

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

Introduction

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

Our Advice Team received 66 enquiries and complaints about your Council, around two-thirds of which were forwarded to the investigative team. About half of all enquiries and complaints received concerned education, mostly school admissions and special educational needs, which accounts for the high proportion of complaints forwarded for investigation. There were also 10 enquiries about adult care services, half of which were passed for investigation; there were nine enquiries about children and family services and eight about transport and highways.

Complaint outcomes

Reports and local settlements

When we complete an investigation, we generally issue a report. This year I issued two reports against your authority.

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. This year for your Council we agreed seven local settlements, representing 17.5% of decisions made on complaints within jurisdiction. Compensation was paid in four cases. The total sum paid was over £10,000, most of which was in connection with one report.

Sometimes though the Council may be at fault I use my discretion not to pursue an investigation, perhaps because there is no significant injustice to the complainant or because the Council has already provided a suitable remedy. But there still may be lessons for the Council to draw from such cases. This year I closed 19 cases using my discretion.

There were 12 complaints where I found no or insufficient evidence of fault by the Council to justify further investigation. There were also five complaints which fell outside my jurisdiction.

Complaints by service area

Children and family services

I decided six complaints about children and family services, two of which resulted in local settlements and one in a report. I did not pursue the two others that were in my jurisdiction.

I directed that the report should not be made available to members of the public or advertised in the press. I shall not therefore comment in detail here, save to say that I found maladministration causing injustice. The Council has accepted my recommendations.

In another case a young person complained about the way he was treated on one occasion by a manager at a private care home where he had been placed by the Council. The Council took the complaint seriously and took appropriate action to ensure that the care home conducted an independent investigation. However, while the Council had satisfied itself that the investigation was thorough, the complainant felt that the home had not offered a proper apology or sufficient information about the outcome. On receiving the complaint, the Council had not been as responsive as it could have been, but it readily agreed to my suggestion to provide a letter of apology and provide as much further information about the outcome of the investigation as was possible without breaching confidentiality.

A complaint from foster carers about the way an investigation had been conducted into allegations against them had been largely upheld under the statutory children's services complaints procedure. In responding to my enquiries, the Council offered compensation of £1,000 and I agreed a settlement on this basis.

Another complaint in this service area which I closed on discretion raised the issue of whether it was appropriate to treat the complainant as unreasonably persistent. I was critical of the Council over the way it dealt with the matter and it agreed to investigate any complaints about new issues that arose.

Adult care services

I made decisions on four complaints about adult care services. In two of these the complainants contacted me because they were having difficulty getting the Council to agree to progress their complaints to the second stage of the statutory complaints procedure. Following further discussion in each case the Council agreed to investigate at stage 2.

I did not pursue one of the complaints I received because although the Council had acknowledged shortcomings in the way it dealt with the question of care home fees, I considered that it had offered an appropriate remedy.

Education

I reached decisions on 27 education complaints, 19 of which were about school admissions and five about special educational needs.

The second report I issued against your authority this year highlighted the vexed question of infant class size legislation. The law prohibits admission authorities from admitting more than 30 children into an infant class taught by one teacher, except in certain specified circumstances. In this case the complainant was refused a place in a Reception class because she applied late and the class was full. Because she lived so close to the school her child was placed at the top of the waiting list. It then transpired that because of the need to rectify a mistake made in the admissions process, another child had been offered a place, taking the numbers up to 31. This meant that when one place was not taken up, the Council refused to admit the complainant's child until another vacancy arose and the numbers dropped to 29. The Council was entitled to take this approach on the basis of infant class size legislation, but I decided to issue the report to draw attention to the potential knock-on effects of mistakes in admission decisions on those on the waiting list, the difficulty of identifying a suitable remedy for complainants, and therefore the importance of having rigorous checking procedures in place when decisions are made. I welcome the Council's offer to raise the issues with other admissions authorities nationally and involve my office in any discussions that follow.

In seven of the school admissions complaints I found no or insufficient evidence of fault. These were mainly concerned with the conduct and administration of appeals. In 10 others, some of which were about appeals for the same school, my investigations revealed a number of problems, including delays in setting up appeal hearings, mistakes in information provided in the appeal decision letter, lack of a record of the decision-making process, and a potentially incorrect approach by the panel to infant class appeals. In one case I was critical of the Council for allowing no discretion to accept late applications even in exceptional circumstances. This complaint was settled when a place became available for the child. The Council also agreed to reconsider the question of discretion in accepting late applications and decided to include the issue in its annual consultation process with schools. Another settlement was agreed on the basis that the Council would apologise for errors made, and provide extra training to new appeal clerks. I closed the other admissions complaints on discretion, but the Council was nevertheless willing to address the issues they raised. One way this was done was to hold a meeting of admission and appeals staff to review how the process had gone and whether any lessons could be learned from mistakes made. I am grateful to the Council for inviting one of my investigators along to the meeting to participate in the discussion.

I decided five complaints about special educational needs (SEN), two of them as settlements and the rest closed on discretion. Such complaints can present particular difficulties for me to investigate because of the limits on my jurisdiction. In many cases the complainant's concerns encompass not only the way the Council has dealt with their requests for and provision of extra support for their child, but also how the school has delivered the additional provision. The Ombudsmen are prohibited from investigating matters relating to the internal management of schools which means I am sometimes unable to address the whole complaint. This limitation affected the way I was able to deal with three of the complaints I decided this year. In one case while there was no clear evidence of fault on the part of the Council in reducing the amount of support provided to the child, the Council nevertheless agreed to arrange a meeting with the complainant and the school to discuss the child's needs and look at whether extra provision could be made to make up for the shortfall.

The Council agreed to pay compensation to one complainant for delay in issuing a final statement of special educational needs, and failure to respond to letters and telephone calls, failings which the Council acknowledged were due to staff shortages. I understand that a review of staffing has

taken place. Another SEN complaint was settled when the Council acknowledged that it had not taken the complainant's wishes fully into account when she questioned the suitability of a placement for her child and had not provided her with sufficiently clear information about how to make a formal request for a change of placement.

Liaison with the Local Government Ombudsman

The average time taken by the Council to reply to our written enquiries was 17.4 days, which is well within the time target we set of 28 days and maintains the improvement seen in the previous year. I am grateful for the prompt response times, which may reflect the relatively high proportion of complaints relating to school admissions, where the Council recognises the need for decisions to be reached as quickly as possible.

The invitation to attend the schools admissions review meeting referred to above was welcome. It was also helpful that the Council offered my office the opportunity to look at its proposed revised complaints procedure.

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 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	Planning and building control	Transport and highways	Other	Total
Formal/informal premature complaints	3	2	2	1	1	0	9
Advice given	2	2	3	1	2	1	11
Forwarded to investigative team (resubmitted prematures)	1	2	0	0	2	0	5
Forwarded to investigative team (new)	4	3	27	1	3	3	41
Total	10	9	32	3	8	4	66

Investigative Team

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	2	7	0	0	12	19	5	45

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	25	17.4
2007 / 2008	20	17.9
2006 / 2007	8	23.1

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