

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

Introduction

This annual review provides a summary of the complaints we have dealt with about Birmingham City 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 dealt with 522 complaints and enquiries about Birmingham City Council during the year to the end of March. Of these 282 (54%) were either complaints where the Council had not had the opportunity to consider them or the advice team was able to provide advice. There were 240 complaints dealt with by this office.

The largest number of contacts was about Housing (192, nearly 37% of the total) of which 88 were dealt with by my staff. Nationally just over 18% of complaints investigated are about Housing compared with nearly 37% in Birmingham.

By contrast complaints forwarded about Planning and Building Control (29 or 12.1%) are significantly less than the national figure (22.1%) as are those about Education (27 or 11.3%, compared to 17% nationally).

We had 89 contacts categorised as Other; this embraces such topics as Anti Social Behaviour, Cemeteries, Drainage and Consumer Affairs and 31 of these were considered by my staff.

Of the remaining categories, contacts about the Social Care element of the Council's functions created 68 contacts divided equally between Adults and Children's Services; 15 of each being dealt with by my staff. Benefits and Public Finance (mainly Council Tax) produced 42 and 34

enquiries respectively of which 20 and seven were complaints forwarded to the investigative team. Transport and Highways was the smallest category, with 3.6% of complaints. This amounted to 19 enquiries with eight of these being complaints dealt with by this office.

Complaint outcomes

Of the 303 decisions made on complaints about your Council, 78 were on premature complaints which had been resubmitted to the Ombudsman because the person complaining was unhappy with the response they had received from the Council (25.7%). These 78 complaints resulted in 25 local settlements, just under one-third of the decisions made on them. The Council may find it helpful to review these complaints to identify any lessons for future complaint handling.

Local settlements

We will often discontinue enquiries into a complaint when a council takes or agrees to take action that we consider to be a satisfactory response – we call these local settlements. In 2008/09, 27.4% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements. Of the complaints, the comparable figure for Birmingham was 45.3%. It is encouraging that your Council recognises the need to settle complaints at an early stage to the benefit of all concerned.

Housing

There were 54 housing complaints resulting in local settlements, with 23 being about housing repairs.

As a result of an investigation of a homelessness complaint, the Council agreed to amend its procedures to ensure that homeless applicants are provided with a written copy of their application to check and sign rather than check on a computer screen.

As part of two investigations, the Council accepted that there were delays in processing and deciding homelessness appeals and put in place measures to address the problem.

In another complaint the Council failed to update its records resulting in a tenant who needed to move due to being a victim of violent crime waiting six months more than they should have done to be rehoused.

One of our investigations concerned a tenant who had moved home and was entitled to compensation under the Land Compensation Act. However, the claim was not submitted by their next of kin until after the tenant died. The Council accepted that its written information about the Home Loss scheme was not clear and agreed to revise it and make the standard Home Loss payment, resulting in a payment of £4,400 to the estate.

A number of complaints involved tenants claiming compensation from the Housing Department. As a result of these investigations, the Council has clarified its procedures for dealing with such claims and ensures that more detailed records are kept. The Council may wish to review the length of time it takes for claims to be assessed by its insurers and loss adjusters, as this is sometimes considerable.

Adult care services

There were eight local settlements on adult care complaints during the year. In one case the Council delayed for 16 months in progressing a disabled facilities grant scheme for a ground floor rear extension. In particular the Council failed to communicate effectively over amended plans. As well as making a compensatory payment of £4,635 to the complainant, the Council agreed to produce amended plans as a matter of course and communicate all variations in plans, however small, to applicants.

Communication failures featured in a case, where someone who had cared for a close disabled relative for many years was not kept informed about the progress of a vulnerable adult investigation, when the relative concerned was removed from their care, following allegations of harm. I appreciate the difficulties of staff not wanting to jeopardise police enquiries but it seemed to me that the situation could have been handled more humanely, with less distress to the individual concerned. I was pleased with the remedy agreed and encouraged that the Council is reviewing its procedures/protocols for this sort of situation.

Two complaints were about shortcomings with the operation of the Social Services complaints procedure – in one case failing properly to consider a complaint at the first stage and in another a failure to offer a stage three review.

Children and family services

There were nine local settlements on Children and Family Services complaints about your Council. In three of these cases financial remedies between £18,000 and £24,000 were agreed.

Two of these complaints concerned foster care. In one, an assessment of a couple as foster carers was subject to severe delay. The individuals were inappropriately assessed as friend and family carers and were not fully advised of the needs and family circumstances of the two young people who were placed with them. The Council has since improved its policies, in particular, its definition of friend and family carers. In another case a complainant was caused unnecessary distress by the Council's mishandling of the de-registration procedures for foster carers, including a confused preliminary investigation and the presentation of flawed evidence to the Fostering Panel. The third case concerned the Council's failure to carry out an assessment of a seriously disabled child until the child was a teenager, causing severe distress to the whole family and a likely loss of services.

Two complaints concerned failures, including delay, in dealing with child protection investigations, one was about the loss of files for a looked after child and another was about lack of services and financial assistance for a young person whilst in care and on leaving care.

Education

There were 11 local settlements on education complaints, eight for school admissions and three for special educational needs.

In the majority of cases school admission complaints were either settled by a fresh appeal hearing or the child being offered a place due to changes in the waiting list. In one case the evidence, about alleged intimidating behaviour by an Appeal Panel Chair, was very finely balanced and it is to the Council's credit that it offered a fresh appeal. Various service improvements have been put in place to enhance the admission appeal process as a result of the settlements including: amendments to the Council's statement of case for primary school appeals to clearly distinguish between those that are subject to infant class size prejudice criteria and those that are not, and more frequent monitoring of the marking of test papers where applicable. One complaint was about an admission appeal after a child had been removed from the school roll due to a prolonged holiday. As well as a £1,000 financial remedy, the Council acknowledged that it had not followed the relevant Regulations correctly and is now reviewing its procedures.

One of the special educational needs complaints concerned a looked after child who had moved outside Birmingham. There was a failure to advise the receiving Council of the child's placement in its area and a delay in agreeing funding, causing a loss of several month's education for the child concerned. The investigation of another complaint, where again a child had lost several months education, identified a problem for the Council in obtaining information from the Child and Adolescent Mental Health Service (CAMHS) to help with assessments. The Council agreed to review its procedures for obtaining information from CAMHS.

Antisocial behaviour

Two of the three complaints of antisocial behaviour resolved by local settlements were about problems caused by neighbours with mental health problems. In one case the complainant left their Council property after regular flooding incidents and sleep disturbance. The complaint was settled by a payment of £750, the offer of an alternative property and a promise that Adult Care Services would assess the neighbour's care needs. In the other case the tenant had experienced nuisance from noise, odour, vermin and dogs and there seemed to be a problem in identifying which council department might assist with the cleaning of the neighbour's flat. This complaint resulted in an action plan being drawn up to help the vulnerable individual concerned and a payment of £500 to the complainant.

Benefits

In 2008/09, 70% of the 42 investigated complaints about benefits were resolved by a local settlement. Two involved vulnerable people where it was unreasonable to expect them to follow the system unaided; in each case the Council recalculated the figures resulting in back payments, one of £12,000. Compensation was also paid. In another case, the Council continued to pay Housing and Council Tax Benefit although it had boarded up the complainant's vandalised property which was subsequently set on fire. The Council lost the keys to the property and did not offer the family alternative accommodation. Ultimately the Council wrote off the Benefit overpayments and paid £3,500 for stress, anxiety and time and trouble due to the complainant being unable to live in his property and having to remain with his sons in unsatisfactory housing conditions from August 2004. This was the highest amount paid; most payments were in the low hundreds.

In a complex case, once the Council had recognised the problem, it not only provided an excellent summary of what had happened but also advised the claimant about other benefits which might be available.

Planning and building regulations

There were five local settlements. In one complaint, the Council had failed to take robust action against an unauthorised use next door to the complainant's home over many years and this resulted in a financial remedy of £2,000 plus an undertaking to take immediate action. In another complaint, the Council took several legal steps to enforce conditions on a new building opposite a complainant's home but never followed them through and after a period of several years decided that enforcement action was not needed. The Council has discretion to do this but had raised the complainant's expectations.

Public finance

Complaints in this category are concerned principally with Council Tax and Business Rates, and led to seven local settlements.

Other issues

One complaint about Building Regulations did not result in a local settlement but highlighted the need for good record keeping and liaison between staff.

Liaison with the Local Government Ombudsman

The average time taken by the Council to reply to our first formal enquiries on 145 complaints was 33.4 days. That shows a steady improvement, down from 36.5 days in 2007/08 and 40.8 days in 2006/07 but it is still outside the 28 day period we ask councils to respond within. Enquiries on 51 complaints (35%) were responded to within the 28 day deadline, an improvement compared to the equivalent figure of 32% for 2007/08. However, if we disregard a multiple complaint of 10 cases, that brings the percentage down to 28%.

Looked at by category, the swiftest response was for Education complaints, with an average time of 16.6 days and the slowest for Transport and Highways at 55.7 days. The extra priority given to school admission cases explains the quick response time for Education complaints. Last year Transport and Highways was one of the categories where there had been a significant improvement in response times compared to the previous year (an average response time of 27.5 days compared with 55.4 days in 2006/07). This year, a multiple of four cases (out of a total of only seven within Transport and Highways), where the response time was 75 days, explains the poorer than average figure for this category.

Children and Family Services complaints took on average 45.3 days for response, Benefits 42.9 days, Public Finance 33 days and Adult Care Services 30.7 days. Housing generated the most enquiries (59) and the average response time was 34.8 days. Planning and Building Control response times showed a marked improvement from 32.3 days to 22.6 days.

Over the past year a small team of staff here has been dealing with complaints about your Council and the arrangement seems to be working well. My Assistant Ombudsman and all members of the team have visited Birmingham during the year and this has been important in further enhancing the working relationships between our two organisations. We do not collect data on informal enquiries carried out during investigation but the anecdotal evidence is that my staff are making increasing and extensive use of this system and that the majority of responses are received well within two weeks. Your staff continue to be extremely willing to discuss ways of remedying complaints and that is very welcome. We have had a useful dialogue during the year on housing repairs, the use of bailiffs and education admission complaints.

Training in complaint handling

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 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. 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	14	12	0	81	19	24	9	9	33	201
Advice given	5	7	3	23	3	3	10	2	25	81
Forwarded to investigative team (resubmitted prematures)	1	2	1	34	7	2	10	5	16	78
Forwarded to investigative team (new)	14	13	26	54	13	5	19	3	15	162
Total	34	34	30	192	42	34	48	19	89	522

Investigative Team

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	0	126	0	0	101	51	25	303

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	145	33.4
2007 / 2008	232	36.5
2006 / 2007	175	40.8

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