



Regulatory Committee:	Audit & Governance Committee
Date:	29 th September 2023
Chair:	Cllr John Bloxsom
Presenting Officer:	Rob Ayliffe, Monitoring Officer
Item Type:	Information
Purpose of Report:	To review the outcome of complaints referred to the Local Government and Social Care Ombudsman (LGSCO) during 2022/23
Recommendations or Actions Sought:	To note the contents of the LGSCO's annual letter and to consider those cases that have been upheld during the year.
Background Documents:	Local Government & Social Care Ombudsman: Annual Review of Local Government Complaints 2022/23
Forthcoming Decisions:	N/A
Appendices:	Appendix 1: Summary of Cases upheld during 2022/23 Appendix 2: LGSCO Annual Review Letter
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Introduction

1. The LGSCO offers the final stage for dealing with all complaints about councils and adult social care service providers. The ombudsman's statutory functions are:
 - to investigate complaints against councils and some other authorities
 - to investigate complaints about adult social care providers from people who arrange or fund their own adult social care
 - to provide advice and guidance on good administrative practice.
2. The ombudsman will only consider complaints when a Council's own internal complaints process has been exhausted and only when a member of the public alleges that they have suffered injustice as a result of maladministration and/or service failure. Complaints may be referred back to the complainant if they are incomplete or premature (ie. the council's internal process has not yet been exhausted).
3. Where the Ombudsman accepts a complaint, the report will first consider whether there was any fault (maladministration) in the Council's actions. If so, the Ombudsman will go on to consider whether that fault caused any loss or injustice to the complainant, and will make recommendations to the Council on how that injustice should be remedied. While LGSCO recommendations are not binding, they are nevertheless taken extremely seriously, and it is unusual for any Council to reject a recommendation brought by the Ombudsman.
4. If the LGSCO considers an issue to be sufficiently serious (either because of the nature of the complaint, the way the council has responded to it, or because it reflects an issue of wider relevance to the sector), they can issue a Public Interest Report. In those circumstances, it is the duty of the Monitoring Officer to report that matter to the Cabinet (if it relates to an executive function) or to the full County Council (if it relates to a whole council function).
5. This report provides CLT with oversight of all cases that were upheld by the Ombudsman during quarters 3 and 4 of 2022/23 (October 2022-March 2023), and of the resulting recommendations. It also reports to the committee the LGSCO's annual review letter, which includes some key metrics on the outcome of complaints against Gloucestershire County Council.

Decisions upheld by the Ombudsman

6. During 2022/23, the LGSCO upheld 14 complaints against the Council. Those complaints break down across Council services as follows:
 - Five complaints concerned delays and failures in the assessment and provision of Education, Health and Care Plans (ECHPs).

- Three were related to Children's Social Care. The first concerned a delay in providing sufficient support to foster parents contributed to a breakdown in the placement. The second concerns a viability assessment which should not have been carried out. (A viability assessment is an assessment that is used to determine whether a prospective kinship carer is able to provide full-time care to meet the needs of a child who is not able to remain with their parents). The third concerned delays in the application process for a child's Disabled Facilities Grant.
- Three were related to Adult Social Care. Two concerned discharges from hospital: in one case, a failure to properly assess an individual's support needs on discharge from hospital; in the other, a failure to communicate with the family. The remaining case was resolved by the Council and a remedy was agreed before the investigation was completed.
- One was related to Children's' transition process and subsequent handling of the complaint. Here the Ombudsman found no fault in our process but upheld the complaint in recognition of GCC's failure to achieve and maintain standards of service delivery that should be expected.
- One was related to a Children's Social Care complaint whereby the complaint was conducted under the incorrect complaints process.
- One further complaint, relating to an unsuccessful appeal for a school place, was upheld but required no further action by the Ombudsman as the Council had already agreed to offer the complainant a fresh appeal.

A summary of each complaint is provided as Annex 1.

7. While the number of complaints upheld is in line with historic trends, the previous year, and in particular, quarter 3 and 4 of that year, has been remarkable in two respects: firstly, the marked increase in the number of complaints upheld in relation to EHCPs; secondly, a marked reduction in complaints about other services being upheld.
8. The increase in EHCP complaints reflects a national pattern. As councillors are aware, services for children with Special Educational Needs are under considerable pressure both in Gloucestershire and across the rest of the country. We are seeing growing need and demand, combined with extreme

challenges in recruiting to key roles, particularly Educational Psychologists. This is resulting in a backlog of EHCP applications and reviews, delays in the council being able to secure provision for children and young people, and a resulting increase in the number of complaints.

9. The council is responding to this challenge in a number of ways, including:
 - Increasing the number of caseworkers in order to reduce caseloads to a more manageable level;
 - Introducing additional staff to deal with queries and complaints from parents and carers about the progress of applications and reviews;
 - Reviewing processes and procedures to make sure they are as streamlined and efficient as they can be;
 - Increasing management oversight of the system;
 - Improving our response to complaints in order to ensure that we are resolving them locally wherever possible;
 - Inviting the LGA to undertake a peer review of SEND services and putting in place an action plan to implement their recommendations.
10. Despite this, it is clear that the system remains under considerable pressure. There are a number of older complaints that are still under investigation by the ombudsman, so we can expect to see this trend continuing for some time.
11. The LGSCO identified this growing trend and issued a focus report into the issue in July 2022 entitled "[Out of school, out of sight?](#)" which offers Councils advice and guidance in their duty to make alternative arrangements to provide a suitable education for children who cannot go to school. In cases where Councils have not fulfilled this duty, the LGSCO is increasingly recommending that council's make financial compensation to families for each day of education that has been lost as a result of that failure. We are seeing that reflected in local cases, as well as nationally.
12. Conversely, the reduction in other complaints being upheld should give members cause for encouragement. Over the past year, both legal services and the corporate complaints team have worked more closely with service areas to identify where complaints can and should be remediated before they are referred to the ombudsman.
13. The LGSCO issued no Public Interest Reports about Gloucestershire County Council during 2022/23.

LGSCO Annual Review Letter

14. The Ombudsman's Annual Review Letter is included as appendix 2 to this report. It shows that Gloucestershire's statistics compare well with those of similar organisations
15. Of twenty-three investigations undertaken by the LGSCO, 14 (61%) resulted in the complaint being upheld, compared with an average of 80% in similar

organisations. This shows that our internal complaints procedures are working effectively to resolve complaints before they progress to the ombudsman. However, the letter highlights that in two of these cases, the remedy was delayed. As a result, we have tightened processes for tracking and following up remedial measures with the services concerned.

16. The council successfully implemented all of the recommendations made by the ombudsman. This is the case for the vast majority of other councils, though a very small number decide to reject the ombudsman's recommendations.

17. In 7% of cases referred to the ombudsman, the Council provided a satisfactory remedy before the complaint reached the ombudsman. This compares with an average of 6% in similar organisations.

LGSCO Annual Report

18. The LGSCO also produces an annual review of its activities across the whole of Local Government. This is published online at <https://www.lgo.org.uk/assets/attach/6437/LG-Review-2022-23-F.pdf>

19. This year's report includes a summary of focus reports produced during the year into the following areas of relevance to GCC services:

- Out of School, Out of Sight? is referred to in paragraph 11 above.
- Equal Access: Getting it right for people with disabilities: This report shares learning about how Councils can and should make reasonable adjustments in order to anticipate and accommodate people's needs.
- Equal Justice: learning lessons from complaints about people's human rights
- Section 117 Aftercare: Guidance derived from complaints about the aftercare of patients receiving support under the Mental Health Act.
- Deprivation of Captial: Advice to those involved in financial assessment of adults with care and support needs.

20. These reports and guidance are circulated to the relevant service Directors and Managers. They often contain suggestions of questions that scrutiny committees could use to hold services to account. In light of that, we are introducing a process to make sure that such guidance is also shared with the relevant scrutiny committee(s).

Annex 1: Summary of Upheld Decisions

Case Reference: 20010783

Mr S complained the Council and Gloucestershire Hospitals NHS Foundation Trust failed to ensure his father, Mr F, was properly discharged from hospital into residential care. He also complained the Council failed to assess Mr F's care and support needs. The LGSCO found fault in the actions of both organisations and recommended financial remedies and apologies. The Council and Trust accepted those recommendations.

Agreed Recommendations

- Within four weeks of the final decision, the Council and Trust will send Mr F a meaningful apology for the faults identified in this statement and their impact on him.
- Within two months of the final decision and subject to receiving evidence of Mr F's residential care fees, the Council and Trust will reimburse six weeks' care fees. The Council and Trust should each pay 50% of the total.

Case Reference: 21005067

The LGSCO found no fault by the Council with regards to action it took to safeguard Mrs D, an elderly woman with complex care needs. The ombudsman also found no fault by the Council and Gloucestershire Hospitals NHS Foundation Trust concerning the planning for Mrs D's discharge from hospital. However, the ombudsman found fault with the Council's communication with Mrs D's family. The Council agreed to pay a financial remedy in recognition of the distress this caused.

Agreed Recommendations

- Within one month of the final decision, the Council will pay Mr D £150 in recognition of the distress caused to him by its failure to communicate with him between 20 April and 10 May 2020 regarding Mrs D's care needs and the ongoing planning for her discharge.

Case Reference: 21002571

The Council failed to provide Mr and Mrs X with sufficient support when they were struggling to cope with their foster child's behaviour. This contributed to the way the foster placement ended. The Council agreed to apologise, make a payment to Mrs X, and take action to prevent similar failings in future.

Agreed Recommendations

Within four weeks, the Council will:

- Apologise to Mrs X for the failings identified in this case.
- Make a payment of £1000 to Mrs X.

Within eight weeks, the Council will:

- Review the support which the Diversion from Care Placement Support Team (DPST) is able to provide. DPST workers should be able to arrange emergency respite when the circumstances are such that it may be beneficial.

Case Reference: 21017801

Mrs X complained to the Council in July 2021 about a viability assessment. The Council's final reply of March 2022 accepted it should never have produced the viability assessment. The ombudsman considered this to be fault. Mrs X says the viability assessment caused her time and trouble and has been particularly distressing. The Council confirmed it has removed the assessment from its records.

Agreed Recommendations

The Council has agreed within one month to:

- Contact all the parties with whom it shared the viability assessment to tell them the assessment is flawed and has been removed from the Council's files.
- Pay Mrs X £200.

Case Reference: 22005005

The LGSCO did not investigate this complaint about an unsuccessful appeal for a school place. This is because the Council has now offered the complainant a fresh appeal and it is unlikely further investigation would achieve anything more.

Case Reference: 21015390

This case concerned a young person transitioning from Children's to Adult Social Care. Mr and Mrs X complained the Council failed to carry out the recommendations made at Stage 2 and 3 of the statutory complaints process. The Council provided information about the action it has taken as well as now arranging a meeting as agreed. These actions, along with a symbolic payment for the frustration caused, were considered by the Ombudsman to be a suitable remedy.

Agreed Recommendations

The Council agreed to:

- Pay a symbolic payment of £500 to Mr and Mrs X
- Provide the minutes of what was commissioned to Mr and Mrs X

Case Reference: 22006649

The LGSCO uphold Mr X's complaint that the Council failed to consider his complaint within its children statutory complaints' procedure, having dealt with it under the Corporate Complaints procedure instead. The Council has agreed to do so without further delay.

Agreed Recommendations

The Council has agreed within 65 working days of this decision to:

- Complete stage two of the Children Act procedure and inform Mr X of his rights under the procedure.
- Pay Mr X £100 for the delays caused by using the wrong procedure.

Case Reference: 21018698

Mrs Y complains on behalf of her daughter, Miss X, that the Council did not fully secure the provision detailed in Section F of Miss X's Education, Health and Care Plan. We have found the Council at fault for not securing the provision specified in Section F of the plan. The faults identified in this statement have caused Miss X an injustice. We have made recommendations to remedy this injustice.

Agreed Recommendations

Within 4 weeks:

- a) provide a written apology to Miss X, fully acknowledging the faults identified in this statement.
- b) pay Miss X £5970. The recommended amount is broken down as follows:
 1. £1920 for the failure to secure the provision in Section F of the EHC Plan for the 20/21 academic year, while Miss X was shielding, but could obtain some education. This is a figure of £300 per month for just over six months, which is the academic year excluding school holidays;
 2. £3150 for the failure to secure the provision in Section F of the EHC Plan for the 21/22 academic year, where the lack of provision had a significant impact. This is a figure of £500 per month for just over six months, which is the academic year excluding school holidays; and
 3. £900 in recognition of the distress, frustration and uncertainty Miss X and Mrs Y experienced.

The Council has agreed to review any payments Mrs Y has made for services or therapies the Council is responsible for securing and confirm in writing whether it will reimburse these costs. To ensure this is completed, I would propose Mrs Y provide the Council with evidence of the additional costs incurred within six weeks of the final decision being issued. Within four weeks of receiving this information, the Council will review this evidence and confirm the outcome. The Council has agreed to make any of the above payments using a method agreed with Miss X and Mrs Y, taking account of Mrs Y's concerns about Miss X's benefit entitlements

Within 6 weeks

- a) review Miss X's case at senior officer level, to consider the faults identified and provide an action plan to Miss X detailing the steps it will take to promptly secure any outstanding provision. This should include clear timescales for any outstanding provision to be put in place.

- b) work with the responsible health body to ensure Mrs Y receives a response addressing concerns about any outstanding jointly-funded provision.

Within 16 weeks

Review, at senior officer level, how it liaises with its commissioned services to promptly secure the provision specified in EHC Plans, producing an action plan to ensure faults identified in this investigation do not occur for others. This review should also consider how to take on board learning from complaints involving other bodies, where the issues raised might impact on delivering the overall EHC Plan.

Case Reference: 21018905

Miss Y complains about the process followed by the Council when assessing her son's social care needs. Miss Y also complains about delays in the application process for a Disabled Facilities Grant (DFG). We find fault in some parts of the complaint, and the Council has agreed to undertake the actions listed at the end of this statement.

Agreed Recommendations

With six weeks of my final decision, the Council will provide evidence of the following:

- £150 payment to Miss Y in recognition of the time and trouble caused by the delay in allocating W's case for assessment.
- Make contact with Miss Y to progress her request for a DFG, in line with its local protocol; and
- Provide details of the work undertaken by the Council to clarify the pathway for parents and carers to request a single assessment.

Case Reference: 22001930

There was fault by the Council in failing to provide suitable full-time education when a child could not attend school for health reasons. There was also delay and fault in the way the Council carried out a statutory reassessment of education, health and care needs. This led to loss of education, unnecessary expense, distress and uncertainty. It also delayed a right of appeal to the SEND Tribunal. The Council will apologise make a financial payment and carry out service improvements.

Agreed Recommendations

Within four weeks:

- The Council will apologise to Ms X and Y for the further faults identified in this decision statement.
- The Council will pay Y £3100 to acknowledge its failure to provide suitable fulltime education and special educational provision between September 2021 and May 2022 and the impact this had on her.
- The Council will refund Ms X £635 for the SLT report she obtained.
- The Council will refund Ms X £275 for her out of pocket expenses to support Y's education while Y was unable to attend school between September 2021 and May 2022.
- The Council will pay Ms X £500 for her time and trouble and to acknowledge the distress the delay and uncertainty caused to her.

Within twelve weeks

- the Council will review its processes and training to ensure:
- Officers carrying out statutory assessments or reassessments discuss with families the advice to be obtained and where a parent or young person makes a request for specific advice that the Council provides a response, with reasons.
- Officers carrying out statutory assessments or reassessments use all reasonable endeavours to obtain professional advice in a timely way by chasing up delayed advice and escalating through appropriate channels.
- Children unable to attend school and entitled to s.19 education receive suitable full-time education on par with what they would receive in school (except where evidence is available that this is not in their best interests) and, where relevant, special educational provision.
- Where another professional or health body brings a child to the Council's attention it considers without delay whether a statutory assessment is required, or when a EHC plan is already in place, whether the plan requires review.
- the Council will consider the requirements of statutory guidance 'Ensuring a good education for children who cannot attend school because of health needs' in relation to having a named officer and written policy statement for children with health needs.
- the Council will report to the Ombudsman the steps which it has taken or intends to take to secure service improvements in light of this complaint.

Case Reference: 22004710

Mrs X complained the Council delayed finalising amendments to her child, W's, Education, Health and Care plan and failed to ensure W received all the provision in their plan. The Council was at fault for unnecessary delay in issuing the EHC plan. It will apologise to Mrs X and pay her £200. The Council will also send the Ombudsman an action plan setting out how it will adapt to cope with the increased demand on its Special Educational Needs service

Agreed action

Within one month:

- apologise to Mrs X for the frustration, distress and uncertainty the delay in issuing W's EHC plan and holding the second funding panel caused her; and
- pay Mrs X £200 in recognition of that injustice.

Within four months:

- send the Ombudsman an action plan setting out how it will adapt to the increased demand on its SEN service. This should take account of the recent caselaw on timescales for annual reviews.

Case Reference: 22006803

Miss Y complains about the Council's failure to deliver suitable educational provision for her son, W, when he was too ill to attend school. She also complains the Council did not pursue a referral for Speech and Language Therapy and told untruths about her to delay a tribunal appeal. We find fault in the complaint, but we consider the fault did not cause a significant injustice or has already been remedied by the Council.

Agreed Recommendations

No further action - the injustice has already been remedied by the Council

Case Reference: 22009574

Mrs B complained the Council failed to adhere to statutory timescales following its review of her daughters Education, Health, and Care Plan. The Council agreed it was at fault for causing delays and it failed to respond to her communication in a timely manner. We found the Council's apology was not enough. It should also make payment to Mrs B to acknowledge the distress and uncertainty its faults caused, and the unnecessary time and trouble she had to bring her concerns to its attention.

Agreed Recommendations

Within one month:

- apologise in writing to Mrs B, and pay her £500 to acknowledge the distress and uncertainty the Council's faults caused, including the unnecessary time and trouble she had to bring her concerns to its attention.

Within three months:

- remind its officers to respond to complaints about delays in notifying parents or young people about its decisions, regardless of whether there are separate ongoing EHC Plan processes in place; and
- remind relevant staff to ensure it adheres to the statutory EHC Plan process timescales and responds to communication from parents and young people without delay.