

BRIEFING NOTE

Agenda Item no. 5

TO: SOCIAL CARE & INCLUSION SCRUTINY AND PERFORMANCE PANEL
DATE: July 2012

RE: COMPLAINTS TO THE LOCAL GOVERNMENT OMBUDSMAN

Purpose

To provide brief details, including the outcome where a complaint has been concluded, of complaints submitted to the Local Government Ombudsman about the council's social care services from 1 April 2011 to date.

Background

The Ombudsman service (or the LGO) operates in accordance with provisions in the Local Government Act 1974, as amended by subsequent legislation.

The Ombudsman's role mainly revolves around the consideration and, where appropriate, the investigation of specific complaints by individual residents and service users, about the actions of local councils, some other public authorities, and (solely in relation to school admissions) schools. The Ombudsman covers the whole range of local authority functions – locally the majority of complaints relate to adult social care, planning & development control, and children's services, with others relating to council tax and housing benefit, anti-social behaviour and highways. Normally the Ombudsman will only investigate a complaint after it has been investigated locally through councils' own complaints procedures.

The Ombudsman has recently taken on a new role in respect of complaints about private care homes from self funded residents.

The Ombudsman service also has a broader role in relation to good administrative practice, and through its conclusions on individual complaints, sometimes highlighted in its annual report and the annual letters to authorities, seeks to identify learning points of more general applicability. The Ombudsman also from time to time produces guidance notes on good administrative practice to assist councils to identify best practice.

Councils are expected to respond to enquiries received in the Ombudsman within a set timescale – 28 calendar days for our initial response – and, where required, must give the Ombudsman access to files and other information relevant to the complaint, and to officers and Members who have had an involvement in the matter.

The Ombudsman publishes an annual review letter summarising its actions in relation to each authority. Locally that letter is reported each year to the council's Standards Committee.

Complaints about Adult Social Care

This note provides brief details, in an anonymised form, of complaints investigated by the Ombudsman, which have been received from 1 April 2011. However, in addition to these, Members should note that seven other complaints were received from the Ombudsman

where the LGO asked the council to investigate locally, through either the statutory complaints procedures for adult social care, or the council's corporate complaints procedure Tellus. One further complaint was referred to the council for its information only, as the matter complained about had been resolved prior to any investigation having been commenced. Finally, one complaint was received from the LGO which had already been investigated locally through the statutory complaints procedure but which the Ombudsman decided not to investigate further.

Case 1

The complainant had complained to the LGO that "the council unlawfully or unreasonably charged her top up fees for her mother's residential care when she moved to a different residential home in ... 2008 although no alternative homes [had been] identified in the council's area". The complaint was received from the LGO on 14 April 2011 with the council's initial response made on 27 May 2011. There was further correspondence between the LGO and council, on a number of points of detail through 2011, and subsequently, on 14 May, a draft report 14 May was issued, with the Ombudsman also outlining a proposed remedy for the injustice caused.

The council has responded to the LGO indicating its willingness to accept the proposed remedy, which included the following elements, namely to apologise to the complainant, to reimburse her (with interest) for the amount of top up fees that she has paid, to come to an agreement with the private care home in relation to ongoing fees and any overdue payments, to pay the complainant £250 for her time, trouble and anxiety arising from the complaint, to review relevant systems including arrangements where third party payments are involved to ensure responsibility for contractual arrangements and reviews rests with the council.

The council is currently awaiting confirmation from the Ombudsman as to possible next steps.

Case 2

The complainants had complained to the LGO that "the council [had] not fully considered her daughter's needs and preferences when deciding to move her from a residential care placement into supported living accommodation", having concern that the impact of the move had not been properly assessed. The complaint was received from the LGO for investigation on 6 October 2011. The council's initial response was provided to LGO on 2 November 2011.

There was further correspondence between the council and the LGO through to May 2012, at which point the LGO proposed the local settlement of the complaint, including the following elements, namely that the council should apologise to the complainants to the distress caused by the failure to instigate a formal best interests meeting as to whether the proposed move was in their daughter's best interests, pay £500 to the complainants for the distress caused by the intended move in December 2011, pay a further £500 to the complainants' daughter, and assess relevant council procedures including arrangements for best interests meetings and communications with service users and their family when changes in service provision are proposed.

The council has accepted those terms and is currently implementing the agreed settlement. On that basis, the LGO has closed its file.

Case 3

The complainant had complained to the LGO that “the council [had] applied unfair charges for [the complainant’s] care services”. The complaint was received from the LGO on 14 September 2011 for local investigation. A copy of the council’s local response was provided to the LGO and subsequently on 1 December 2011 the LGO re-submitted the complaint for its own investigation. The council’s response was provided to LGO on 20 December 2011.

Correspondence between the LGO and the council has continued until 21 June 2012 when the LGO closed its file, concluding that “the council [had] assessed the complainant’s care needs against Fair Access to Charging criteria (FACS) and [had] correctly allocated a personal budget ... to meet the needs assessed as substantial or critical”.

Case 4

The complainant had complained on behalf of her mother to the LGO that the council had failed to take into account previous medical information or the views of respite carers in an assessment of her mother’s care needs in 2011; that the case worker had not taken into information into account when its had subsequently been brought to his attention by the complainant; and that the social worker had visited the complainant’s mother against the wishes of the complainant. The complainant also complained about the previous local investigation of her complaint, that it had not been undertaken properly or fairly.

The complaint was received from the LGO on 9 January 2012 for local investigation. Subsequently on 8 March 2012 the LGO re-submitted the complaint for its own investigation. The council’s response was provided to LGO on 18 April 2012. The LGO subsequently closed her file having concluded that there does not appear to be any maladministration by the council.

Case 5

The complainant has complained to the LGO that “the council failed over a period of five months to identify and support the needs of [the complainant’s] mother and failed to meet the cost of her care”. The complaint was received from the LGO on 26 March 2012. The initial council’s response was provided to LGO on 25 April 2012. The LGO’s investigator sought clarification on two specific points on 10 May, and those details were provided on 30 May.

The council is currently awaiting confirmation from the Ombudsman as to possible next steps.

Case 6

The complainant has complained to the LGO that “the council failed to take adequate and appropriate account of [the complainant’s] disability related expenditure in its calculation of his assessed charges; increased [the complainant’s] charges ... without an apology for what seemed to be a council error, failed to consider exercising its discretion to mitigate these charges, and obtained [the complainant’s] signature for [the] revised support plan when [there was] no carer or advocate [present to offer support]. The complaint was

received from the LGO on 25 May 2012. The initial council's response was provided to LGO on 26 June 2012.

This complaint had initially been referred back to council for local investigation in November 2011, and withdrawn shortly afterwards. A complaint was received locally in February 2012 and a response made through the statutory complaints procedure.

Case 7

The complainant has complained to the LGO that "the council did not act in accordance with the Fairer Charging Guidance when backdating [the complainant's] charge" and also "failed to take into account [the complainant's] disability related expenditure in its initial charging assessment". The complaint was received from the LGO on 25 May 2012. The initial council's response was provided to LGO on 26 June 2012.

Recommendations

To note the contents of this briefing note.

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