

**The Local Government Ombudsman's
Annual Review
Medway Council
for the year ended
31 March 2010**

Local Government Ombudsmen (LGOs) provide 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, we aim to get it put right by recommending a suitable remedy. We also use 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 2009/10

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 2009/10 and a note to help the interpretation of the statistics.

Enquiries and complaints received

Last year our Advice Team handled 93 enquiries and complaints about your Council. Of these, 22 related to complaints which we considered were premature, and we referred them to your Council for investigation. We gave advice to 15 other enquirers on a variety of matters, including my jurisdiction. Our Advice Team passed 56 complaints to the investigative team, including 10 that had been resubmitted following consideration by your Council. The categories which generated the highest number of enquiries and complaints were education and planning and building control. The overall number of complaints and their distribution is similar to those received in 2008/09.

Complaint outcomes

Last year I made decisions on 60 complaints against your Council. There were 18 complaints in which I found no, or insufficient, evidence of fault by the Council to warrant further investigation. I used my discretion not to pursue investigations into 13 complaints, for example where the injustice to the complainant was not significant to warrant a remedy or where the remedy which the Council had provided was adequate. I found that five complaints were outside my jurisdiction.

Reports

When we complete an investigation, we generally issue a report. I issued two reports. The first followed an investigation of seven complaints about the Council's handling of a planning application to develop a sports pitch close to the complainants' homes. I found that the Council had failed to take into account the relationship between the complainants' homes and the proposed sports pitch and the potential for overlooking and loss of privacy in their gardens from a viewing area, running the length of the pitch. Following my report the Council undertook to ensure that it keeps a more detailed record of proceedings at its Development Control meetings. The Council also agreed to reimburse each of the complainants for the reasonable costs of any work they do to protect them from the unanticipated impact of the sports pitch. A disagreement over what are the reasonable costs, in the case of one complainant, is the subject of a fresh complaint to my office.

The second report was issued by my colleague Ombudsman, Jerry White. It was part of an investigation of nine complaints made by the RNIB about the way seven authorities implemented a statutory concessionary travel scheme which was introduced in April 2008. Local authorities have discretion to offer schemes that are more generous than the statutory scheme. The one complaint against your Council concerned its decision to introduce a charge for a 'companion bus pass' which allows the holder and a companion to travel for a flat rate each day, irrespective of the

number of journeys made. Mr White found that when the Council decided how to implement the statutory scheme it failed to consider its duties under the Disability Discrimination Act 1995 and failed to consult or notify service users. The Council agreed to pay the complainant £100 compensation for his sense of outrage and to review its policy. I am pleased to note that it has now decided to remove the charge for the companion bus pass.

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 2009/10, 26.9% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements.

Of the complaints we decided against your authority, which were within my jurisdiction, 16 (34%) were local settlements. These resulted in the payment of compensation totalling just under £22,000. Two complaints accounted for £16,000 of this total.

Three complaints concerned children and family services. In the first the Council failed to produce 'a pathway plan' for a young person leaving care (a pathway plan contains an assessment of the young person's needs and records the actions and services required to respond to those needs and to provide support to the young person in their transition to adulthood). As a result the young person lost services and assistance. The Council also delayed in investigating a complaint about these matters. The Council paid a total of £4,500 compensation and agreed to review its procedures.

The second complaint also concerned delay by the Council in investigating a complaint through the statutory procedure and in completing a 'later life letter' for an adopted child (a later life letter provides an explanation to a young adult of the decisions made while he/she was looked after by the local authority). The Council paid £500 compensation. The third complaint concerned the Council's failure to respond to the complainant's questions about contact arrangements with his children. The Council provided a response and paid £250 compensation.

Two complaints concerned education. In one the Council failed to update a statement of special educational needs, to reflect a child's move from a residential school to the 6th form of a mainstream school. The move subsequently broke down. The Council paid £1,000 compensation. I asked the Council to review its procedures to ensure that statements are updated. The Council told me that it was satisfied that its procedures are sufficiently robust. This is a matter I will review in the light of any similar complaints. In the second the Council agreed to offer a re-hearing of an education admission appeal, in the light of some concerns about the way an application to a grammar school had been dealt with. In the event the complainants were successful in obtaining a place at another school and so did not pursue the fresh appeal.

Four complaints concerned planning and related matters. One involved the assessment of the loss of value to the complainant's property following the Council's failure to deal properly with a planning application to develop adjoining land. The Council and the complainant's assessments were some way apart. In view of this the Council agreed to seek an independent assessment from the District Valuer. This indicated a loss of value of £11,500 which the Council paid by way of compensation.

The second complaint concerned the Council's 10 week delay in accepting a planning application. The Council paid £300 compensation. The third concerned incorrect advice on the need for planning permission. The Council agreed to meet the complainant's costs in obtaining some legal advice about the matter, totalling £881. In the last complaint the Council wrongly told the complainant that it had sufficient information to take enforcement action in respect of his

occupation of a caravan. The Council paid £200 compensation.

Four complaints concerned housing matters. Three were about delays in carrying out housing repairs. The Council paid a total of £850 compensation. The fourth was about the Council's delay in providing a licence for a house in multiple occupation. When it issued the licence it included conditions that had not been previously mentioned. The Council agreed to refund the cost of the licence fee (£550) and to fund the cost of the additional works that were now necessary. I asked the Council to review its procedures in the light of this complaint. The Council explained that its section dealing with private housing is now fully staffed. It has tightened some of its procedures and issued an advice booklet on HMOs.

One complaint concerned the Council's wrong advice that housing benefit would cover the rent for a property it suggested the complainant and her family should move to. The complainant moved and found that there was a shortfall in the benefit payment. Had she been properly advised she would not have moved. The Council had already undertaken to make up the shortfall while it actively assisted the complainant in finding alternative accommodation. In addition it agreed to meet the costs of the complainant's first move (approximately £650) and of her likely second move.

One complaint concerned the provision by the Council of information to a local newspaper that the complainant had committed a parking offence, when this was not the case. The Council paid £100 compensation and agreed to place a retraction notice in the local newspaper.

The last complaint concerned a misleading advertisement about the Council's fair trader scheme. The complainant's expectations about what could be expected from the scheme were unduly raised. The Council paid £100 compensation and reviewed the wording of its advertisement.

I used my discretion not to pursue a complaint about local taxation. The Council's council tax bills did not refer to the circumstances under which it is possible to appeal to the Valuation Tribunal Service (the VTS). In this instance the Council advised the complainant about this separately. At my suggestion the Council has reviewed the content of its bills and will now include information about the VTS when the bills are issued.

Liaison with the Local Government Ombudsman

The average time taken by the Council to reply to our written enquiries was 27.3 days. This is a significant improvement on the previous year's figure and now just inside my target time of 28 days. I expressed concern in my last Annual Review about the time taken by the Council to provide information and I am grateful that the Council has made this progress. My Investigators have noted examples where the Council has been helpful in agreeing to settle complaints and this too is welcome.

In my last Annual Review I also expressed concern about the then high level of local settlements (46%). This also has fallen, as explained above but is still higher than the national average. I also note that of the six re-submitted complaints that I decided in the year three resulted in local settlements. Two of the settled cases above involved delays by the Council in investigating complaints. This suggests that the Council may still need to improve the way it considers complaints and resolves fault when dealing with matters through its own procedure.

Training in complaint handling

I would like to take this opportunity to remind the Council that 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 authority's services.

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June 2010

Section 2: LGO developments

Introduction

This annual review also provides an opportunity to bring councils up to date on developments in the LGO and to seek feedback.

New schools complaints service launched

In April 2010 we launched the first pilot phase of a complaints service extending our jurisdiction to consider parent and pupil complaints about state schools in four local authority areas. This power was introduced by the Apprenticeships, Skills, Children and Learning Act 2009.

The first phase involves schools in **Barking and Dagenham, Cambridgeshire, Medway and Sefton**. The Secretary of State no longer considers complaints about schools in these areas. In September the schools in a further 10 local authority areas are set to join the pilot phase.

We are working closely with colleagues in the pilot areas and their schools, including providing training and information sessions, to shape the design and delivery of the new service. It is intended that by September 2011 our jurisdiction will cover all state schools in England.

A new team in each office now deals with all complaints about children's services and education on behalf of the Ombudsman. Arrangements for cooperation with Ofsted on related work areas have been agreed.

For further information see the new schools pages on our website at www.lgo.org.uk/schools/

Adult social care: new powers from October

The Health Act 2009 extended the Ombudsmen's powers to investigate complaints about privately arranged and funded adult social care. These powers come into effect from 1 October 2010 (or when the Care Quality Commission has re-registered all adult care providers undertaking regulated activity). Provision of care that is arranged by an individual and funded from direct payments comes within this new jurisdiction.

Each Ombudsman has set up a team to deal with all adult social care complaints on their behalf. We expect that many complaints from people who have arranged and funded their care will involve the actions of both the local authority and the care provider. We are developing information-sharing agreements with the Care Quality Commission and with councils in their roles as adult safeguarding leads and service commissioners.

Council first

We introduced our Council first procedure in April last year. With some exceptions, we require complainants to go through all stages of a council's own complaints procedure before we will consider the complaint. It aims to build on the improved handling of complaints by councils.

We are going to research the views of people whose complaints have been referred to councils as premature. We are also still keen to hear from councils about how the procedure is working, particularly on the exception categories. Details of the categories of complaint that are normally treated as exceptions are on our website at www.lgo.org.uk/guide-for-advisers/council-response

Training in complaint handling

Demand for our training in complaint handling has remained high, with 118 courses delivered over the year to 53 different authorities. Our core Effective Complaint Handling course is still the most popular – we ran some of these as open courses for groups of staff from different authorities. These are designed to assist those authorities that wish to train small numbers of staff and give them an opportunity to share ideas and experience with other authorities.

The new Effective Complaint Handling in Adult Social Care course, driven by the introduction of the new statutory complaints arrangements in health and adult social care in April 2009, was also popular. It accounted for just over a third of bookings.

Over the next year we intend to carry out a thorough review of local authority training needs to ensure that the programme continues to deliver learning outcomes that improve complaint handling by councils.

Statements of reasons

Last year we consulted councils on our broad proposals for introducing statements of reasons on the individual decisions of an Ombudsman following the investigation of a complaint. We received very supportive and constructive feedback on the proposals, which aim to provide greater transparency and increase understanding of our work. Since then we have been carrying out more detailed work, including our new powers. We intend to introduce the new arrangements in the near future.

Delivering public value

We 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 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.

Mindful of the current economic climate, financial stringencies and our public accountability, we are determined to continue to increase the efficiency, cost-effectiveness and public value of our work.

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June 2010

Appendix 1: Notes to assist interpretation of the statistics 2009/10

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.

Premature complaints: 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 either refer it back to the council as a 'premature complaint' to see if the council can itself resolve the matter, or give advice to the enquirer that their complaint is premature.

Advice given: These are enquiries where the LGO Advice Team has given advice on why the LGO would not be able to consider the complaint, other than the complaint is premature. For example, the complaint may clearly be outside the LGO's jurisdiction.

Forwarded to the investigative team (resubmitted premature and new): These are new cases forwarded to the Investigative Team for further consideration and cases where the complainant has resubmitted their complaint to the LGO after it has been put to 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 2009/10 will already have been in hand at the beginning of the year, and some forwarded to the Investigative Team during 2009/10 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 LGO 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 LGO'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 LGO'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 2009/10

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 | 2 | 6 | 3 | 5 | 2 | 2 | 0 | 2 | 1 | 23 |
| Advice given | 2 | 1 | 4 | 0 | 1 | 1 | 1 | 4 | 1 | 15 |
| Forwarded to investigative team (resubmitted prematures) | 0 | 1 | 1 | 6 | 0 | 1 | 1 | 0 | 0 | 10 |
| Forwarded to investigative team (new) | 2 | 5 | 14 | 2 | 1 | 1 | 12 | 3 | 7 | 47 |
| Total | 6 | 13 | 22 | 13 | 4 | 5 | 14 | 9 | 9 | 95 |

Investigative Team

| Decisions | MI reps | LS | M reps | NM reps | No mal | Omb disc | Outside jurisdiction | Total |
|-------------|---------|----|--------|---------|--------|----------|----------------------|-------|
| 2009 / 2010 | 8 | 16 | 0 | 0 | 18 | 13 | 5 | 60 |

| Response times | FIRST ENQUIRIES | |
|------------------------|------------------------|----------------------------|
| | No. of First Enquiries | Avg no. of days to respond |
| 1/04/2009 / 31/03/2010 | 30 | 27.3 |
| 2008 / 2009 | 34 | 40.2 |
| 2007 / 2008 | 25 | 38.7 |

Average local authority resp times 01/04/2009 to 31/03/2010

| Types of authority | <= 28 days % | 29 - 35 days % | > = 36 days % |
|----------------------------|--------------|----------------|---------------|
| District Councils | 61 | 22 | 17 |
| Unitary Authorities | 68 | 26 | 6 |
| Metropolitan Authorities | 70 | 22 | 8 |
| County Councils | 58 | 32 | 10 |
| London Boroughs | 52 | 36 | 12 |
| National Parks Authorities | 60 | 20 | 20 |