

TRAFFORD COUNCIL

Report to: Executive
Date: 21 March 2022
Report for: Information
Report of: Executive Member for Finance and Governance

Report Title

Report on Complaints Determined by the Local Government & Social Care Ombudsman 2020/21

Summary

There is a statutory duty to report to Members on adverse outcomes of complaints formally investigated by the Local Government & Social Care Ombudsman. This report sets out the background to this duty, and provides Members with a summary of complaints determined in 2020/21.

Recommendation(s)

That the content of the report be noted.

Contact person for access to background papers and further information:

Name: J.M.J. Maloney
Extension: 4298
Background Papers: None.

Implications:

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| Relationship to Policy Framework/Corporate Priorities | <i>Complaint outcomes are potentially relevant across the range of Council policies.</i> |
| Relationship to GM Policy or Strategy Framework | <i>None directly arising from this information report.</i> |
| Financial | <i>The financial implications are detailed in the report.</i> |
| Legal Implications: | <i>In accordance with the Local Government Act 1974, and the Regulatory Reform (collaboration) Order 2007, the Local Government Ombudsman has a statutory role to investigate complaints and to provide advice and guidance on good administrative practice.</i> <i>Statutory reporting requirements are set out in the body of the report.</i> |
| Equality/Diversity Implications | <i>None directly arising from this information report.</i> |
| Sustainability Implications | <i>None directly arising from this information report.</i> |
| Carbon reduction | <i>None directly arising from this information report.</i> |
| Resource Implications e.g. Staffing / | <i>None directly arising from this information report.</i> |

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| ICT / Assets | |
| Risk Management Implications | <i>None directly arising from this information report.</i> |
| Health & Wellbeing Implications | <i>None directly arising from this information report.</i> |
| Health and Safety Implications | <i>None directly arising from this information report.</i> |

Background

1. Complaints to the Local Government & Social Care Ombudsman

Services provided by the Council and agencies working on its behalf are subject to the jurisdiction of the Local Government & Social Care Ombudsman, who is empowered to investigate complaints of maladministration and / or injustice in relation to the delivery of those services.

Ordinarily the Ombudsman will only investigate complaints which have completed progress through all stages of the Council's Corporate or Statutory complaints procedures. The Ombudsman also operates, for the majority of complaints, a 2-stage assessment process, whereby complaints are only referred for investigation where it appears, on the face of it, that this could be warranted.

It follows from this that the population of complaints actually referred by the Ombudsman for detailed investigation is comparatively small, and will tend to involve the most long-running and intractable issues; there is thus a significant likelihood that any complaint subject to detailed investigation will be upheld.

2. The Requirement to Report to Members

There are two distinct circumstances where reports on Ombudsman complaints are required to Members.

- In rare, particularly serious cases, or where a generic / multiple issue has been identified and where the Ombudsman has formally issued a "Public Interest" report, Local Government Act 1974 (LGA) s. 30(1) provides that a report must be made to Members.
- There is a broader requirement, under Local Government and Housing Act 1989 (LGHA), to advise Members of any findings of "maladministration", whether under a Public Interest report or a more usual Decision Statement.

3. Change in Ombudsman Complaint Classification / Need to Report

In the year 2020/21, no Public Interest report was issued which would have given rise to a report to Members under LGA '74 s. 30(1).

In respect of the LGHA '89 duty, a number of years ago the Ombudsman amended its classification / definition system, to base it on a binary distinction of complaints as being "Upheld" or "Not Upheld". Crucially, any complaint deemed to be upheld is classed as "Maladministration", however trivial the identified fault, and whether or not any injustice arose to the complainant as a result of that fault. As a result of this descriptive change, the Council now receives comparatively regular technical findings of "Maladministration". Another consequence of the use of this term to define the finding in these cases is that it also triggers the statutory requirement under LGHA '89 to report on "Maladministration" findings to Members.

Whilst there has been no substantive change in the complaints environment or the Council's performance, this additional reporting requirement has arisen essentially from a change in the Ombudsman's terminology.

4. Complaints Summary 2020/21

For the purposes of this report, the complaints included are those recorded in the Ombudsman's Annual Letter for 2020/21 as having been formally determined within that municipal year.

It should be noted that, to allow authorities to respond to the Covid-19 pandemic, the Ombudsman did not accept new complaints and stopped investigating existing cases between March and June 2020. This reduced the number of complaints we received and decided in the 20-21 year. This should be considered when comparing data from previous years

Annexe A provides for Members' information an anonymised summary of cases where complaints have been upheld, and thus, under the current classification, deemed to involve "maladministration". Details are included of service area, subject of the complaint, and outcome following the Ombudsman's investigation.

| Complaints | | |
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| 18 detailed investigations between 1 April 20 – 31 March 21 | 12 Upheld decisions | 67% of complaints we investigated were upheld. This compares to an average of 72% in similar authorities. |

According to the Ombudsman's analysis, there were 12 upheld decisions during the year, a number of these relating to ongoing complaints primarily handled in the previous year. In terms of service area, the highest numbers arise in areas which are either high volume services or which can be by their nature contentious and / or involve significant financial aspects, such as Waste Management, Revenues & Benefits and Adult Care charges. (These 3 areas account for 10 of the 12 cases listed below.)

Findings and Resolutions

In terms of the nature of findings / resolution, the following issues can be noted.

- 1 case resulted in an "Upheld" finding even though not fully investigated, since issues had already been satisfactorily addressed through the Council's own processes.
- 2 cases resulted in a finding of "Maladministration but No Injustice", with no remedy required.
- In 2 cases, a finding of "Maladministration Causing Injustice" resulted in no further action / recommendations, because issues had been effectively resolved.
- 1 case involved an apology and reconsideration of an application.
- This leaves 6 cases which involved some element of financial remedy, usually accompanied by an apology and / or proposals for amendment to / review of decision-making processes or systems. The financial remedy could take the form of an actual payment (sometimes nominal, in respect of time and trouble / inconvenience), waiver of liability for fees / charges, a review of a previous assessment decision, etc.

Satisfactory Remedy provided by the authority

- In 25% of upheld cases the Ombudsman found the authority had provided a satisfactory remedy before the complaint had reached the Ombudsman
- This compares to an average of 11% in similar authorities.

Financial Implications

The case attracting the most significant value (waiver of reclaim of c. £1,300) is worthy of note. The complainant had made a number of complaints over a lengthy period that the Council had wrongly re-claimed significant mis-spent Direct Payment monies. Whilst the Ombudsman found an overstatement in the Council's calculation of the amount due, and thus fault, the principle – contested by the complainant - of the correctness of the Council's re-claiming a much more significant sum of c. £18k was in fact upheld by the Ombudsman's investigation.

Compliance with Ombudsman recommendations

- In 100% of the cases the Ombudsman was satisfied the authority had successfully implemented recommendations

Consultation

There are no public consultation requirements in respect of this report.

Other Options

None: there is a duty for these findings to be reported to Members.

Reasons for Recommendation

To satisfy a statutory duty in ensuring that Members are informed of the outcome of Ombudsman investigations.

Finance Officer Clearance GB

Legal Officer Clearance DS



CORPORATE DIRECTOR'S SIGNATURE

To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.

OMBUDSMAN DECISIONS 2020/ 21 – UPHELD COMPLAINTS

| Refs. | Notes | Area | Description | Outcome |
|----------|----------|---|--|--|
| 19021151 | 14.4.20 | Revenues / Benefits | Faults in handling Discretionary Housing Payment | Not formally investigated by Ombudsman: issues addressed via the Council's internal complaints process. No additional remedy recommended. |
| 19011864 | 23.6.20 | Revenues / Benefits | Delay in recalculating Council Tax reduction following complainant's error. | Finding of fault causing injustice; but no further action, recommendation or remedy as already remedied by Council. |
| 19007725 | 13.8.20 | Revenues / Benefits | Fault in handling appeal rights. | Minor payment to be offset against outstanding debt – and advice to staff. |
| 19017380 | 17.8.20 | Social Care Charging / Recovery | Unexplained delay during the course of legitimate recovery action. | Finding of Maladministration but no Injustice. (Process fault but no detrimental impact on complainant.) Thus no remedy / recommendations made. |
| 19012517 | 28.9.20 | Adult Social Care – Safeguarding Referral Process | Failure properly to consider whether referrals met threshold to commence safeguarding enquiry. | Finding of Maladministration but no Injustice. (Fault remedied by the Council.) Thus no remedy / recommendations made. |
| 19014664 | 13.10.20 | Revenues & Benefits – Discretionary Housing Payment | Error in consideration of DHP application. | Finding of fault causing injustice; apology and reconsideration of application taking all relevant factors into account. |
| 19016424 | 10.11.20 | Waste collection | Numerous failures to collect on scheduled day. | Finding of fault causing injustice; but no further action, as measures by Council had left no significant unremedied injustice. |
| 19005333 | 18.11.20 | Adult Social Care – Direct Payments | Error in calculation of mis-spent Direct payments. | Finding of fault causing injustice; reduction in amount to be recovered by the Council. [NOTE: Whilst the Ombudsman identified an error in the calculation, it found no fault with the principle – which the complainant had contested - of the Council's recovery of a significantly larger mis-spent amount.] |

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| 20001681 | 3.12.20 | Waste collection | Numerous failures to return bin / deal with complaints appropriately. | Finding of fault causing injustice; payment to recognise time and trouble; and advice to staff re service requests / repeat complaints. |
| 19015316 | 21.12.20 | Revenues & Benefits – Discretionary Housing Payment | Fault in handling DHP application. | Finding of fault causing injustice; apology, modest payment in respect of distress and procedural reminder to staff. |
| 20004202 | 21.12.20 | Waste collection | Numerous omissions of bins from collection. | Finding of fault causing injustice; payment to recognise time and trouble / distress; and monitoring regime to ensure sustained improvement. |
| 19019125 | 22.12.20 | Property Management | Fault in handling request for information on a property sale and associated complaint. | Finding of fault causing injustice; payment to recognise time and trouble, distress and additional costs. |