

**Public Administration and Constitutional Affairs Committee
Inquiry into sourcing public services: lessons learned from Carillion collapse**

**Written evidence submitted by Local Government and Social Care
Ombudsman**

About LGSCO

1. The Local Government and Social Care Ombudsman (LGSCO) investigates complaints about local authorities, registered adult social care providers, and some other organisations that provide public services in England. We help to ensure that these services are accountable to the people who use them by ensuring that the organisations within our jurisdiction put things right when they go wrong.

Introduction

2. We welcome the opportunity to contribute to the committee's inquiry into how the government and public sector manages the risks of outsourcing the delivery of public services. We have focused our submission on key themes from the complaints the Ombudsman has investigated involving local services outsourced and delivered by external contractors.
3. Public services are provided through increasingly complex delivery methods which involve a range of public, private and voluntary organisations. Councils contracting out services can take many different forms, from commissioning specific services from a private provider (e.g. a care home place) to contracting a provider to undertake a whole service area (e.g. that of a local housing authority or highways authority). In investigating complaints, we are clear that the provision of a service can be outsourced but accountability cannot be transferred. Councils remain accountable for the delivery of services even where services are provided at arms' length by external contractors. This is set out in our legislation which is clear that the Ombudsman must treat actions of any organisation contracted as actions of or on behalf of the council¹.
4. A common theme across the complaints we investigate is that councils sometimes fail to establish sufficient control and oversight of their contractors. At the root of many complaints we see lies councils' failure to properly monitor the performance of organisations delivering services on their behalf to ensure the service provided in accordance with the contract terms or to the required standards. Where complaints are raised, we also sometimes see councils trying to take a step back from the actions of a service provider acting on their behalf and in some instances seeking to shift blame.
5. A contractor acting on behalf of the council may provide an initial response if someone makes a complaint, but an individual must be told of their right to escalate the complaint to the council, and to the Ombudsman, if they remain dissatisfied. Councils must ensure that clear procedures are in place with any contractors to deal with complaints, making it clear the council retains oversight of any issues. Because a council remains responsible for their contractors' actions, it should ensure it is aware of complaints received about

¹ Local Government Act 1974, section 25(6) to 25(8) <https://www.legislation.gov.uk/ukpga/1974/7/contents>

those services, both for purposes of monitoring the contract and so that it can put things right when they go wrong. Councils and their partners should ensure the procedures for complaining are easy for members of the public to understand and do not deter them from complaining.

6. Complaints and how they are dealt with provide a useful source of information for monitoring a contractor's performance. Councils and those delivering services on their behalf should also ensure they learn from complaints and the arrangements between should provide a way to do this. These arrangements should be agreed from the outset.
7. Complaints are also an important tool in the scrutiny of public services and can support existing accountability mechanisms. We believe there is an opportunity for complaints to be used more effectively to support local scrutiny functions, which is all the more important when services are outsourced. We share the insight from our investigations through a range of means. We publish reports of both individual investigations and on thematic issues highlighting common or systemic issues. Each of our thematic reports includes a list of questions which scrutiny committees can ask about their local authority's performance. We will continue to share our information in this way and work to ensure the value of complaints in holding authorities and those they contract with to account is recognised.
8. This submission draws from a diverse range of case studies from our complaints. The breadth of cases it covers indicates that issues around managing outsourced services cut across all areas of public service delivery.

Key issues arising from our investigations

9. **Poor communication between a council and its contractors can lead to serious service failures. Too frequently, our investigations reveal evidence of councils or their contractors giving contradictory information in response to concerns raised, which can exacerbate problems further. When the way a service is delivered changes, such as following a decision to contract it out to a third party, it is important for councils to anticipate and prepare for potential problems.**

➤ *Case study:*

John was assessed by an occupational therapist who confirmed that he needed to have a stair lift fitted in his home. The council arranged for an external contractor to carry this out. The referral form stated that John's son should be contacted first and that all arrangements be made through him, but did not make clear why. Despite this, the contractor failed to speak to the son before visiting John. It then proceeded to remove a stair rail and leave the property without fitting the stair lift. This left John with less assistance to climb the stairs than he had before. John fell on the stairs shortly afterwards and subsequently died in hospital after contracting pneumonia.

As the contractor was acting on behalf of the council, any fault of the contractor is the council's fault. When John's son complained to us, we found that the council was right to identify several failings in the process of fitting the stair lift. The council changed its referral form to include a section in which interim safety measures are set out prior to the lift being fitted. This should enable occupational therapists to advise the contractor fully of the client's mobility needs. The contractor also changed its processes so that it always installs a temporary handrail when it has removed one. We agreed these actions were satisfactory to remedy the injustice.

➤ *Case study:*

Lorna lived in a privately-owned house with her husband and three children. Her youngest son, Jonathan, has severe autism and requires supervision at all times. The council decided it was necessary to adapt the property to meet Jonathan's needs. Lorna argued that the council failed to take proper account of the occupational therapist (OT) assessment in deciding what works would be undertaken.

Our investigation found that the council did not properly advise Lorna during the planning stage of the proposed works. As a result, the subsequent building work did not fully meet her disabled son's needs. The poor workmanship of the council's contractors caused further injustice to Lorna and her son. We recommended that the council arrange an independent inspection of the building work completed at her property. We stated that if the inspection finds any defects in the works completed by the council's contractors, the council should arrange and fund the necessary remedial works. The council was responsible for fault in any works completed by its contractors.

➤ *Case study:*

Mr and Mrs J complained to the council about a new transport provider which had taken over the contract to transport their son, who has special education needs, to school. On one morning, one of its drivers arrived for the school run wearing an out of date identity badge. The parents refused to let their son travel in the car. This had affected other parents who were caught up by the same events.

The council has a safeguarding duty to ensure that contractors who are involved in the transport of children are suitable and ensure that its driving staff are DBS cleared and wear a badge issued by the council. In addition, it was the council's policy that contractors should introduce themselves to the parents before the commencement of a new contract. The incident caused a complete breakdown with the parents refusing to use the taxi firm thereafter. When we investigated, we found the council was at fault for failing to give then parents adequate notice of the change of provider, recognise the seriousness of their concerns and properly investigate the transport provider concerned.

➤ *Case study:*

Jane reported concerns about the tree in front of her home, which she argued had damaged a wall in front of her garden. In line with its policy, the council passed the requests for the tree works to its contractors. They arranged for one of its surveyors to inspect. The council argued that the survey found the tree was structurally sound, but its roots needed to be pruned. The contractor however issued a letter saying the council would remove the tree. She complained about the conflicting advice received from the council's contractors, who twice told her the council would fell the tree.

In response to our investigation, the council said it had agreed to the contractor felling one tree on the street but not the one outside Jane's home, which had caused the confusion. We found the council was at fault for its contractor sending letters to the complainant where they said it would remove the tree. The council agreed to apologise for the poor communication.

10. Where services are outsourced, councils retain the ultimate responsibility for ensuring the quality of the service and being accountable if things go wrong. Our investigations often reveal inadequate monitoring by councils of their contractors' performance. Where councils fail to ensure they have proper oversight of their contractors, this can lead to poor standards of service provision.

➤ *Case study:*

The council collects Rachel's rubbish every two weeks and her recycling every week. Over a period of three months the council only collected the rubbish once and missed

several recycling collections. Rachel reported the problem by phone and on-line numerous times but nobody got in touch. She complained in writing. The council upheld her complaint and explained the problems were linked to its use of an external contractor. The council apologised but the problems continued. For another three months Rachel had to call the council every fortnight as it was the only way to get her refuse collected. Even then the collection was often a week late.

In response to our investigation, the council explained the contractor had been using a van which was too big to access Rachel's road. The contractor allocated a smaller van to the route and the service improved. We found that, after the initial complaint, the council did not do enough to monitor the service even though it knew there was a problem. Following our investigation, the service subsequently improved and there had been no more missed collections. Other residents also had issues with their collections, to the extent it was raised in the local press. We welcomed the fact that, while we were investigating, the council's scrutiny panel discussed the problem and an action plan was agreed with the contractor to improve the service for everyone.

➤ *Case study:*

The council contracted a private provider to provide temporary accommodation for homeless people in its area. It arranged temporary accommodation for Karim and his family. The accommodation consisted of one room with shared bathroom and kitchen. Karim complained that there not enough beds for the family and about issues with mould and damp. Our investigation found that Karim and his family had to wait for four days for sufficient beds to be provided in the first accommodation they were placed in.

The family were then moved into a different unfurnished accommodation. Karim contacted the council about repair issues in this accommodation. We found it took the council two weeks to respond to Karim's complaints and it failed to check that work had been completed. The council should not have to rely on occupants of temporary accommodation to inform it if work is not completed. We found the council should have suitable arrangements in place with its contractors to ensure work is completed on time. Karim and his family later moved into permanent accommodation. The repairs to the temporary accommodation were carried out after the family moved. We recommended the council take action to ensure its contractors provide suitable accommodation and that repairs are carried out properly and in a timely manner. It reviewed its procedures and now follows up on repairs with complainants after 24 hours to ensure they are happy the repair has been carried out.

➤ *Case study:*

Andrea lives independently in her own home but has a range of health difficulties. The council commissioned a care provider to provide the support she requires. Part of the care provider's role was to administer medication to Andrea. Due to the components of Andrea's medication she needed a four-hour gap between doses. Her son complained that the care provider acting on behalf of the council had failed to administer her medication properly. In its response, the care provider accepted there had been three occasions when it failed to administer medication as there was not a four-hour lapse.

Our investigation found further such instances where there was an insufficient time lapse between doses. We also found further problems with the care provider failing to store medication safely, ensure that carers arrived at consistent times or communicate properly with Andrea's son after an incident where she had been given a double dosage of medication. Following our investigation, the council agreed to monitor the care provider in relation to its management of medicines as part of its role as the contractor of services. This was to ensure that the care provider was upholding regulatory standards in this area and delivered a safe service.

11. Councils need to assure themselves that complaint investigations involving their contractors are conducted rigorously. Where individual complaints may point to wider problems in the delivery of a service that has been outsourced, councils must ensure these concerns are acted on. Our investigations often reveal instances where councils have failed to take ownership of responding effectively to reported issues or where problems are allowed these to persist. In such cases, people are left to raise concerns time and again about the same problem or there are missed opportunities for improving the standard of the service as a whole.

➤ *Case study:*

The Council assessed Susan as needing a package of care after discharge from hospital. It agreed Susan needed four daily visits, totalling eighteen and a half hours support each week to enable her to remain in her home. The council contracted a care agency to provide care to Susan.

Her son complained to us that the council failed to properly investigate his complaint about the care agency's failure to provide his mother the contracted care package. We found the council had accepted the care provider's investigation and failed to check evidence about timekeeping, records of service delivery or changes to the care given to Susan. We found fault in the way the council oversaw the care provider's performance against its contract, which it agreed to remedy.

➤ *Case study:*

The council provided a household refuse collection service to Edna's property and to other properties on her street. The council contracted with a private company to deliver the service. Edna complained that for several years the refuse collectors consistently failed to return her wheelie bins and food waste bins off the pavement to within the boundary of her property. She said most properties on her street, as well as in the council borough generally, were similarly affected.

The council responded to her complaint by raising the problem with the contractor and requesting it put her bins back in the right place and to monitor the situation going forwards. Unfortunately, the problem persisted and she informed the council her bins were still not being replaced after every collection. The situation subsequently improved. While Edna's bins were now being properly dealt with, the contractor failed to put things right for her neighbours who continued to receive a poor service. She argued the contractor had only responded to her individual complaint and failed to address the impact of this problem on those living on her street more generally. The council had not pursued this issue as it argued it had not receive recent complaints about it. Following our investigation, the council apologised to Edna but also agreed to closely monitor the quality of refuse collection in her street to ensure the standard required by the contract was met.

12. When services are outsourced, complainants should not have to struggle to identify whether it is the council or the contractor they need to send their complaint to. This should be made clear in the arrangements between the council and its contractors. Contractors should also adhere to the same high standards of complaint handling.

➤ *Case study:*

Miriam's council contracted out its food, refuse and recycling collections. Within the contract, the private company agreed to collect missed collections the day after they are reported. The company is also responsible for responding to complaints at the first stage. Miriam reported six missed collections over six months. Initially the contractor came back

within one to two days but, as the problems continued, the service deteriorated and the contractor did not deal with the missed collection until the following week. Miriam complained to the contractor. In response, the contractor gave an incorrect reason for the missed collection.

When Miriam complained to the council, it upheld the complaint and found there had been a different reason for the missed collection. In short, the contractor blamed Miriam but the council found she had not done anything wrong. Each time Miriam complained about a run of missed collections, the service would improve for a while and then deteriorate. We found the contractor was not properly collecting the refuse, recycling or food waste. Its complaint handling was poor and this made it harder for Miriam to resolve the problem. The council agreed to review how it deals with complaints after they have been considered by the contractor.

13. In some of our investigations, we found councils at fault where there has been an absence of a formal agreement between them and the organisation delivering services on its behalf. In some cases, this contributed to a lack of a shared understanding whether an outsourcing arrangement has been entered into.

➤ *Case study:*

Councils have a statutory responsibility for dealing with stray dogs found in their area. If a council decides to delegate its stray dogs function to a private contractor, it remains responsible for discharging that duty. Helen's dog went missing and was picked up by kennels. She contacted the council to complain about excessive fees she had been charged by the kennels. However, she was told by the council that the fees were set by kennels and were outside of its control. She was therefore advised she needed to make a complaint to the kennels.

The kennels described themselves as a subcontractor for the council. However, this was at odds with the council's view that it did not have a contract with the kennels and had not delegated its stray dog duty to it. The council also argued that the kennels were only providing a holding service. We found the council was at fault for using the services of the kennels in discharge of a statutory duty without properly formalising the agreement. The council agreed to our recommendations to take action to formalise its arrangements and also remind its officers that the council is responsible for the stray dog function even if a third party is carrying it out. Further, it agreed to introduce monitoring of the kennels to ensure it is carrying out its duties properly and offered value for money.

Keeping pace with public service reform

14. As stated above, our jurisdiction extends to any third party administering or providing a service on behalf of a local authority. However, we consider it is necessary for our legislation to also evolve to reflect the changes in public service delivery. The Local Government Act 1974 sets out our jurisdiction in terms of the authorities that the Ombudsman has jurisdiction over. This approach was appropriate at a time where local public services were delivered directly by a clearly identifiable number of local councils. However, it no longer reflects the realities of the way local public services are now delivered and risks becoming increasingly irrelevant.

15. We would welcome reform that seeks to enshrine in our legislation an overarching principle that users of all publicly funded local services should have the right to access an independent ombudsman service. This more modern approach to our jurisdiction would allow us to continue to provide a clear route to redress to users

of those services irrespective of the pace of future reform in local public services and help to future proof our legislation.

- 16. The public expects services to remain accountable irrespective of the mode of delivery. We strongly believe that when services are outsourced or where new structures are created, this should take into account the need for clear routes for accountability and redress. The risk otherwise is that this weakens and confuses lines of responsibility or at worst, that it creates an accountability vacuum. We have responded to this changing environment for examples by publishing key principles for complaint handling in combined authorities² and working together with them to ensure they provide a clear path for service users through the complaints system. The Committee's inquiry provides an opportunity to consider how the requirement for transparency, accountability and redress can be preserved given the changes in methods of public service delivery.**
- 17. We hope our comments will be useful to you in this important inquiry and we would be happy to discuss any element of this contribution in more detail. If you consider we can be of any further assistance, please do contact us. We would also welcome the opportunity to provide oral evidence to the Committee's inquiry.**

**Local Government and Social Care Ombudsman
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² <https://www.lgo.org.uk/information-centre/reports/advice-and-guidance/guidance-notes/principles-combined-authorities>