

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

Westminster City 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 Westminster City Council 2008/09

Introduction

This annual review provides a summary of the complaints we have dealt with about Westminster City 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 on the 2008/09 statistics without drawing those comparisons.

Enquiries and complaints received

Our Advice Team received 229 enquiries and complaints about your Council. The majority concerned housing (65) or transport and highways (75). Around half of the enquiries and complaints we received were passed to the investigation team and the remainder were considered to be premature or some advice was given.

Of the 40 complaints about housing which were passed to the investigation team, 16 were about disrepair, 11 were about allocations and the remainder concerned homelessness, housing sales/leaseholds and tenancy management. All but two of the 32 transport and highways cases passed to the investigation team were about parking. The "Other" category includes complaints passed for investigation concerning antisocial behaviour and leisure and culture.

Complaint outcomes

A 'local settlement' is a complaint where, during the course of our investigation, the Council has agreed to take some action which we consider is a satisfactory response to the complaint. This can include such things as reconsideration of a decision, repairs carried out, policies reviewed, benefit entitlement paid, an apology made or other action. In addition I may ask the Council to pay compensation. In 2008/09, 27.4% of all complaints the Ombudsmen decided and which were

within our jurisdiction were local settlements. Of the complaints within jurisdiction we decided against your authority almost 41% were local settlements. They included compensation of just over £10,000 in total.

Sometimes though the Council may be at fault, I use my discretion not to pursue an investigation because there is no significant injustice to the complainant. But there still may be lessons for the Council to draw from such cases. This year I closed 24 cases using my discretion.

There were 38 complaints where I found no or insufficient evidence of fault by the Council to justify further investigation. There were also 26 complaints which fell outside my jurisdiction.

Complaints by service area

Housing

Housing allocations

I decided 13 complaints about the Council's housing allocation system. There were three local settlements. In the first, a duplicate file was wrongly created which led to medical points not being included on an application. The Council had already considered the complaint under its complaints procedure and had identified the problem. My investigator looked to see if the complainant had missed out on any opportunities for rehousing but could not conclude that they had. But the Council paid them £50 for their time and trouble in pursuing the complaint.

In the second local settlement the Council had delayed in considering an application for a transfer on medical grounds. The Council agreed to consider new medical evidence and as a result the complainant was awarded additional priority.

In the final settlement the Council delayed in updating the complainant's records (following the birth of a child) and in processing his application for a transfer. It confirmed that the delays had not affected the complainant's prospects for a move because of the shortage of suitable accommodation but the Council agreed to pay compensation of £100 in recognition of the uncertainty.

In the remaining cases about housing allocations the complainants were either unhappy with the length of time they were waiting or the sort of properties they were offered. However, in most cases I did not find the Council to be at fault.

Disrepair

I decided 16 complaints about council house repairs and obtained local settlements in 11 of them.

Two cases involved a failure to carry out work to the property before the tenants moved in. In one case the inconvenience was low and the Council agreed to increase the level of compensation to £100. In another case the failure to do the work may have contributed to infestations of mice and cockroaches. The Council had already arranged a management transfer before I became involved but, although it had acknowledged fault, it had not considered compensation. The Council agreed to my suggestion that it should pay the complainants £700.

Another case involved a mouse infestation and a failure to take adequate steps to prevent the mice gaining access to the complainant's property. It was resolved by the Council doing work to prevent access by the mice and paying £250 compensation.

Two complaints were about water leaks. One was from a flat above; there had been some delay in dealing with this but after my involvement the Council promptly repaired the leak, redecorated the damaged areas and paid £250 in compensation to the complainant. The other case involved water penetration through the roof. Major works to replace the roof were delayed, and it took two years for effective action to be taken to stop the leak. The Council agreed to increase the compensation offered to the complainant from £150 to £500.

Another settlement involved the Council delaying in replacing an elderly complainant's radiator. The Council's operative had visited promptly to turn off the radiator and the complainant was given an electric heater for her lounge. But the repair, which should have taken four weeks, took almost four months. The Council replaced the radiator, reimbursed the complainant for her additional electricity costs and paid compensation of £120.

Sometimes tenants contribute to delays by not providing access. In three such cases I decided that there should be limited or no compensation to reflect the tenants' own contribution to the delays and the minor impact of the unfinished works.

Leaseholders

A leaseholder wanted to purchase a room from the Council in the basement of the property in which she lived. The Council delayed before replying and the complainant wrongly assumed she would be able to buy the room. But the Council eventually decided not to sell it. That decision was a proper one for the Council to take but I asked that it pay the complainant some modest compensation for having her expectations dashed.

I cannot normally deal with complaints about service charges as there is a right of appeal to the Leasehold Valuation Tribunal. But I did investigate one unusual case. The complainant had sold his flat some time ago but his solicitors had retained a substantial sum against unresolved service charges which in error they paid to the Council. The Council agreed in principle to repay this sum but failed to do so and the complainant, not unreasonably, instructed his solicitors. However, by the time the Council agreed to settle, the solicitors' costs were almost equal to the sum due to be repaid. Following discussions with both the Council and the complainant, I agreed compensation of £3,000 for the two years delay in settling the matter and including interest on the sum to be repaid.

Antisocial behaviour

I decided five complaints about the Council's response to complaints about antisocial behaviour. In two cases the Council was either not at fault or had not had a reasonable time to consider the matter but in the remaining three cases I agreed local settlements.

In one of the local settlements a resident had been experiencing noise nuisance from a neighbour for about 10 years. They had made numerous reports to the noise team. An abatement notice was served on the neighbour and the Council witnessed breaches of the notice. My investigation revealed a lack of record keeping which meant that there were no records to show why the Council decided not to take enforcement action. The complainant was sent contradictory information and the evidence which they submitted to the estate office was not passed on to the noise team. The Council took several steps: it agreed that the noise team would spend time with the complainant in order to witness the noise and to deal with it appropriately; it paid compensation of £350 to the complainant; it agreed to review several policies; it later appointed two new staff to deal with those properties with a high number of complaints over the last 12 months; and it also developed a quality assurance protocol for the noise team.

In another of the settlements, the Council paid £500 to a complainant for five months delay in dealing with noise nuisance from a tenant with mental health problems.

Parking

Parking enforcement is a fertile area for complaints, partly because of the number of contraventions and partly because of the complexities of the appeal system. Because of these rights of appeal, 12 of the complaints I received this year fell outside my jurisdiction. In another nine cases I did not find any fault with what the Council had done, but in 15 complaints I obtained local settlements.

In one case a motorcyclist who parked in a bay which had been suspended received a penalty charge notice (PCN) which he paid. He said the bay was not properly signed and that other motorcyclists had received tickets for parking in it. The Council accepted that on the balance of probabilities the suspension notice may not have been prominently displayed as it had issued 62 tickets over two days and it cancelled and refunded payments on all of them.

Another motorcyclist left her bike parked for 5 days. Several PCNs were issued but not all of them were left on the bike. Although the complainant made representations about those PCNs she did receive, the Council's automated system did not recognise that her letter applied to all of the issued tickets. So she lost her right to appeal some of them and had to pay over £900 in fines. The complainant could have filed a statutory declaration to regain her appeal rights but the Council's officers failed to explain this to her properly. After I investigated, the Council apologised to the complainant, repaid £670 of the £900 and paid compensation of £150 for her time and trouble. In addition the Council also upgraded the automated system and amended its letter about statutory declarations.

Other faults revealed by these complaints included:

- A failure or delay in reimbursing a parking fine;
- A broken undertaking to allow time to unload when making deliveries to customers;
- A suspension of a Pay by Phone account without notice or explanation;
- A failure to reply to written representations; and
- A failure to stop recovery action despite the complainant's successful appeal.

In some cases, although my investigation did not reveal significant fault, the Council agreed to exercise its discretion in the complainants' favour. For example, a disabled resident who had received a PCN made representations too late and the debt was passed to the bailiffs for recovery. I asked the Council to consider the complainant's circumstances and it agreed to refund all but £50 of the payment made by the complainant. In another case described by the Council as "borderline", it agreed to reconsider the complainant's representations on compassionate grounds.

Four complainants said the compensation offered by the Council's own complaint investigation, was inadequate but I considered that the compensation the Council had offered in those cases was a reasonable remedy.

Housing benefit

A commercial landlord informed the Council's fraud team that a tenant was more than eight weeks in arrears. This meant that the Council should have paid the housing benefit directly to him as the landlord. The fraud team sent the letter to the benefit department which did not receive it. The complaint went through all three stages of the Council's own complaint process and although the Council agreed that the letter had been received by its fraud team, it was not prepared to offer any compensation. After my investigation the Council agreed to pay almost £700 which represented the amount of benefit outstanding from the point the landlord told the Council about the arrears to the point it made payments to the landlord.

Local taxation

The Council delayed for well over a year in sending an officer to determine whether a property was habitable, but in the meantime continued with council tax recovery action against the complainant. Eventually the council tax account was put right, the complainant was refunded the resulting credit and the bailiffs' fees he had incurred, and the Council paid compensation of £500.

Leisure and culture

I decided three complaints about alleged nuisance arising from the use of a small Council-owned park by pupils of a private school during the school day. The Council said this use was permissible under the existing bye-laws and there was no evidence it caused a significant problem. Nevertheless, the Council agreed to review the bye-laws to see whether or not in future its permission would be required for this type of use of its parks on a regular basis.

Education

An applicant for a school place felt that the admissions authority and the appeal panel failed to correctly consider the social and medical evidence provided in support of the application. After further medical and social evidence was submitted, a place was offered at the school.

In another case the Council was working to an incorrect timescale and so delayed before assessing a child's special educational needs. Fortunately the child did not miss out on any educational provision but the Council reviewed its procedure and in recognition of the frustration, anxiety, time and trouble caused to the complainant, it paid compensation of £200.

Waste management

In one case a rubbish bin was placed on the pavement outside a complainant's home. Unfortunately, people dumped all sorts of rubbish thereby causing not just a mess but also obstructing the pavement. The Council agreed to remove the bin - but did not do so. Following my investigation the Council removed the bin, paid compensation for its delay and arranged for a senior officer to meet the complainant to discuss the continuing problem of people dumping rubbish. There was then a further delay by the Council in arranging the meeting and when the complainant contacted me again the Council paid additional compensation.

Liaison with the Local Government Ombudsman

The average time taken by the Council to reply to our written enquiries was fractionally over 28 days. This was quicker than last year and just exceeded our time target. Most of these enquiries were in relation to complaints about housing and parking and so improvements in these two areas would seem to be the key to ensuring an improved performance.

I was pleased that one of the Council's central complaints team attended our seminar for link officers in March of this year. I hope that he found the event of interest.

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 groups of individuals from different authorities.

I note that during 2008/09 six of the complaints I decided as settlements had previously been referred to the Council as premature but the complainants were not satisfied with the outcome of the Council's investigation. So our courses may be of interest to you and I have enclosed some information on the full range of courses available together with contact details for enquiries and bookings.

Conclusions

I welcome this opportunity to give you my reflections about the complaints my office has dealt with over the past year. I hope that you find the information and assessment provided useful when seeking improvements to your Council's services.

Tony Redmond
Local Government Ombudsman
10th floor
Millbank Tower
Millbank
London
SW1P 4QP

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.

Tony Redmond
Local Government Ombudsman
10th floor
Millbank Tower
Millbank
London
SW1P 4QP

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	0	0	0	17	2	14	3	27	7	70
Advice given	1	0	2	8	3	3	0	16	14	47
Forwarded to investigative team (resubmitted prematures)	1	2	0	14	1	3	1	5	4	31
Forwarded to investigative team (new)	1	0	3	25	6	3	1	27	15	81
Total	3	2	5	64	12	23	5	75	40	229

Investigative Team

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	0	43	0	0	38	24	26	131

Response times	FIRST ENQUIRIES	
	No. of First Enquiries	Avg no. of days to respond
1/04/2008 / 31/03/2009	68	28.1
2007 / 2008	85	30.0
2006 / 2007	72	25.9

Average local authority response times 01/04/2008 to 31/03/2009

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