

**The Local Government Ombudsman's  
Annual Review  
Essex County 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 Essex County Council 2008/09

## Introduction

This annual review provides a summary of the complaints we have dealt with about Essex County 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

I received 139 enquiries and complaints about your authority. Of these 47 concerned education, 29 concerned transport and highways, 23 concerned adult care services and 23 concerned "other". Of the remainder, 12 concerned children and family services, three concerned planning and building control, and one concerned housing and one concerned public finance.

Thirty of the enquiries and complaints were premature and advice was given in a further 36 instances. The remaining 73 complaints were forwarded to the investigative team.

## Complaint outcomes

I decided 78 complaints made against the Council last year. Twelve complaints were outside my jurisdiction and so I could not consider them. I found no fault in 37 cases. I exercised my discretion to discontinue my involvement in 15 cases where although there was some evidence of fault I could not conclude that it had caused significant injustice. Of the remaining 14 complaints I issued one report and settled 13 locally.

## **Reports**

When we complete an investigation, we generally issue a report. This year we issued one report. This report concerned the Council's children and family services.

The Council had failed to tell a complainant that payments made to them for caring for their grandchild, who was a child in need, would end when they obtained a Residence Order. It then applied a means test in respect of ongoing financial support which did not take into account the applicant's individual circumstances. The complainant faced financial problems in looking after their grandchild as a result, and struggled to pay the nursery fees she had to incur as she was in full time employment.

The Council agreed to reinstate the allowance it had been paying from the date payments ended, totalling £7,500; and to continue to pay £90 a week until a new means test was carried out. It also agreed to review its policy and procedure in respect of its means test to assess ongoing financial support for kinship carers, and to produce leaflets explaining all the options in such circumstances. It has now implemented all these improvements to its services.

## **Local settlements**

A 'local settlement' is a complaint where, during the course of our investigation, the Council has agreed to take some action which we consider is a satisfactory response to the complaint. This can include such things as reconsideration of a decision, repairs carried out, policies reviewed, benefit paid, an apology or other action. In addition I may ask the Council to pay compensation. This year I agreed 13 local settlements with your Council and asked you to pay compensation of £8,519 in total.

In 2008/09, 27.4% of all complaints the Ombudsman decided and which were within our jurisdiction were local settlements. Of the complaints we decided against your authority, 20% were local settlements.

Sometimes though the Council may be at fault I use my discretion not to pursue an investigation because there is no significant injustice to the complainant. But there still may be lessons for the Council to draw from such cases. This year I closed 15 cases using my discretion.

## **Complaints by service area**

### ***Education***

Seven of the 13 local settlements were in this area, and I asked the Council to pay compensation of £6,869 in total.

#### *School admissions*

I decided 23 complaints about the Council's schools admissions scheme. In two complaints I found that the Council was at fault.

In one, the Council failed to provide advice and support to a Traveller who wanted to apply for a secondary school place for their son, although they were known to the Council's Travellers Education Service. As a result of this failure their son was out of school for two terms after his arrival in the area. The Council paid £250 as compensation, and changed its procedures to implement its new statutory duty to identify children out of school and to find appropriate places for them.

In the other complaint where I found fault, a school admissions appeal panel relied on information about other children from the primary school where a place was being sought in reaching its decision to refuse the appeal. This information was not produced at the hearing for the complainant to challenge, and turned out to be inaccurate. The Council agreed to offer the complainant a new appeal hearing.

In a third complaint, although there had been no fault by the Council, I suggested that a school's governors might look at how a neighbouring authority used forms for making special arrangements for aptitude testing for admission.

### *School exclusions*

I decided two complaints about exclusions from schools. In one I found that the Council was at fault. The exclusions appeal panel upheld the complainant's appeal against their child's permanent exclusion from a special school. However, it failed to follow the correct procedure or to follow good practice principles endorsed in case law when considering whether to direct that the child should be reinstated. The Council agreed to arrange a new appeal hearing specifically to reconsider the issue of reinstatement afresh.

### *School transport*

I decided one complaint on this, and found that the Council was not at fault.

### *Special educational needs*

I decided seven complaints on this, and found that the Council was at fault in three complaints.

In the first, the Council delayed unreasonably in locating a new placement for a child with a statement of special educational needs, following an authorised leave of absence from a mainstream school. The delay meant that the child received only five hours schooling a week for one and a half terms. The Council paid £750 as compensation.

The second complaint concerned an arrangement by the Council with the Primary Care Trust to provide speech and language therapy to a child as specified in her statement of special educational needs. The Trust made cuts and reduced the sessions; later it agreed to pay for the employment of more therapists, but the Council took over six months to employ a therapist. In all, the Council failed to provide the agreed therapy for 49 sessions over two school years. The Council agreed to pay £2,450, its estimate of the cost of the missed sessions, plus £250 for the complainant's time and trouble.

In the third complaint the Council delayed in amending a statement, and failed to make a home education visit. It agreed to pay £675 as compensation, and has reminded its staff and its schools to ensure that the Home Education Service is kept informed of any pupil not on a school roll.

### *Student support*

I decided one complaint on this, and found that the Council was not at fault.

### *Education general*

I decided one complaint on this, and found that the Council was at fault.

A Council special school felt that it could no longer cope with the behaviour of the complainant's child, who had a statement of special educational need. Both the complainant and the school asked the Council to find an alternative placement, but there was a delay in identifying and

agreeing this. The child was out of school for a total of 10 months over three periods, during which she did not receive suitable education or the specialist provision contained in her statement. The Council agreed to pay £2,494 compensation as a means of redress.

### ***Transport and highways***

#### ***Highway management***

I did not investigate four of the complaints I received as these were outside my jurisdiction. In one of these the Council agreed with a suggestion that it re-write its practice note for deciding applications for vehicle crossovers. I investigated eight complaints, and found that the Council was at fault in two.

In one the Council made an order to re-open a road to two-way traffic, but this was not sealed within the statutory timeframe, although the road was re-opened. Another confirmatory order was required. The complainant said that the process was therefore flawed. The Council agreed to go through the procedure again, to consult widely, and to report fully to the appropriate Cabinet Member if an order was warranted by this information.

In the second complaint the Council delayed in attending to clearing drains which were causing intermittent problems during periods of heavy rain. The Council agreed to inspect these drains and to carry out any clearing required.

#### ***Rights of way***

I decided one complaint on this, and found that the Council was not at fault.

#### ***Traffic management***

I decided one complaint on this, and found that the Council was not at fault.

### ***Adult care services***

I investigated four complaints, and found that the Council was at fault in one.

The complainant's mother received domiciliary care from the Council. The complainant notified the Council when her mother's savings fell below £30,000 asking it to carry out a financial re-assessment. The Council applied the re-assessment, which resulted in a nil contribution, from the date it received the complainant's letter rather than from when the capital fell below the relevant level. It agreed to write off an invoice for £2,275 which it had wrongly sent, and to revise its booklet on charges for non-residential care to clarify its policy and practice.

### ***Children and family services***

I did not investigate two of the complaints I received, as these were outside my jurisdiction. I investigated five complaints and found the Council at fault in two; one led to a report, which I have summarised above, and the other to a local settlement.

In the latter complaint the Council moved a child to another residential home against professional advice. As a result they lost two hours of learning support a week, and were caused distress. The Council agreed to pay £950 compensation.

### ***Planning and building***

I investigated two complaints, and found that the Council was at fault in one of these.

In that complaint, the Council's notification to a neighbour of a planning application at a school did not mention a proposed compound and bin store. Had the complainant known of this they would have objected to the application. This then would have been referred to Committee for a decision rather than being decided by delegated authority by an Officer. When it was put to the Committee following my involvement, it said that it would have refused the application based largely on the effect on the complainant's amenity. The Council agreed to move the bin store as soon as it was practicable to do so, and to pay the complainant £500 a year until it did so; it also paid them £200 for their time and trouble.

### ***Other***

I did not investigate six complaints under our category of "other" which refers to complaints made about a number of different council services other than those mentioned above, as they were outside my jurisdiction. I investigated 10 complaints, and found the Council at fault in one.

In an earlier local settlement the Council had agreed to revise its procedures concerning the banning of members of the public from its premises. In the present complaint the Council said that it had not done this. It agreed to review the ban from one of its offices that the complainant had received, in accordance with guidelines I suggested, and to carry out the previously agreed revision of its procedures.

In one of the other complaints I investigated, the Council decided to close and sell an outdoor learning centre. There was strong opposition to this, but I decided that there had been no fault in the Council's consultation or in the procedure it had followed, and so the Council had not been at fault.

### **Liaison with the Local Government Ombudsman**

The average time taken by the Council to reply to our written enquiries was 30.2 days, which is slightly slower than the time target of 28 days that we set, but considerably better than the Council achieved last year.

In three complaints that led to local settlements my investigators noted particularly helpful and quick contributions from Council staff, but in another three complaints they raised some concern about the quality of the Council's response.

### **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 groups of individuals from different authorities.

I am pleased that during 2008/09 we provided three two day training courses in Good Complaint Handling to staff from your authority, and another two day course in Effective Complaint Handling.

We have extended the range of courses we provide and I have enclosed some information on the full range of our 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	Public Finance inc. Local Taxation	Planning and building control	Transport and highways	Other	Total
Formal/informal premature complaints	11	6	6	0	0	1	5	2	31
Advice given	3	2	8	1	1	0	13	7	35
Forwarded to investigative team (resubmitted prematures)	3	0	1	0	0	0	3	3	10
Forwarded to investigative team (new)	6	4	32	0	0	2	8	11	63
<b>Total</b>	<b>23</b>	<b>12</b>	<b>47</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>29</b>	<b>23</b>	<b>139</b>

## Investigative Team

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	1	13	0	0	37	15	12	78

Response times	FIRST ENQUIRIES	
	No. of First Enquiries	Avg no. of days to respond
1/04/2008 / 31/03/2009	50	30.2
2007 / 2008	47	37.5
2006 / 2007	33	37.3

## Average local authority response times 01/04/2008 to 31/03/2009

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