days from the date we send our letter/fax/email to the date that we receive a substantive response from the council. The council's figures may differ somewhat, since they are likely to be recorded from the date the council receives our letter until the despatch of its response.–

Table 4. Average local authority response times 2008/09

This table gives comparative figures for average response times by authorities in England, by type of authority, within three time bands.

LGO Advice Team

Enquiries and complaints received	Adult care services	Children and family services	Education	Housing	Planning and building control	Transport and highways	Other	Total
Formal/informal premature complaints	3	9	4	0	1	4	3	24
Advice given	2	1	5	0	2	4	2	16
Forwarded to investigative team (resubmitted prematures)	0	2	1	0	0	1	0	4
Forwarded to investigative team (new)	5	11	29	1	1	10	3	60
Total	10	23	39	1	4	19	8	104

Investigative Team

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	0	16	0	0	26	13	14	69

Average local authority response times 01/04/2008 to 31/03/2009

Response times	FIRST ENQUIRIES	
	No. of First Enquiries	Avg no. of days to respond
1/04/2008 / 31/03/2009	38	29.3
2007 / 2008	33	31.6
2006 / 2007	27	30.6

Types of authority	<= 28 days %	29 - 35 days %	> = 36 days %
District councils	60	20	20
Unitary authorities	56	35	9
Metropolitan authorities	67	19	14
County councils	62	32	6
London boroughs	58	27	15
National park authorities	100	0	0