

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

Introduction

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

Last year, our Advice Team handled 164 enquiries and complaints about your Council. Of these 28 related to complaints which we considered were premature, and we referred them to your Council for investigation. We gave advice to 26 other enquirers on a variety of matters, including my jurisdiction. Our Advice Team passed 110 complaints to the investigative team. The issues which prompted the most significant numbers of enquiries were Education, Social Services, and Transport and Highways. These subjects also accounted for the majority of the complaints forwarded to the investigative team.

Complaint outcomes

This year, I made decisions on 125 complaints against your Council. There were 43 complaints in which I found no, or insufficient, evidence of fault by the Council to warrant further investigation. I used my discretion not to pursue investigations into 34 complaints, for example where the injustice to the complainant was not significant enough to warrant a remedy, or where the remedy which the Council had provided was adequate. I found that 13 complaints were outside my jurisdiction.

Local settlements

A 'local settlement' is a complaint where, during the course of our investigation, a council takes or agrees to take some action that we consider to be a satisfactory response to the complaint. In 2008/09, 27.4% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements. Of the complaints I decided against your authority, which were within my jurisdiction, 35 (31.3%) were local settlements. These settlements resulted in the Council making payments totalling £23,812. Among these payments, £3,350 arose from three complaints about children and family services, £3,250 from eight complaints (six of which were related) about highways matters, and £16,962 from three complaints about special educational needs.

Complaints by service area

School admissions

I decided 58 complaints about applications and appeals for admission to Community and Voluntary Controlled schools, where the Council is the admissions authority. One complaint was outside my jurisdiction. In 23 complaints, there was no, or insufficient, evidence of maladministration and, in 20 others, I used my discretion not to pursue an investigation.

I agreed to settle 14 complaints. In a number of appeals, the written cases presented on the Council's behalf contained mistakes and, in others, the Panels took account of irrelevant factors in reaching their conclusions. In eight cases, a place at a preferred school was offered to a pupil, by various means including a successful appeal. The Council offered a rehearing, with a completely different Appeal Panel and a different Clerk, in respect of the appeals of six other pupils.

Nevertheless, the Council was reluctant to accept our recommendations that some appeals should be reheard, and more resistant to our suggestion that, in a very exceptional case where the Council and the Appeal Panel had been at fault, the Council should exercise its discretion to admit the pupil without requiring a further appeal. The Council has agreed to review a range of procedures and published material relating to applications and appeals for school places.

School transport

I decided four complaints about school transport. In one complaint, there was no, or insufficient, evidence of maladministration and, in one other, I used my discretion not to pursue an investigation. Another complaint was outside my jurisdiction.

I settled the last complaint. The Council had allocated too many places on a school bus so that it was overcrowded. The complainant's children were transferred to another bus which deposited them slightly further from their home. The Council reinstated the original provision and apologised for the error, caused by an officer overriding a computerised system.

In another case, which did not call for a formal settlement, the Council agreed to give further attention to procedural issues connected with eligibility for free home to school transport and with its scheme for non-statutory appeals against the refusal of transport.

Special educational needs

I decided six complaints about special educational needs. In two complaints, there was no, or insufficient, evidence of maladministration and, in one other, I used my discretion not to pursue an investigation.

I agreed to settle three complaints. In one case, there was a shortfall, of eight hours each week for more than three months, in provision to meet a pupil's special educational needs. The Council paid £1,750 to meet the cost of the lost provision.

In a second case, the Council failed over two years, partly through difficulty in recruiting therapists, to provide speech and language therapy for a pupil who had moved into its area. The Council paid £1,000 to recognise two years' lost provision, and £250 to acknowledge the complainant's time and trouble in complaining.

In the third case, the Council delayed unreasonably in finalising a pupil's statement of special educational needs at the transfer to secondary school. There was then delay in identifying a suitable residential placement, during which the Council maintained that the pupil could attend a local day school. The pupil was without education for some time. When alternative education was provided, it was inadequate. The Council was resistant to providing information about the complaint, despite a personal approach by me, and to settling the complaint. It finally agreed to make a payment of £13,962, representing £6,868 in respect of lost day provision, £5,344 in respect of lost residential provision, a contribution of £750 to the complainant's legal fees, and £1,000 to recognise the complainant's time and trouble.

Children and family services

I decided 17 complaints about children and family services. Two complaints were outside my jurisdiction. In five complaints, there was no, or insufficient, evidence of maladministration and, in five others, I used my discretion not to pursue an investigation.

I agreed to settle five complaints. Two complaints related to the Council's withdrawal of a play scheme service without adequate notice, and without providing suitable alternative provision for about 18 months. The Council paid a total of £500 to recognise its failure to give adequate notice of the change, and a total of £2,500 to acknowledge its failure to make prompt alternative provision. It also paid one complainant £250 to recognise a potential breach of confidentiality through its persistently sending correspondence to a wrong address.

Highway management

I decided 22 complaints about highway management. Three complaints were outside my jurisdiction. In seven complaints, there was no, or insufficient, evidence of maladministration and, in one other, I used my discretion not to pursue an investigation.

I agreed to settle 11 complaints. In one case, the Council agreed to use its best endeavours to ensure that a highway on a relatively recent development was adopted by 31 July 2008. As the Council was unable to implement that settlement, I am investigating a further complaint about that matter.

Another complaint concerned four years' delay in adopting a highway, it emerged that the delay had been caused solely by the Council's delay in undertaking a transfer of land. The delay had meant that the complainants' entitlement to claim for the loss of value of their property had expired. The Council agreed to settle the complaint by reconsidering the claim as though it were still valid, subject to negotiation in the usual way.

In another case, there was delay, totalling three months, in repairing a street lamp and in replying to the complainant's correspondence. The Council agreed to pay £150 to recognise its faults. I have asked it to review the handling of complaints about highways issues.

A further case showed that the Council had allowed a footpath to become blocked in a way which endangered the complainant. The Council wrongly told the complainant that the road in question was the responsibility of the Highways Agency, and not its responsibility. The Council acknowledged, by paying £100, that it had put the complainant to avoidable time and trouble.

There were six related complaints about the way in which the Council had kept and maintained its highway records, and given inconsistent advice about the status of a highway and land adjoining it. While there were other issues outside my jurisdiction which could have been the subject of legal proceedings between the parties, it was apparent that the Council's actions had led to a lack of clarity as to the complainants' positions. The Council has apologised for its faults, reviewed the procedures governing its highway records, and paid each complainant £500.

Other service areas

I considered other complaints against the Council in relation to other service areas. They included planning applications, trees, student support, consumer affairs, and waste management. The Council settled one complaint relating to a planning application, in respect of which we secured a payment of £250 for the complainant.

Liaison with the Local Government Ombudsman

The average time taken by the Council to reply to our written enquiries about complaints was 38.1 days. This represents a significant deterioration, compared with the time taken last year (29.4 days) to respond to our enquiries. Delayed responses were not confined to any particular departments. I hope that the Council will make every effort to achieve the target (28 days) which we set for responding to our first written enquiries.

The Council's responses to our enquiries as well as being slow do not always provide full answers to the questions raised. This can lead to the need to make further enquiries. Some service areas provide their own responses directly to my investigative staff, instead of through the Council's designated link officer and this can cause difficulties. While some responses have been thin, others have contained an excess of detail. On occasion the Council is reluctant to offer to settle complaints.

Some of the Council's responses on admission appeal cases have been incomplete, with pages missing from Clerks' manuscript notes of Admissions Appeal Panels. Our concern about the quality of responses applies not only to complaints about appeals where the Council is the admissions authority for the school in question, but also where the Council provides an appellate and clerking service on behalf of the Governors of Voluntary Aided and Foundation schools who are their own admissions authorities.

I appreciate the assistance the Council gives my office in dealing with a significant number of complaints. My officers keep in touch with your Corporate Access to Information Coordinator, and visit your Council's offices from time to time, in particular in relation to issues about social services. We find these contacts useful. I am sure it will assist if our staff meet in the coming year to discuss the concerns I have expressed above.

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 am pleased that during 2008/09 we provided training in Effective Complaint Handling to 15 first line managers from children's services within your authority.

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	Public Finance inc. Local Taxation	Planning and building control	Transport and highways	Other	Total
Formal/informal premature complaints	6	9	2	0	2	5	4	28
Advice given	3	6	6	0	0	4	7	26
Forwarded to investigative team (resubmitted prematures)	0	3	1	0	0	5	3	12
Forwarded to investigative team (new)	4	12	60	1	2	16	3	98
Total	13	30	69	1	4	30	17	164

Investigative Team

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	0	35	0	0	43	34	13	125

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	69	38.1
2007 / 2008	78	29.4
2006 / 2007	62	29.5

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