

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

Sandwell Metropolitan Borough 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 Sandwell Metropolitan Borough Council 2008/09

Introduction

This annual review provides a summary of the complaints we have dealt with about Sandwell Metropolitan Borough 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 received 154 complaints and enquiries during the year. Of these 61 were about housing issues, 13 about planning-related matters, 15 were in the public finance and local taxation category, 16 were about education matters, mainly school admissions. There were eight enquiries or complaints about benefits administration, three about each of adult social care and children and family services, and two concerned transport and highway issues. There were also 33 cases recorded in the 'Other' category which included antisocial behaviour, waste management, cemeteries, land and miscellaneous matters.

We treated 40 of those complaints and enquiries as premature and in a further 29 cases advice was given (usually to make a complaint direct to the Council). The remaining 85 complaints were forwarded to the investigative team either as new complaints (68) or as premature complaints that had been resubmitted (17).

Complaint outcomes

I decided 80 complaints against the Council during the year. In 32 of those cases (40%) I found no evidence of maladministration. I used my discretion not to investigate a further nine. Typically these are cases where even though there may have been some fault by the Council there is no

significant injustice to the complainant. In 19 cases (which represents almost 24% of all decisions made in the year) I took the view that the matters complained about were outside my jurisdiction and so they were not investigated.

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 we decided against your authority 20 cases were local settlements, which is 25% of the total. Overall, your Council paid £11,725 to recognise the injustice caused to complainants in those cases, as well as taking other action.

Antisocial behaviour

In three cases the Council and its partner, Sandwell Homes, failed properly to follow their own antisocial behaviour procedures by not speaking to the complainants initially and by not keeping them properly informed as their enquiries progressed. While there was no evidence that the Council and Sandwell Homes could have done more to stop the antisocial behaviour from happening, the Council agreed to pay each complainant £100, arrange for senior Council and Sandwell Homes officers to meet with them and to explore the prospects for mediation between the parties.

Social Care

In two cases, one involving adults and the other involving children, the Council upheld complaints through its own complaints procedures but then failed properly to consider what was the appropriate remedy for each complaint.

Avoidable delay in assessing the care needs of one complainant's parent who had dementia meant there was delay in referral to a care home, resulting in unnecessary distress and inconvenience to the complainant. The complaint was considered and upheld by a Review Panel at Stage 3 of the Council's procedures as they were at the time, but the Panel only recommended a payment of £250 for the complainant's time and trouble in pursuing the complaint. It failed to recognise the significant degree of distress the Council's failings had caused. Your Council agreed to make a payment of £1,000 when invited by my office to do so, and that was welcome. It is also the case that new procedures under the Department of Health complaints initiative for all adult social care complaints, 'Making Experiences Count' (see Section 2 of this review), will remove the Panel stage. But it is important that councils make a proper assessment of injustice caused to the complainant in those complaints which are upheld, and provide a reasonable and proportionate remedy. This will avoid the need for some complainants to come to me.

In a child protection case there was significant avoidable delay in arranging the placement of a very young child with grandparents, so the family was separated for a period significantly longer than necessary at a crucial time in the child's life. Although the complaint was substantially upheld at Stage 2 of the Council's procedures, the adjudication did not deal with the question of an appropriate remedy. Taking into account the seriousness of the errors and their impact on the family, the Council agreed at my invitation to make a payment of £5,000 to the complainants. I welcome its agreement to do so, but it would have been better if the Council's own procedures had dealt with the question of the appropriate remedy, with assistance from my office if necessary.

Housing

Seven housing complaints resulted in local settlements, about one third of the total in number and in the amount of the remedies. I describe here only the more significant cases.

Homelessness

In one case, a complainant was evicted on the grounds of rent arrears even though his housing benefit claim was still unresolved and there was evidence the Council had failed to act on information received. Other mistakes compounded the error. The Council agreed to make a direct offer of accommodation when the outstanding arrears, which were later established as being correct, are cleared. In another case the Council, or its partner Sandwell Homes, failed properly to assess medical priority for rehousing because it did not include staff with medical qualifications and experience in the process. The Council paid these complainants £750 in recognition of the costs they incurred and the distress, time and trouble they were caused. The Council has also begun to take steps to improve its procedures [although these have been the subject of another investigation completed after the period to which this review relates].

Allocations

In one case a complainant was given the wrong advice about the type of property to bid for under the choice-based lettings scheme the Council and Sandwell Homes operate. As a result she made bids for properties she had no chance of being allocated and missed the opportunity to bid for accommodation which she might have been allocated. During the course of the investigation, the complainant was successful in being rehoused, and the Council agreed to make her a payment of £250 in recognition of her earlier disappointment, and her time and trouble spent pursuing her complaint.

In another case the Council gave the complainant incorrect information about the family's overcrowding status and availability of a living room as sleeping accommodation. A gas fire in the room meant the room could not be used as sleeping accommodation, although the Council insisted that it could. When the complainant continued to use it as such the Council cut off the gas without warning, leaving the family without heating. The matter was quickly resolved, but the Council agreed to make a payment of £75 in recognition of the impact of its mistakes.

Repairs

The Council and Sandwell Homes failed to deal promptly and effectively with flooding from a downstairs toilet necessary for a family member with a disability. There was also delay in carrying out repairs and works under the Decent Homes initiative and to provide disabled facilities. Moreover, the Council failed to consider making arrangements for the family to move out while works were carried out, and this meant they had to try to cope in difficult circumstances with the disability for longer than should have been necessary. The Council agreed to complete the works and other outstanding repairs quickly and to pay the complainant the sum of £1,700 in recognition of the distress and inconvenience caused.

In another case, contractors for Sandwell Homes caused disruption to the complainant's water supply while carrying out work next door, and Sandwell Homes failed to respond promptly. When it did, the remedial work caused unacceptable disruption, and the complainants were offered a meagre payment by way of compensation. The Council and Sandwell homes agreed to carry out additional work and to increase the payment to the complainants to £250 in recognition of the inconvenience they were caused.

The Council and its partners arranged a 'kick-start' loan for a family to bring their own home up to 'Decent Homes' standards, but failed to administer it properly by not ensuring they were able to exercise the kind of choices they should expect. Some of the work carried out by contractors arranged by the Council was of poor quality and unacceptable. The Council agreed to fund remedial and some additional works as well as to make a payment of £1,000 which it had already offered in its own response to the complaint.

Local taxation

In one case the Council failed to offer reasonable support to a taxpayer who was vulnerable by reason of a disabling health condition, and failed to take into account information supplied in relation to a council tax benefit claim. At a late stage of its own procedures, and after some delay which had led the complainant to come to me, the Council arranged to restore the benefit claim to the best position possible given the passage of time and with good grace offered a payment of £1,000 to recognise the loss of benefit which could not be backdated as well as a degree of distress caused to the complainant.

In another case the Council recorded the property of a man who had died as being exempt from Council tax until probate was granted, but it overlooked asking for the information for two years, during which time it issued three Council tax demands showing that there was no tax to pay. When it discovered the mistake, over £3,000 was owing, and the Council wanted to secure the debt with a charging order on the property until it was sold. That would have required a liability order from the courts, but the complainant, the next-of-kin, was reluctant to have a court judgement against him. The Council agreed in discussion with my office to seek a voluntary arrangement to secure the outstanding debt and to pay the complainant £250 in recognition of the impact of its original omission.

I wish to note two cases where the Council pursued recovery action for outstanding Council tax even though the complainants' circumstances would suggest this was inappropriate. In one case the complainant suffered mental health problems and other difficulties which the Council was aware of, but it refused to accept reduced payment towards arrears or withdraw the debt from its bailiffs. When my office asked it to reconsider its position, however, it agreed to reduce the payment of arrears from £12 to £3 per week, recalled the debt from its bailiffs and cancelled all fees and charges which had arisen from the bailiff action. In the other case there was an outstanding claim for Council tax benefit with which the Council was dealing and where it was seeking additional information. But at the same time the Council issued a summons for Council tax arrears, causing the complainant significant anxiety. Through the Council's own complaints procedure it admitted some peripheral faults but did not address the question of the summons, and treated the complaint as a compensation claim, focusing on a question of legal liability and referring the matter to its risk management and insurance section even after my office intervened. This meant the Council missed some opportunities to resolve the complaint causing the complainant more anxiety, time and trouble in pursuing the matter. In its defence, the Council said that so many residents are entitled to some Council tax benefit that it will not suspend recovery action on receipt of an application. It seems to me that approach is flawed for two reasons: first, if so many residents are entitled to some Council tax benefit there must be a good prospect of a new application leading to an award of benefit which pays all or most of the outstanding Council tax, so recovery action in such cases would amount to a waste of resources; and second, I generally consider it to be maladministration for a Council to take recovery action without properly considering the individual taxpayer's circumstances or where the action proposed is disproportionate. I would urge the Council to review its approach in light of this. I am pleased to note that this case in particular was resolved and the Council paid the complainant £150 in recognition of what had happened.

Liaison with the Local Government Ombudsman

Formal enquiries were made on 49 complaints during the year. Your Council's average response time of just over 28 days is about the same as last year's time, but remains fractionally outside the 28 days requested. I note that, on average, responses to enquiries on complaints about planning, housing, and benefits take longer than responses on other service areas. Responses in some service areas, such as school admissions, are received in a much shorter time. It would be helpful

if you could review your procedures and take steps to try to ensure that we receive your responses to our enquiries within 28 days whenever it is possible, as this will have an impact on average times.

My officers continue to appreciate the readiness of your staff generally to consider taking early action to resolve complaints. But I have noted some cases where either the remedies proposed by the Council have been less than I would expect to see, and in some cases quite meagre, or where no remedy has been proposed even though the Council has identified and accepted mistakes in its actions. You may wish to remind Council and Sandwell Homes' officers that I expect appropriate and proportionate remedies to be offered where the Council's actions and those of its partners have caused avoidable injustice to citizens. More guidance on this aspect of complaint handling can be found on our website.

The Authority was not represented at our Seminar for local authority complaints officers held in November 2008. We would be pleased to see a representative at the next Seminar, planned for 2010.

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.

In previous years we have provided training in Good Complaint Handling to staff from your authority. We have extended the range of 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 would welcome the opportunity for an Assistant Ombudsman and some of my investigative staff to discuss the concerns raised by this review with your senior officers and to provide additional guidance as appropriate. I shall ask the Assistant Ombudsman from the relevant team to contact you shortly to arrange a visit to your offices for this purpose.

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	1	0	0	23	3	5	0	0	8	40
Advice given	1	1	1	9	3	2	2	1	9	29
Forwarded to investigative team (resubmitted prematures)	0	1	0	5	0	2	3	1	5	17
Forwarded to investigative team (new)	1	1	15	24	2	6	8	0	11	68
Total	3	3	16	61	8	15	13	2	33	154

Investigative Team

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	0	20	0	0	32	9	19	80

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	49	28.6
2007 / 2008	60	28.2
2006 / 2007	88	24.0

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