

**The Local Government Ombudsman's
Annual Review**

**The London Borough of
Havering
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 the London Borough of Havering 2008/09

Introduction

This annual review provides a summary of the complaints we have dealt with about the London Borough of Havering. 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

A total of 112 enquiries about your council was received in 2008/09. Housing was the service area with the highest number of overall contacts (43). Other services areas with significant numbers were planning (12), public finance (10), education (8) and highways (8).

Of the 50 complaints which were investigated, 18 concerned housing issues. The main concern was repairs. Other areas which generated numbers of complaints were education, most being about school admissions, and antisocial behaviour (which fall within our 'other' category).

Complaint outcomes

Reports

When we complete an investigation, we issue a report. This year one report was issued against your Council. This found maladministration causing injustice to the complainant.

The report was published by my colleague Local Government Ombudsman, Jerry White, and the Health Service Ombudsman. It followed a joint investigation into complaints made by Mencap

relating to the health and social care of six people with learning disabilities who had died between 2003 and 2005. The complaints involved a total of 20 public bodies, including three local councils. One of these was your Council. The report made wide ranging recommendations affecting all NHS and social care organisations in England about meeting the needs of people with learning disabilities.

The complaint involving your Council concerned the case of "Mr Cannon", a 30 year old man with severe learning disabilities, who broke his leg when in respite care at a Council owned Care Home in June 2003. Mr Cannon's health had deteriorated rapidly following the injury, despite medical treatment and hospitalisation, and sadly he died in August 2003. Mr Cannon's parents made complaints against the Council, the local Medical Centre, the Hospital NHS Trust and the Healthcare Commission in relation to their son's death.

Mr Cannon's parents complained that their son was provided with inadequate care by the Council and that this led to his injury and death. They said the Council failed to keep their son safe as a result of poor planning, poor supervision, weak management and inadequate staffing. They also said the Council repeatedly failed to properly investigate the circumstances of Mr Cannon's injury or take responsibility for the part their failings played in his injury and subsequent death.

Mr White concluded that the Council failed to provide and/or secure an acceptable standard of care for Mr Cannon and, as a result, his safety was put at risk. His injury might well have been avoided and probably should have been if not for the deficiencies identified. The Council also compounded the family's distress because it did not respond to their subsequent complaint in an appropriate way. It was concluded that the Council had contributed to a public service failure which resulted in a preventable death.

The Council was asked to apologise formally to Mr Cannon's parents and make each of them an ex-gratia payment of £10,000. It was also urged to take all necessary steps to ensure Care Plans and risk assessments are properly in place for all persons receiving respite care it commissions. I am gratified that the Council has agreed to implement these recommendations.

Other complaint findings

I made 52 other decisions on complaints against the Council (some of which were received in the preceding year). In 20 cases, I found no fault with the Council's actions. 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. At other times the substantive matter of the complaint may be outside my jurisdiction. This year I closed 15 cases using my discretion and there were two cases where I could not investigate the complaints because they were outside my jurisdiction.

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, a review of policies, an apology or other action. In addition we may ask the Council to pay compensation. In 2008/09, 27.4% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements. This year I agreed 13 local settlements with your Council (25.5%). In eight of these cases I recommended the payment of compensation. This amounted to about £2,000 in total.

Complaints by service area

Housing

I decided 20 complaints about housing, including nine about housing repairs. I found no fault in two of the repairs cases and used my discretion to discontinue the investigation in two others; another was considered as premature and referred back to the Council to be dealt with under its own

complaint procedures. Four investigations led to local settlements involving modest awards of compensation because of delays in carrying out repairs.

With the other housing complaints, I concluded in six cases that the Council was not at fault, and in another I asked the Council to consider the complaint before I would become involved. There were four other local settlements.

In one case involving a homeless man, the Council delayed in taking a homelessness application for three months. It eventually decided it had no duty to secure accommodation for the man, but nevertheless agreed to offer him a 12 month tenancy on a discretionary basis. In the circumstances I considered the Council's action, in addition to its payment of £150 compensation, represented a very suitable settlement of the complaint. In another homelessness case, I could not establish from the differing accounts and interpretations of what had been said whether the Council was at fault.

In another the complainant had some medical problems and wanted to move. I found no grounds to criticise the Council for its assessment of priority for housing on the Housing Register, or for its response to a request for re-housing in another area. But I did conclude the Council had unreasonably delayed in getting an occupational therapist to address the complainant's problems with using their bathroom, and it had failed to respond properly to some correspondence. The Council remedied matters satisfactorily with a payment of £150 compensation and liaison over possible further works to the existing home.

A further local settlement was promptly concluded with the Council correcting a registration date for housing, which gave the complainant increased priority when they bid for properties under the choice based lettings scheme. And a final housing local settlement was reached where the complainants felt unable to move into a new property for a number of weeks because their son was in hospital: the Council agreed to write off the rent for the period in question.

Antisocial behaviour

I reached a settlement with the Council on one case relating to antisocial behaviour by the complainant's neighbours. The Council had decided to take possession proceedings against the offending tenant early in 2007 but then invalidated its possession notice by granting an introductory tenancy. A further attempt to take action later in the year failed because of problems with the notices issued. The Council accepted it had been at fault and said that without this it would have arranged for the neighbour to sign an Acceptable Behaviour Contract which might have been effective or, at least, would have given it a stronger hand to seek possession if the Contract was breached. As a settlement, I recommended the payment of £1,000 compensation and for the Council to reconsider its options, including the case for taking legal action.

I did not find grounds to seek a remedy for a complainant in another antisocial behaviour case involving an owner-occupier. But the complaint raised general issues about the Council's approach. In particular, it had dealt with matters in a compartmentalised way and there was a delay in referring harassment issues to the staff. The Council also failed to follow up what action the police had taken and did not provide information to the complainant about what had been done. I note that the Council agreed to draw up a protocol on dealing with complaints involving owner-occupiers as a result. So I should be grateful if you would report back to me about what progress has been made in this respect and provide me with a copy of the protocol if one has now been issued.

Education

Five of the eight decisions I made on education cases were complaints about school admissions. I found no fault in the Council's actions in three cases and decided there were insufficient grounds to

pursue matters in another. But as a result of an issue raised by that complaint I asked the Council to provide more information in its admission brochure about how home to school distances (used in assessing the priority for school places) are calculated.

I found fault by the Council in one school admissions case. Here, the Council did not give the complainant sufficient notice of information which was going to be used at an appeal hearing as part of the explanation of why a child was not offered a place at a particular school. There is statutory guidance about this and the fault meant that the parents did not have all the time they should have had to prepare their own case for the appeal. The fault was remedied by the Council's agreement to arrange a fresh appeal.

Planning and building control

Two of the five decisions in this area were local settlements: I found no fault by the Council in the three cases. In one of the other cases, the Council wrongly told the complainant that it did not have the powers or resources to take action against a landowner in respect of a dangerous tree very close to their home. After I had pointed out to the Council its powers, it required the landowner to undertake works to make the tree (and others) safe. This seemed a satisfactory solution to the concerns raised.

The Council also gave misleading advice about the acceptability under the Building Regulations of a developer's proposal to make a connection to a sewer, sections of which the complainant co-owned. As a result of the advice, the complainant unnecessarily incurred legal costs to protect his property rights. The Council was prompt in acknowledging fault and proposing an acceptable remedy involving the refund of legal costs and payment of compensation.

Adult care services

In addition to the report on "Mr Cannon", referred to above, there was one other finding on an adult care case this year. This involved a complaint about booking procedures for respite care. I exercised my discretion not to pursue the complaint further as the Council had already agreed to amend its procedures before the complaint came to me. The complainant subsequently raised concerns about the new arrangements. But I took note of the Council's plan to set up a working group including local care home representatives with the aim of making further improvements to respite booking arrangements, which appeared to address matters.

Public finance

Two of the four complaints about public finance issues were outside my jurisdiction. I found no fault by the Council with another and I used my discretion to discontinue the investigation in the last. In this, the complainant felt the Council was being heavy handed in threatening court action and adding costs when an instalment of council tax was paid late, but the Council's actions were within the law and it refunded the costs so I did not investigate further.

Transport and highways

I did not pursue any of the three transport and highways complaints I decided: I found no fault in one case (about parking) and insufficient grounds to pursue the other two. One concerned a change in the Council's policy towards blue badge holders. The Council had recognised there were some problems with the way this applied so it adjusted the policy. The complainant was content with this.

Liaison with the Local Government Ombudsman

We ask councils to respond to our enquiries within 28 days. The average time taken to respond to the 33 enquiries we made to your Council was 24.3 days. This is slightly better than the average for the preceding year and maintains the significant improvement in this area. I note that replies to our enquiries were particularly and commendably prompt in schools admissions cases (on average 5.6 days), which we prioritise. For 2007/08 I had cause to comment on slow responses and other concerns regarding some planning and housing enquiries. This year performance appears to be much more consistent, though there were still slow responses (51 and 48 days respectively) on two housing cases and with one complaint about antisocial behaviour (66 days).

I am aware that there have been some disagreements between my staff and your officers regarding jurisdictional issues and about the Council's responses to some of our enquiries. I acknowledge the Council's right to raise legitimate issues that may arise in respect of our investigations, and I am satisfied we have usually been able to resolve any differences. Where there are disagreements, however, it is important that complainants do not suffer in consequence.

With one complaint enquiries were made in February. The Council challenged my jurisdiction, and sought legal advice. The Council was quite entitled to do this but I asked that it prepare a response meantime, so that my investigation was not unduly delayed. I am concerned that the Council did not do this and, having accepted that the complaint was within my jurisdiction, it did not provide the requested reply until April. I do not agree that by collating information meantime the Council would have "tacitly accepted" my view or that the Council can or should decide my investigation must be placed "on hold".

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.

We have extended the range of training courses we provide and 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	3	1	1	16	2	4	3	2	5	37
Advice given	0	0	0	9	4	3	3	2	3	24
Forwarded to investigative team (resubmitted prematures)	0	0	0	8	0	3	1	2	2	16
Forwarded to investigative team (new)	2	0	7	10	1	0	4	2	8	34
Total	5	1	8	43	7	10	11	8	18	111

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	20	15	2	51

Average local authority resp 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	33	24.3
2007 / 2008	33	25.9
2006 / 2007	40	32.7

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 Parks Authorities	100	0	0