

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

Poole Borough 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 Poole Borough Council 2008/09

Introduction

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

Our Advice Team received 59 complaints and enquiries during the year. Of these eight were about housing issues, 20 about planning-related matters, four were in the adult care services category, three related to children and family services, five of which were about school admissions, six concerned transport and highway issues, one regarding benefits and there were 12 others concerning access to information, anti-social behaviour, environmental health (2), drainage and waste management.

We treated 13 of those complaints and enquiries as premature and in a further seven cases advice was given (usually to make a complaint direct to the Council). The remaining 39 complaints were forwarded to the investigative team either as new complaints or as premature complaints that had been resubmitted.

Complaint outcomes

I decided 50 complaints against the Council during the year. In 21 of those cases (42%) I found no evidence of maladministration. I used my discretion not to investigate a further 11. Typically these are cases where even though there may have been some fault by the Council there is no

significant injustice to the complainant. In 11 cases (22% of all decisions made in the year) I took the view that the matters complained about were outside my jurisdiction and so they were not investigated.

Reports

When we complete an investigation, we generally issue a report. This year we issued one report against the Council. The complainant complained that the Council based its decision to approve a planning application for a pair of semi-detached houses next to his home on inaccurate information. As a result, he feared an overbearing development next to his property and a consequent loss of amenity.

The Council's Planning Committee approved the planning application by a majority of one vote. There was a suggestion that a Committee Member only voted to grant planning permission because she understood from the discussion about it that the proposed new three-storey houses would be in keeping with neighbouring properties. Had she known the adjoining properties did not have three storeys she would have voted to refuse consent.

Because of differing recollections of the Committee's discussion, I was not able to establish exactly what was said. I concluded that, for whatever reason, a misapprehension arose, which influenced a Member's decision. As the application was only approved by one vote, I considered that, but for the misapprehension, the Council would probably have refused the application. It is possible that the applicant could have appealed successfully against such a refusal. Nevertheless, I took the view that the complainant was left with some uncertainty about the outcome and a justified sense of outrage. I found maladministration in the decision-making process which had caused the complainant injustice. To remedy the injustice I recommended that the Council pay him compensation of £750. I am pleased that the Council agreed to do so.

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. Of the complaints we decided against your authority six were local settlements.

Four of the local settlements related to complaints about planning. The Council paid a total of £1600 compensation.

The Council failed to notify one complainant of her neighbour's planning application for an extension. The Council accepted that an administrative error had occurred and offered to pay the complainant £500 compensation for the loss of opportunity to comment on the application. Our investigation of the complaint did not suggest that, had the complainant had the opportunity to voice her objections, the decision to approve the application was likely to have been different. So we considered the compensation offered was an appropriate remedy. I was pleased that the Council reviewed its procedures for publicising applications as a result of this complaint.

The Council accepted that it gave misleading and inaccurate advice to a planning applicant which led him to believe the Council was not going to defend its position at the hearing of his appeal against its refusal of planning consent. This was not the case, but the Council failed to take reasonable steps to correct its advice. Consequently the complainant was unable to make an informed decision about the need for professional representation at the appeal hearing. While the

onus was on the complainant to ensure that his case was as robust as possible, I accepted he acted in good faith on the advice given to him and, as a result, attended the appeal hearing without making the preparations he would have made had the Council made clear its true intentions. The Council apologised and paid him compensation of £350.

In a third case the Council refused an application for tree works on the basis that the whole of the applicant's garden was covered by a tree preservation order. In fact only part of the garden was covered by the order and the complainant would have been entitled to fell certain trees without consent. When the Council discovered its error, however, it made an interim order covering the whole area, thus preventing her from doing so. The initial error caused the complainant injustice because she lost the opportunity to improve the amenity of her garden. The Council agreed to pay her £500 compensation in recognition of the understandable outrage she felt. As a result of the complaint it reviewed its procedures to ensure that copies of tree preservation orders are attached to all tree work applications.

The fourth case concerned poor communication between planning enforcement team officers, which led to the complainant's expectations being raised that the Council would take formal action to prevent an unauthorised use of a site near his home. As a result he was put to time and trouble pursuing the matter with the Council when no such action was intended. The Council had already apologised for misleading him. It agreed to pay him compensation of £250.

Adult care services

The complainant was denied the right to succeed to a tenancy on the death of his mother because the Council adhered strictly to the stipulation in the Housing Act that a tenancy may only pass to one successor. The complainant's mother had succeeded to the tenancy on the death of his father, so when the complainant asked for the tenancy to pass to him the Council sought possession of the property. Even if there is no legal right to succeed, councils can use their discretion to consider whether to make an exception to the normal arrangements and allow someone to succeed. The Council did not do this and I considered it fettered its discretion. The Council agreed to consider the case on its own merits and decide whether to grant the complainant the tenancy within three months. Meanwhile it suspended legal action against the complainant. I considered its proposed action was a fair settlement of the complaint and did not recommend any further remedy.

Education

The Council agreed to a fresh appeal hearing for a complainant whose child had failed to gain a place at a school where the admissions policy was flawed. One of the admissions criteria related to distance from home to school but did not say how the distance should be calculated. We considered the appeal panel had been misdirected and concluded that the decision to refuse a place was not safe. We asked that the new panel be told about the flaws in the policy and the relevant issues that needed to be addressed.

Liaison with the Local Government Ombudsman

Formal enquiries were made on 29 complaints during the year. Your Council's average response time of 33 days is longer than last year's time of 29 days and is outside the 28 days requested. The average is brought down by slow responses from two service areas in particular: Planning and building control (average 37 days) and Adult care services (average 38 days). I appreciate there may be particular demands on officers' time in some areas and that the number of complaints each service receives varies considerably, but some simple actions may result in substantial improvements.

For instance, we made enquiries on 16 planning complaints and were disappointed to find that the response on one of these took 10 weeks and another over six. Given that the average planning response time is one day better than last year, a quicker response on those cases might have improved further the average time. By contrast, we received very quick replies from Education (14 days) and Transport and highways (15 days). Your Council may wish to consider sharing best practice between service areas to improve response times overall.

Several complainants have commented that your Council's responses to their complaints exceed the promised timescales in your published complaints procedure by a considerable margin. For example, a complainant made a complaint in May 2008 about planning and did not receive a reply until 29 August 2008. He wrote again but only received a final response on 21 January 2009, after he had complained to me. We consider 12 weeks is sufficient time for councils to investigate a complaint. You may wish to review your complaints handling procedure in this respect.

My officers continue to appreciate the readiness of your staff to consider taking action to resolve complaints.

Training in complaint handling

I am pleased that during 2008/09 we provided training in Effective Complaint Handling to staff from your authority. We have extended the range of courses we provide and I have enclosed some information on the full range of courses available together with contact details for enquiries and bookings.

Conclusions

I have been critical of some aspects of your Council's complaint handling, but welcome your commitment to try to improve it, especially as there are clear benefits to you in doing so. Our experience shows that the earlier a complaint is resolved the less time staff have to spend on it. And learning from what has gone wrong brings service improvements resulting in greater customer satisfaction and ultimately fewer complaints. While there is scope for further improvement in some service areas, I am pleased that your Council has used our training course on effective complaint handling this year and would encourage you to consider further training for your staff.

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. 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, will 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	Planning and building control	Transport and highways	Other	Total
Formal/informal premature complaints	1	1	0	3	1	5	0	2	13
Advice given	0	1	0	1	0	0	1	4	7
Forwarded to investigative team (resubmitted prematures)	1	0	0	1	0	3	0	1	6
Forwarded to investigative team (new)	2	1	5	3	0	12	5	5	33
Total	4	3	5	8	1	20	6	12	59

Investigative Team

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	1	6	0	0	21	11	11	50

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	29	32.6
2007 / 2008	26	29.5
2006 / 2007	12	34.3

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