

Corporate Governance and Audit Committee – 25.01.2019

1: Purpose of Report

It was agreed that the Corporate Customer Standards Officer would attend Corporate Governance and Audit Committee twice yearly to report on complaint matters for the first half of the financial year.

An update to the actions undertaken following the formal Ombudsman report against the council is also provided.

A change in Ombudsman reporting procedures and its implications are also highlighted.

Corporate Governance and Audit Committee are asked to note the contents of the report.

2: Update on Complaints Workload and Cases Upheld by the Ombudsman

The Local Government Ombudsman publishes details of every complaint decision three months after they are formally made. This enables us to compare half yearly performance against other West Yorkshire Councils.

For the period 01/04/2018 – 20/09/2018, the Ombudsman considered the following number of cases

Council	Complaints Considered	Formally investigated	Upheld
Kirklees	29	12 (41% of cases)	6 (21% of all complaints)
Calderdale	18	5 (28%)	3 (17%)
Bradford	21	6 (29%)	4 (19%)
Leeds	56	22 (39%)	8 (14%)
Wakefield	18	3 (17%)	1 (6%)

Kirklees received 29 of 142 West Yorkshire complaints which equates to 20.5% of the complaints received, which is broadly equal to the population share Kirklees has in West Yorkshire (20%). It should be noted this half year, Kirklees does appear to have received a slightly higher proportion of Ombudsman complaints than it traditionally receives (17-19%). However, given the numbers involved, just 1-2 additional investigations can make a difference.

Also the proportion of complaints formally investigated by the Ombudsman in Kirklees is slightly higher than we might anticipate. This could be a reflection of the council's reputation with complaints handling where the ombudsman has been critical of the council, or it could reflect individual cases that perhaps prompt concern.

The proportion of upheld cases is also higher than might be anticipated. The area of Special Educational Needs and culminating in a formal report at the end of the period in question may help account for the statistical result. Again, a very small number of cases can skew the statistics given the small numbers involved.

Detail of Specific Cases Upheld by the Ombudsman – April – October 2018

17 003 706 – Children’s Service. Mrs B complains the Council was at fault in the way it dealt with the placement of a baby with her and her husband, and about how it dealt with her complaint. Some faults were accepted by the Council following investigation under the statutory complaints procedure. The Ombudsman’s investigation identified some further faults. The Council has agreed to a recommendation for remedy in the form of apology and a payment in recognition of distress, inconvenience and time and trouble.

17 000 159 – Special Educational Needs. The Council took a year too long to issue an EHC Plan for Mrs X’s son, Y. It also failed to make some of the provision ordered by the subsequent SEND Tribunal for up to a further year. It will apologise to Mrs X, pay her £2050 and review its practice in adhering to timescales for issuing EHC Plans.

17 015 517 – Adult Services Direct Payment - Mr X complains that the Council would not include the cost of travel, entrance fees, or massage, to meet eligible needs, in his personal budget. The Ombudsman finds the Council was at fault and caused Mr X distress. It will consider how much meeting his needs will cost, and what other related expenses Mr X has to pay. It will also consider whether this caused Mr X an injustice and offer a suitable remedy if so.

17 015 766 – Waste Service – The Council was at fault when it missed bin collections in line with its assisted collection service for disabled service users. The Council’s £100 remedy was appropriate for the complainant, Mr Z’s out of pocket expenses. The Council failed to inform Mr Z about its policy for vacant properties. It failed to pay him the agreed remedy. The Council will remedy Mr Z’s further injustice by paying him an extra £100.

17 014 759 - Special Educational Needs - Mrs X complained about the transfer of a Statement of Educational Need to an Education, Health and Care Plan. The Council was at fault because it took too long to complete the transfer. The Council has already apologised to Mrs X and that is sufficient to remedy the injustice it caused her.

17 019 805 – Special Educational Needs. – this is the formal Ombudsman report as described in point 3.

Examples of Learning from complaints

We have identified communication issues within our **Adult Services** service and the advice residents are given. In particular this relates to reviewing support packages and direct payments, where residents have not been given clear advice on the appropriate use of direct payments. Training and support is being provided to front line staff about how this advice can become more accurate to help ensure expenditure is directed to remedy the identified need.

There is continuing review of various adult service policies and procedures where complaint matters have informed process, and we are arranging Adult Service

Ombudsman training for team and senior managers to improve and encourage proactive complaints handling.

The regular complaints meetings with senior managers have developed into identifying policy, procedure and training development as a result of complaint outcomes.

Bin collection – with one complaint we identified a disconnect with the guidance provided to our telephone team against the procedure deployed by the refuse service. This related to not providing a collection service from empty properties and led to inaccurate advice being provided to a resident. We also identified some issues around reviews of assisted bin collections which has resulted in a clarification in the policy to ensure residents are better informed about any changes in collection.

3: Update on Formal Ombudsman Report

The council received a formal local government ombudsman report on 2 October 2018 (as reported previously). The service area related to Special Educational Needs and reflected difficulties encountered by many councils following changes in legislation which required more intensive action and support to be provided by councils.

Recommendations in the formal Ombudsman report were as follows:

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this.

In addition to the requirements set out above, the Council has agreed to make the following payments to Mrs X within three months of our final decision: £200 for the unnecessary distress and time and trouble caused in having to bring a third complaint to us; £400 for the term and a half of Assistive Behaviour Application (ABA) missed from September 2017 to February 2018; £400 to acknowledge the cumulative effect on X of the extended period the Council failed to provide the complete package of support specified in his Statement.

The Council has also agreed that within three months of our final decision it will review the procedures it uses to monitor and ensure delivery of special educational provision. It should report its findings to us and the action taken.

Appendix 1 contains the report considered by Cabinet on 11 December 2018, which was approved.

While the service regrets the inconvenience and upset caused to the family involved, it should be noted similar formal reports have been issued against other councils on this matter.

The complaint has also helped to inform how the service should deal with complaints presented by other parents who have also suffered delay in assessment and introduction of packages, and the service have been active in looking to resolve any

remaining concerns for other parents. This enables the resident to receive a positive outcome without having to wait some months for the Ombudsman to form a conclusion. We are aware the Ombudsman did offer one other resident some advice, and confirmed that our proposed remedy was in line with what they might anticipate.

Details of the service improvement proposed by the service as a result of a £500,000 budget increase was reported to Cabinet in November. Staff are intended to be in place this month and service improvements can be introduced at this time.

Much work has been undertaken to involve interested parties/parents into the improvement process and this has helped improve relationships and there is a clearer process for assessments to be undertaken.

The service have been working with the parent to ensure the care and support plan is in place. At present a plan has been agreed and drafted, and is awaiting social care input before it is confirmed. The level of compensation has been paid to the complainant.

4: Changes in Ombudsman Procedure – recording outcomes

The Ombudsman has tightened up on monitoring to ensure that agreed remedies are actioned within timescales. They intend to report on their findings for their next annual update (due July 2019).

We have identified some issues around ensuring payments and apologies are issued quickly by services, and propose some changes to procedures which should assist.

Background -

When the Local Government Ombudsman forms a view on a complaint and where the complaint is upheld, it considers whether fault is found and what remedy might address the situation for the resident. The decision and remedy of the Ombudsman is not currently legally binding upon the council, but they will check with councils to determine whether the council may agree their recommended course of action.

Kirklees have supported all decisions and remedies proposed by the Ombudsman in the past 10 years.

The suggested remedy from the Ombudsman often incorporates the following:

- A genuine apology for the resident
- A level of compensation/time and trouble (this is not a punitive sum)
- A reassessment of the decision affecting the resident
- Some assurance of procedure improvement into the future for other residents

The Ombudsman usually sets a deadline for actions to be undertaken (typically one month for apology/cash payment/reassessment for the resident, and three months for service improvement). This recognises that the situation needs to be addressed fairly quickly for the resident.

From April 2018, the Local Government Ombudsman has started undertaking more stringent checks on whether the recommended actions agreed have been

undertaken in deadline. This requires the council to provide evidence to support the actions it has taken.

Unfortunately, we have identified a small number of occasions where actions have not been undertaken on time, and in addition we sometimes find the service struggling to complete the remedy in deadline. A late remedy risks reputational damage and does little to help repair the damaged relationship between resident and the council.

We are unsure at this stage whether the council is performing poorly in this area (the first national outcomes will be published next July) but there is a risk of adverse publicity if it has not considered cases in good time. We are in the process of obtaining feedback from other local councils about how well they are performing.

To help improve response times and reduce chase up issues, we propose that the Corporate Customer Standards Officer arranges any agreed compensation payment (using the service cost code) and to prepare a general apology letter immediately, which the service can turn into a bespoke and timely response.

We also intend to highlight the situation and remind complaints colleagues they need to ensure the remedies are actioned in good time and information provided back to the Customer Standards section so action can be shared with the Ombudsman without the need for administrative chase up.

Appendix 1: Report on Ombudsman Formal Decision to Cabinet

<https://democracy.kirklees.gov.uk/documents/s26188/Item%2011%202018%2010%2030%20Ombudsman%20Response.pdf>