

20 July 2017

By email

Pat Flaherty
Chief Executive
Somerset County Council

Dear Pat Flaherty

Annual Review letter 2017

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman (LGO) about your authority for the year ended 31 March 2017. The enclosed tables present the number of complaints and enquiries received about your authority and the decisions we made during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

The reporting year saw the retirement of Dr Jane Martin after completing her seven year tenure as Local Government Ombudsman. I was delighted to be appointed to the role of Ombudsman in January and look forward to working with you and colleagues across the local government sector in my new role.

You may notice the inclusion of the '*Social Care Ombudsman*' in our name and logo. You will be aware that since 2010 we have operated with jurisdiction over all registered adult social care providers, able to investigate complaints about care funded and arranged privately. The change is in response to frequent feedback from care providers who tell us that our current name is a real barrier to recognition within the social care sector. We hope this change will help to give this part of our jurisdiction the profile it deserves.

Complaint statistics

Last year, we provided for the first time statistics on how the complaints we upheld against your authority were remedied. This year's letter, again, includes a breakdown of upheld complaints to show how they were remedied. This includes the number of cases where our recommendations remedied the fault and the number of cases where we decided your authority had offered a satisfactory remedy during the local complaints process. In these latter cases we provide reassurance that your authority had satisfactorily attempted to resolve the complaint before the person came to us.

We have chosen not to include a 'compliance rate' this year; this indicated a council's compliance with our recommendations to remedy a fault. From April 2016, we established a new mechanism for ensuring the recommendations we make to councils are implemented, where they are agreed to. This has meant the recommendations we make are more specific, and will often include a time-frame for completion. We will then follow up with a council and seek evidence that recommendations have been implemented. As a result of this new process, we plan to report a more sophisticated suite of information about compliance and service improvement in the future.

This is likely to be just one of several changes we will make to our annual letters and the way we present our data to you in the future. We surveyed councils earlier in the year to find out, amongst other things, how they use the data in annual letters and what data is the most useful; thank you to those officers who responded. The feedback will inform new work to

provide you, your officers and elected members, and members of the public, with more meaningful data that allows for more effective scrutiny and easier comparison with other councils. We will keep in touch with you as this work progresses.

I want to emphasise that the statistics in this letter comprise the data we hold, and may not necessarily align with the data your authority holds. For example, our numbers include enquiries from people we signpost back to the authority, but who may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

During the year we issued two public reports about your Council, the first after it repeated a fault we had criticised it for the year before. Both complaints concerned a young person with special educational needs, severe learning difficulties and complex communication problems who attends a special school. In 2016 the Council had repeated its failure to ensure he received the therapies outlined in the Statement of Special Educational Needs. He missed the speech and language therapy, occupational therapy and one to one support required by his Statement for a term and a half. These are serious failings.

In our 2015 investigation, the Council had accepted it had failed to provide some of the support in his Statement. It agreed to improve its procedures to prevent a recurrence of the fault. It told the parents it had taken on board our recommendations. Therefore, the Council's repeat of this fault in 2016 caused the family added unnecessary frustration and compounded the impact on the young person, his learning and his friendship groups.

We recommended the Council: apologise to the family; make a payment to acknowledge the time and trouble of having to bring a complaint to us again; pay the family £1,000 to use for their son's educational benefit; and monitor how many sessions he had received to catch up for the lost therapies. We also recommended it improve its annual review process, address a lack of expertise in commissioning therapies and produce an action plan. The Council has made the agreed payments to the family and made some improvements to its procedures. We are continuing to monitor the Council's compliance with the remaining recommendations.

The second public report involved a complaint from a man about the Council's involvement in his wife leaving the country with their young children without his knowledge or consent. During the course of the Council's investigation into the welfare of the children, the wife advised the Council she intended to leave her husband and take the children to Australia. Council officers should have been aware that it is a criminal offence to take a child out of the UK without either the consent of everyone who has parental responsibility for that child or permission from the court. We found the Council was wrong to suggest the wife arrange for the children's passports to be delivered to the Council's offices so that her husband was not aware of her plans to leave. We also found the Council was at fault in failing to seek legal advice or take action to notify the police or Border Agency of her intentions. The court in Australia ordered that the children be returned to the UK and the children now spend equal time with each parent.

We recommended the Council make a payment in respect of the man's expenses incurred in ensuring his children were returned to the UK. We also recommended it make an additional payment in recognition of the distress, anxiety, anger and frustration he experienced. The Council initially disputed our findings of fault and recommendations but has now agreed to make the payments.

More generally, I have concerns about some poor complaint handling practice at your Council. There has been an instance where the Council has taken action after my

investigators have issued their draft decision, making the assumption that no further changes would be made to it. We share draft decisions with both councils and complainants and invite comments from both before progressing to a final decision. On one occasion the Council started recovery action against the complainant to have him return direct payments after the draft decision indicated no fault by the Council. Whilst the Council is entitled to take action at any point, the apparent belief that the draft decision was a final decision is concerning.

The statutory duty to report Ombudsman findings and recommendations

As you will no doubt be aware, there is duty under section 5(2) of the Local Government and Housing Act 1989 for your Monitoring Officer to prepare a formal report to the council where it appears that the authority, or any part of it, has acted or is likely to act in such a manner as to constitute maladministration or service failure, and where the LGO has conducted an investigation in relation to the matter.

This requirement applies to all Ombudsman complaint decisions, not just those that result in a public report. It is therefore a significant statutory duty that is triggered in most authorities every year following findings of fault by my office. I have received several enquiries from authorities to ask how I expect this duty to be discharged. I thought it would therefore be useful for me to take this opportunity to comment on this responsibility.

I am conscious that authorities have adopted different approaches to respond proportionately to the issues raised in different Ombudsman investigations in a way that best reflects their own local circumstances. I am comfortable with, and supportive of, a flexible approach to how this duty is discharged. I do not seek to impose a proscriptive approach, as long as the Parliamentary intent is fulfilled in some meaningful way and the authority's performance in relation to Ombudsman investigations is properly communicated to elected members.

As a general guide I would suggest:

- Where my office has made findings of maladministration/fault in regard to routine mistakes and service failures, and the authority has agreed to remedy the complaint by implementing the recommendations made following an investigation, I feel that the duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the council summarising the findings on all upheld complaints over a specific period. In a small authority this may be adequately addressed through an annual report on complaints to members, for example.
- Where an investigation has wider implications for council policy or exposes a more significant finding of maladministration, perhaps because of the scale of the fault or injustice, or the number of people affected, I would expect the Monitoring Officer to consider whether the implications of that investigation should be individually reported to members.
- In the unlikely event that an authority is minded not to comply with my recommendations following a finding of maladministration, I would always expect the Monitoring Officer to report this to members under section five of the Act. This is an exceptional and unusual course of action for any authority to take and should be considered at the highest tier of the authority.

The duties set out above in relation to the Local Government and Housing Act 1989 are in addition to, not instead of, the pre-existing duties placed on all authorities in relation to Ombudsman reports under The Local Government Act 1974. Under those provisions, whenever my office issues a formal, public report to your authority you are obliged to lay that

report before the council for consideration and respond within three months setting out the action that you have taken, or propose to take, in response to the report.

I know that most local authorities are familiar with these arrangements, but I happy to discuss this further with you or your Monitoring Officer if there is any doubt about how to discharge these duties in future.

Manual for Councils

We greatly value our relationships with council Complaints Officers, our single contact points at each authority. To support them in their roles, we have published a Manual for Councils, setting out in detail what we do and how we investigate the complaints we receive. When we surveyed Complaints Officers, we were pleased to hear that 73% reported they have found the manual useful.

The manual is a practical resource and reference point for all council staff, not just those working directly with us, and I encourage you to share it widely within your organisation. The manual can be found on our website www.lgo.org.uk/link-officers

Complaint handling training

Our training programme is one of the ways we use the outcomes of complaints to promote wider service improvements and learning. We delivered an ambitious programme of 75 courses during the year, training over 800 council staff and more 400 care provider staff. Post-course surveys showed a 92% increase in delegates' confidence in dealing with complaints. To find out more visit www.lgo.org.uk/training

Yours sincerely

A handwritten signature in black ink, appearing to read 'M King', with a stylized flourish at the end.

Michael King
Local Government and Social Care Ombudsman for England
Chair, Commission for Local Administration in England

Local Authority Report: Somerset County Council
For the Period Ending: 31/03/2017

For further information on how to interpret our statistics, please visit our website:
<http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
24	0	4	26	0	12	0	1	1	68

Decisions made

Decisions made				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate	Total
5	2	31	14	3	11	79%	66

Notes

Our uphold rate is calculated in relation to the total number of detailed investigations.
 The number of remedied complaints may not equal the number of upheld complaints. This is because, while we may uphold a complaint because we find fault, we may not always find grounds to say that fault caused injustice that ought to be remedied.

Complaints Remedied

by LGO	Satisfactorily by Authority before LGO Involvement
10	0