

**STANDARDS COMMITTEE
4 JULY 2007**

LOCAL GOVERNMENT OMBUDSMAN COMPLAINTS – STATUS REPORT

Purpose of Report

1. This report provides an update of Local Government Ombudsman Complaints which this council has dealt with and resolved between January and June 2007.

Case Summaries

2. The following case summaries are complaints received from the Ombudsman's office which have been resolved in the six month period considered for this report. This does not reflect the number of current cases that are ongoing.

Case 1 – Highways

The complainant stated that the Council had failed to ensure that the road outside his property was properly repaired after being taken up by a utility company. The consequence of this was that passing traffic was causing his house to shake and the house was suffering ongoing damage.

The crux of this complaint was the standard of work associated with the repair of the road surface. The complainant stated that the trench that had been opened had not been sufficiently backfilled and therefore could not sustain the weight of passing traffic. The issue was that although the surface of the trench had been repaired, the backfill was not to the same standard as the rest of the road and was therefore causing problems.

Prior to the Ombudsman's letter the council had already made arrangements for the work to be inspected as part of its routine inspection regime. As a result of the inspection the trench and surrounding potholes were backfilled.

This was seen as a reasonable way to resolve this matter and was noted as a local settlement. There was no recommendation for a time and trouble payment.

The complaint was recorded as local settlement.

Case 2 – SEN

The complaint concerned how the council had dealt with the complainant's son's Special Educational Needs (SEN). There were several elements to this complaint,

some of which the Ombudsman could not investigate. However the Ombudsman did investigate whether there was a delay in carrying out an assessment of the child's education needs which subsequently led to a delay in issuing the final Statement of Special Educational Needs which specifies what arrangements will be made to meet those needs.

The Ombudsman paid particular attention to the Code of Practice on Special Educational Needs which establishes timescales for assessing needs and issuing a Statement. The Ombudsman considered whether the time taken to issue the final Statement was reasonable in relation to the Code of Practice.

The council stated that because of the relationship with the parents and the fact that they were particularly active with the assessment procedure, it felt that the process was fundamentally working. However the Council acknowledged that with hindsight it should have been driving the process to a speedier conclusion.

The Ombudsman noted that the Council had been slightly ahead of schedule in issuing the first draft Statement. However events seemed to have been significantly delayed from this point. The Ombudsman noted in his summary that although the Council was acting with the best intentions in working with the parents, it should have been aware of the overall effect of the time delay and had a more proactive approach in securing an earlier conclusion.

It was noted that due to the delay, the complainant's son lost approximately one term's worth of SEN provision. It was proposed that to resolve this complaint the equivalent cost of the lost term's provision should be paid with an additional payment for time and trouble in pursuing the complaint. The Council agreed to this and the sum of £4050.00 was paid to the complainants.

The complaint was recorded as local settlement

Case 3 – Social Services – Child Protection

The complaint concerned how the council dealt with an investigation concerning alleged child abuse made against the complainant.

An anonymous allegation was made to Social Services regarding the complainant's children. Following the confirmation of what was alleged to have happened, child protection officers convened a Strategy Group meeting to consider what action should be taken. This is standard procedure under statutory guidelines in child protection investigations. The Strategy Group uses a multi-agency approach to these cases and is designed to ensure a consistent approach when investigating child protection allegations.

The facts that were reported to the Strategy Group are one of the significant issues that concerned the complainant. He stated that the alleged facts leading to the investigation were inconsistent, and that the Strategy Group relied upon insufficient and unreliable information upon which to make its decisions, resulting to their decision to conduct an investigation into the allegation being flawed. He made a complaint by means of the statutory Social Services complaints procedure.

An investigation into his complaint was conducted by the Department for Children and Education. An independent officer was employed to carry out a detailed investigation. The Ombudsman commented that the Stage 2 report contained sufficient factual evidence to make it unnecessary for him to repeat the work that had already taken place.

The Ombudsman's conclusions were that maladministration had taken place on several points. The handling of the allegations themselves and the procedural practices were the main drivers in this complaint investigation.

The Ombudsman recommended that a sincere apology be made to the complainant together with a payment in recognition of both the stress caused by the Council's maladministration and the time and trouble of pursuing the complaint. The Council agreed the Ombudsman's remedy and a letter of apology together with a payment of £2500 was sent.

The complaint was recorded as local settlement.

Case 4 – Social Services – Care home fees

The complainant's wife needed residential nursing care. The fees for the nursing home chosen by the complainant exceeded the WCC local limit for assistance: the fees were £624 p/w, the local limit was £425. The complainant's wife qualified for free nursing care of £75 p/w, funded through the Mental Health Partnership NHS Trust (MHPT).

The complainant realised that his wife's savings would not be sufficient to pay for her nursing home fees for the rest of her life, and approached MHPT employees for information about the level of funding that would be available from the state. General information was provided by a Community Psychiatric Nurse and a Social Worker. There was no record of these conversations. Officers also sent the complainant a leaflet which outlined in general terms how funding calculations are made. The leaflet did not contain any sample calculations.

The complainant then obtained financial advice from an independent financial adviser (IFA) specialising in the funding of nursing and residential care and was given a range of options. He checked with DCS finance staff that his preferred option would not be considered to be an abandonment of assets, and they confirmed in writing that it would not. The complainant invested his wife's savings in a bond.

The investment reduced the complainant's wife's assets to the point where she qualified for state contributions to her nursing home fees, and the complainant applied to DCS for contributions.

At this point it became clear that he had not understood how the Social Services contribution is calculated.

The complainant thought that the calculation looked like this:

Weekly nursing home fees	£620 –
Minus client contribution of £341	<u>£341</u>
	= £269 –
Minus weekly nursing care contribution of £75	<u>£ 75</u>
	= £194 –
Weekly contribution from DACS (to a maximum of £425)	<u>£194</u>
	= £ 0

Balance of nursing home fees to be met by third party contributions from the complainant

£0

Whereas in fact the calculation works like this:

Weekly nursing home fees	£620 -
Minus local limit made up of:	<u>£425</u>
Contribution from the complainant's wife	£341 +
Nursing fees contribution	£ 75 +
Social Services contribution	<u>£ 10</u>
	= £426

Shortfall to be met by third party contributions from the complainant = £195 p/w

The complainant complained to the NHS, who took a year to determine that the matter should be considered by means of the Social Services statutory complaints procedure and referred it to WCC. The case went to an independent review panel.

The Panel recommended that:

- a) conversations between clients and social services, particularly where these relate to financial matters, should be confirmed in writing;
- b) that the leaflet giving advice on care costs should be rewritten to improve its clarity. Specifically, they recommended (inter alia) that:
 - it should be clear to service users that the leaflet provides general information only and that further information should be sought about individual cases;
 - the leaflet should state that service users should obtain independent financial advice before making any decisions about care home placements.

These recommendations were implemented after the Review Panel hearing, and before the complainant made his complaint to the Ombudsman. In addition, the Director apologised to the complainant and made an ex gratia payment of £150 in recognition of the delay in hearing his complaint.

The complainant remained dissatisfied, because the Review Panel did not accept that the leaflet was misleading, and did not recommend that the Council should meet the weekly deficit in the nursing home contributions that he was having to pay. He complained to the Ombudsman..

The Ombudsman considers that there was maladministration leading to injustice, in that the original leaflet did not contain worked examples, and because officers did not make contemporaneous notes about discussions relating to financial matters, nor confirm them in writing to the complainant.

However, the Ombudsman indicated that the independent financial adviser, who was outside the Ombudsman's jurisdiction, was responsible for ensuring that the complainant received detailed investment advice, and that this was not the Council's responsibility. He did not, therefore, consider that the Council should be responsible for meeting the complainant's third party contributions.

He recommended a local settlement of an additional £1000 and a further apology to the complainant for the lack of clarity of the original leaflet and advice. Officers have taken steps to arrange the local settlement. However, the Ombudsman considered that there was sufficient public interest in these matters to require him to issue a report despite the local settlement being reached.

The report was considered by Cabinet, but no further action was required following the Ombudsman's report.

The complaint was recorded as maladministration and injustice (with report)

Additional Ombudsman Information

4. The Local Government Ombudsman is working to get the 2006/2007 Annual Report out to all authorities by the end of June.

STEPHEN GERRARD
MONITORING OFFICER

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The following unpublished documents have been relied on in the preparation of this Report:

None