

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

**Walsall 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 Walsall Metropolitan Borough Council 2008/09

## Introduction

This annual review provides a summary of the complaints we have dealt with about Walsall 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 61 complaints and enquiries during the year. Of these 13 were about planning and building control, seven about children and family services, five concerned adult care services, and six concerned transport and highway issues.

We treated 16 of those complaints and enquiries as premature and in a further 14 cases advice was given (usually to make a complaint direct to the Council). The remaining 31 complaints were forwarded to the investigative team either as new complaints or as premature complaints that had been resubmitted.

## Complaint outcomes

I decided 33 complaints against the Council during the year. In 13 of those cases (39%) I found no evidence of maladministration. I used my discretion not to investigate a further six. 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 five cases (which represent 15% 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.

Of the 33 complaints that I decided in the year six had been resubmitted after initially being referred to your Council as premature. In five of those complaints I found no maladministration and no significant injustice in the third.

## **Reports**

When we complete an investigation, we generally issue a report. This year we issued one report against the Council. A disabled married couple applied for a disabled facilities grant for adaptations when they moved into a housing association property. The Council was aware that the work needed would exceed the mandatory maximum grant of £25,000. However, the complainants were neither informed that funding above this amount was discretionary, nor that there was any possibility that these additional costs might not be covered. I concluded that the Council had fettered its discretion by failing to consider all discretionary funding when taking into account the circumstances of the individual case. The Council had decided in June 2007 that it would only fund grants up to the maximum of £25,000, and did not change its policy until October that year. In this case it had also failed to take into account the cost to the Council of keeping the husband in a residential care home when it advised the complainants that funding would not be provided. He could not return home until the adaptations were completed. This caused significant injustice because the husband had to remain in residential care and separated from his family for six months longer than necessary. It also caused the couple financial problems because the husband was not paid disability benefits when in residential care and his wife lost her carer's allowance. The family had extra expense in visiting the residential care home which was nine miles from the family home. I was satisfied that this caused considerable stress for the family.

I recommended that the Council should write off residential care charges of £2457.20 in recompense for costs incurred by the couple as a result of the husband having to remain in residential care longer than should have been the case, and the further residential care charges of £1000 for the period between the date when he should have been able to return home and the date when he did return home. The Council also agreed to make a payment of £1000 compensation in recognition of the significant distress caused to the family.

It is often appropriate to issue a report on this type of complaint so that my consideration of the matter and my findings can be in the public domain. This is what I did in this case.

## **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 against your Council eight were decided as local settlements.

Three of the local settlements related to complaints about highway management. In one case the Council accepted that it had incorrectly interpreted the status of a road and given the complainant incorrect information over a seven-year period. This meant that the complainant was put to the expense of maintaining the road until the Council eventually admitted its maintenance responsibility. The Council agreed to pay the complainant £1000, half of which was recompense for the costs incurred by him.

In another case the Council delayed in removing a redundant traffic counting box outside the complainant's house which prevented him from widening the access for his car. The Council acted promptly after the complaint was made to me and carried out the work.

In the third complaint, about private hire vehicles obstructing access to other properties, the Council failed to follow matters up with the operator of the taxi firm when letters were not responded to, despite promises made to the local neighbourhood partnership that further contact would be made. Site visits had been made by the Council but no problems had been identified. These visits were not documented. The Council agreed to write to the taxi firm again and to visit the complainants to discuss the problems. I considered that this was an appropriate remedy.

I decided two adult care complaints as local settlements. In one the complaint was made on behalf of an elderly carer who had suffered a stroke and was in poor health. There was a failure to inform the carer of visits by Council officers before they were made. This meant she was unable to ask a third party to be there to help her. There were various delays in taking court of protection action and associated matters which meant that the carer remained responsible for dealing with the affairs of her elderly aunt, who was in residential care, when she was unable to do so. The Council failed to provide the carer with regular updates. This caused distress to the carer and the Council also failed to inform the complainant what was happening despite a promise to do so. The complainant had to go to time and trouble to find out what was happening. The Council agreed to pay compensation of £500 to the carer, and £400 to the complainant and to revise its procedures to ensure that visits to service users' representatives are preceded by either telephone or written contact to explain the reason why a visit is necessary.

In the other adult care services complaint, the Council failed to draw up a satisfactory care plan, failed to review it after December 2007, and failed to adhere to the care plan by keeping the family properly informed. The Council also failed to administer medicine in accordance with guidelines. The Council had already amended its medication procedures before the complaint was made to me. I did not think the failure to draw up a full care plan or to review it meant that the complainant's mother did not receive the care to which she was entitled. However, the Council's failures caused distress and resulted in time and trouble in pursuing the complaint. I agreed remedies of £250 to the complainant, and £250 to her mother for changes in medication procedures.

I decided one housing-related case as a local settlement. The Council failed to inform the complainant on his first visit to the Council that he could return to make a homelessness application within 28 days of being made homeless. The Council then delayed in taking the application from him when he eventually returned to the Council. In addition to compensation of £200 for the complainant, the Council also agreed to hold a training session for front-line staff to ensure that they are aware of the homeless procedures and when applications should be accepted.

In a complaint concerning a planning matter, the complainant believed that flat had been built higher than approved by the planning permission. There was no evidence to show that the Council had checked levels as claimed. I was satisfied with the Council's agreement to measure the height of the property and, if higher than approved, to consider whether enforcement action was appropriate.

I was satisfied in a building control complaint that a foul water drain would not have been allowed to be connected to a surface water drain if there had been a proper inspection by the building inspector. The Council agreed to contribute one third of the complainant's costs in putting the connection right (up to a maximum of £750) and one third of costs incurred in legal expenses.

The Council remedied these eight complaints in ways which I considered was appropriate and paid a total of £3,600, as well as providing other benefits, to the people affected.

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

Formal enquiries were made on 24 complaints during the year. Your Council's average response time of 34.9 days is a marked improvement on last year's time of 45.3 days but remains outside the 28 days requested. My staff noted significant delays in replying to enquiries on one adult care services complaint (enquiries made in May 2008 not answered until August 2008). In four complaints decided by way of local settlements there were significant delays in replying to proposals for settlement and a request for supporting documentation. The Council needs to make more strenuous efforts to get its act together in this area. I also hope settlements may be achieved more speedily once the principle of a local settlement has been accepted.

## **Training in complaint handling**

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. 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, will 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	5	0	0	3	0	3	0	4	16
Advice given	1	2	0	0	0	1	0	0	10	14
Forwarded to investigative team (resubmitted prematures)	0	0	0	0	1	0	6	2	5	14
Forwarded to investigative team (new)	3	0	2	2	0	0	4	4	2	17
<b>Total</b>	<b>5</b>	<b>7</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>13</b>	<b>6</b>	<b>21</b>	<b>61</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	8	0	0	13	6	5	33

**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	24	34.9
2007 / 2008	26	45.3
2006 / 2007	20	34.5

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