

**The Local Government Ombudsman's  
Annual Review  
Medway 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 Medway Council 2008/09

## Introduction

This annual review provides a summary of the complaints we have dealt with about Medway 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

This year our Advice Team dealt with 94 enquiries and complaints about your Council. Of these, 19 related to complaints which were deemed to be premature and so were referred back to the Council for investigation. The categories that generated the most significant number of enquiries and complaints were Education (28), Planning & Building Control (17) and Transport & Highways (11). These categories also accounted for the majority of the 60 complaints forwarded to the investigative team.

## Complaint outcomes

This year I made decisions on 61 complaints against your Council. There were 10 complaints where I found no or insufficient evidence of fault by the Council to justify further investigation. Six complaints fell outside my jurisdiction. I used my discretion not to pursue investigations into 18 complaints, for instance where the injustice to the complainant was not significant enough to warrant a remedy or where I considered a remedy already provided by the Council was adequate. During the year I decided six complaints that had previously been referred to the Council to consider through its own procedures and had then been resubmitted to me. I upheld just one of these.

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. Of the complaints I decided against your authority, which were within my jurisdiction, just over 46% were local settlements. As a result of these settlements your authority agreed to pay £4,850 in compensation.

When we complete an investigation, we generally issue a report. This year I issued one report against your authority and my colleague Ombudsman, Mr White issued a second.

## **Complaints by service area**

### ***Housing***

I decided eight complaints about housing issues. I used my discretion to close three of these complaints.

I issued one report resulting from the failure to deal properly with the housing application of a woman fleeing domestic violence. The complaint also identified the Council's failure to comply with its statutory duty to maintain a full housing allocations scheme. The complainant has subsequently been housed in permanent accommodation and the Council has paid her £500 in compensation. The Council has also now implemented a new allocations scheme.

I agreed local settlements with the Council on four other housing complaints.

Two of these were from homeless people, both of whom had been poorly treated by Council officers, one over their application for housing and the other over the storage of possessions. With regard to the latter, the Council has subsequently produced a procedure for the storage of possessions.

The other two related to various problems with housing repairs. One of these complaints identified a lack of clarity over responsibility for cooking facilities, which has since been rectified.

The Council paid compensation totalling £1,700 in respect of these complaints.

### ***Adult care services***

I decided four complaints about adult care services. One of these was outside my jurisdiction and I used my discretion not to pursue two others. I agreed to settle the last complaint by a payment of compensation following the failure to provide adequate support to someone with autism.

My colleague Ombudsman, Mr White, issued a report following his investigation of the failure for a period of eight years to provide aftercare under Section 117 of the Mental Health Act 1983 to someone discharged from hospital after being detained under Section 3 of the Act. The Council reimbursed its share of the costs of the complainant's aftercare (which amounted to just over £755,000), undertook to fund future aftercare in conjunction with the relevant Health Authority and contributed £1,000 towards the complainant's legal costs.

### ***Children & family services***

I decided four complaints about children and family services. One of these was outside my jurisdiction and I used my discretion not to pursue a second.

I agreed local settlements on the other two. One of these related to the arrest of a parent accused of child abuse. The arrest may have been avoided if the allegation had been handled properly. The

Council paid compensation of £1,500 and is currently considering what action to take to ensure that similar problems do not re-occur. The other settlement resulted in the Council providing copies of various documents to the complainant which it had failed to do at an earlier stage.

### ***Planning***

I decided 11 complaints about planning issues. One complaint was outside my jurisdiction and there was insufficient evidence of maladministration to pursue investigations into four others. I used my discretion not to investigate four complaints.

I agreed to settle two complaints. One related to the failure to take into account the impact of changes in land levels when granting planning permission for a neighbouring development, which resulted in overlooking of the complainant's patio and garden. The Council agreed to take action to increase the height of the boundary wall and fence. The second related to a delay in taking action to repair the complainant's boundary wall, which had been damaged by a tree on Council land. The Council removed the tree, repaired the wall and agreed to put in some additional planting on the land outside the complainant's home.

### ***Highways***

I decided eight complaints about highways issues. One was outside my jurisdiction and I used my discretion not to pursue three others. I agreed to settle four complaints relating to:

- a delay in carrying out work to divert a ditch, including false promises and failing to respond to correspondence. The Council agreed to carry out the work within three months and to pay compensation;
- the failure to pay compensation agreed as part of a settlement to an earlier complaint;
- the failure to recognise that complaints about an overgrown hedge related to an obstruction to the highway. This resulted in the Council agreeing to trim the hedge each year until such time that it was able to identify the owners of the hedge, and to pay compensation;
- the failure to respond to correspondence about parking tickets, which resulted in the Council sending an apology.

### ***Education***

I decided 22 complaints about educational issues. One special educational needs complaint was outside my jurisdiction. I found no maladministration on four school admissions complaints and I used my discretion not to pursue investigations into two others as well as two complaints about general educational issues.

I agreed to settle 13 education complaints. Ten of these related to failures in the arrangements for school admissions. The complaints were settled either by school places being offered to the children or by re-hearings for the parents. One of my Investigators subsequently visited the Council to discuss its school admissions arrangements and a number of changes have now been made which should help to avoid similar problems from occurring in future years. Other settlements related to:

- the failure to provide 1:1 support to a child with special educational needs. The Council agreed to put in place a catch-up programme and to pay compensation to the child's foster carer;
- the poor handling of a non-statutory school transport appeal which resulted in a re-hearing being offered;

- the failure to follow the Council's procedures when the complainant decided to educate a child at home, which resulted in compensation being paid.

### **Liaison with the Local Government Ombudsman**

The average time taken by the Council to reply to our written enquiries was 40.2 days, which is significantly higher than the time target we set and continues the upward trend of the past few years. It also compares unfavourably with the performance of other unitary authorities, only 9% of which have an average response time of 36 days or longer. As in previous years there were some very significant delays on a small number of complaints, including 108 days to respond on a housing complaint and 94 days on a children and family services complaint. Of the 34 complaints on which we made enquiries, only seven of the responses were within the target time.

One of my Investigators visited the Council in August 2008 to discuss the Council's procedures for complaint handling. The Council has subsequently confirmed that on-line reporting and case management control systems have been refined to give greater focus to response times and to identify delays at an earlier point within the process. It does not appear that this has yet resulted in any significant improvement. We were also advised that the Council's Business Improvement Team was reviewing existing processes, with a view to eliminating duplication and maximising efficiency and productivity. It would be helpful to know the outcome of that review and whether the Council expects to be able to reverse the upward trend in response times during the current financial year.

The high level of local settlements (46.4% of those within my jurisdiction) suggests that the Council's own procedures for dealing with complaints may not be as robust as they could be, and that it may be reluctant to accept fault or not be prepared to offer an appropriate remedy until pressed to do so. This is a matter I will keep under review, particularly in the context of the operation of our new Council First policy (see Section 2 of this review for more details).

### **Training in complaint handling**

In previous years we have provided training in Effective Complaint Handling to staff from your authority. We have extended the range of courses we provide and can also provide customised courses to help authorities to deal with particular issues. 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.

**Tony Redmond**  
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**10<sup>th</sup> Floor**  
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**London SW1P 4QP**

**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	Benefits	Public Finance inc. Local Taxation	Planning and building control	Transport and highways	Other	Total
Formal/informal premature complaints	3	3	2	2	2	1	0	2	4	19
Advice given	0	1	2	2	3	0	2	2	3	15
Forwarded to investigative team (resubmitted prematures)	0	0	0	0	0	1	0	1	0	2
Forwarded to investigative team (new)	2	5	24	4	1	1	15	6	0	58
<b>Total</b>	<b>5</b>	<b>9</b>	<b>28</b>	<b>8</b>	<b>6</b>	<b>3</b>	<b>17</b>	<b>11</b>	<b>7</b>	<b>94</b>

**Investigative Team**

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	2	26	0	0	10	18	6	62

**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	34	40.2
2007 / 2008	25	38.7
2006 / 2007	26	37.7

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