

FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

19 October 2023

**Report of the Director of Legal & Democratic Services and Monitoring
Officer**

**Annual Review Letter of the Local Government & Social Care
Ombudsman (LGSCO) 2022-23**

(Corporate Services and Budget)

1. Divisions Affected

1.1 County Wide

2. Key Decision

2.1 This is not a key decision

3. Purpose

3.1 The purpose of this report is to inform Cabinet of the Local Government and Social Care Ombudsman's (LGSCO) Annual Review letter for the year ended 31 March 2023.

4. Information and Analysis

4.1 The LGSCO's Annual Review letter 2022/23, giving details of the total number of complaints for Derbyshire County Council for the year ending 31 March 2023, is attached as Appendix 2 for consideration. All of the Ombudsman's annual review letters are published on their website.

- 4.2 The aim of the Annual Review Letter is to provide councils with information which will help them assess their performance in handling complaints.
- 4.3 For the period ending 31 March 2023, the LGSCO received 97 complaints and enquiries relating to Derbyshire County Council. The 97 complaints compares to 86 complaints for Derbyshire in the period 2021/22 (an increase of 12.7 %).
- 4.4 Looking specifically at the decisions made by the LGSCO for the period ending 31 March 2023, there were 25 detailed investigations carried out, of which 5 were not upheld and 20 were upheld. This gives an upheld rate of 80%. By way of comparison in 2021/22 the LGSCO investigated 30 complaints against the Council; this represents a decrease in complaints investigated in 2022/23 of 33%. The upheld rate in 2021/22 was 80% compared to 80% in 2022/23.
- 4.5 In respect of the 20 complaints upheld by the LGSCO in 2022/23 the LGSCO found fault and suggested a remedy in respect of each case and the remedies were acceptable to the council.
- 4.6 In terms of the 97 complaints made and 20 complaints upheld by the LGSCO these can be identified in relation to the following County Council departments:

Department	Number of complaints and enquiries made to the LGSCO	Number of complaints upheld by the LGSCO
Adult Care	29	5
Children's Services	50	11
Place	12	4
CST	6	0

Details of the upheld complaints and the remedies are set out in Appendix 3.

- 4.8 In respect of compliance with the LGSCO's recommendations of the 18 complaints where compliance with the recommended remedy was recorded during the year, the Council complied with all the recommended remedies giving a compliance rate of 100%.
- 4.9 Of the 20 upheld decisions the Ombudsman found the Council had not provided a satisfactory remedy in any of the cases before the complaint

reached the Ombudsman. This compares to an average of 6% in similar organisations.

4.10 The LGSCO has noted that during the year 2022/23 there were several occasions when their investigations were delayed by the Council's failure to respond in a timely manner to the LGSCO's requests for information. The response times to the LGSCO are usually five working days to respond to an initial request for information or supply additional information, twenty working days to respond fully to an investigation and ten days to respond to a draft decision. More than two fifths of the responses to the LGSCO's enquiries were late. The delays were mainly within Children's Services but there was also a proportion of Adult Care cases where there were delays in sending responses. The LGSCO accepted that these delays were partly attributable to staff shortages, which the LGSCO acknowledged could be challenging to manage. In nearly all cases however the Council requested extensions before the due date lapsed. Whilst staff shortages still remain, departments are doing their best to respond to complaints whilst dealing with other competing priorities.

4.11 The LGSCO also became aware of a long running Children's Services complaint the Council had been investigating. The complaint began in December 2017, and despite repeated requests and promises from the Council that it would be progressed to the next stage of the local resolution process, the learning review took place instead. This ultimately did not resolve the complaint and the complaint came to the LGSCO's office for consideration. The LGSCO's investigation did not find systemic failings but noted the poor practice. The LGSCO was pleased to see the Council's willingness to accept its actions were wrong and practice had since changed.

4.12 The Children's Services department are continuing to review their practices and procedures relating to provision of the Education Health and Care Plans (EHCP's) for young people with special educational needs and disabilities. Cabinet will note that the provision of the EHCP plans and educational placements to support the plans is a national problem.

5. Consultation

5.1 No consultation is necessary.

6. Alternative Options Considered

6.1 Not to inform Cabinet of the LGSCO's Annual Review letter for the period ending 31 March 2023; however, it is considered important that

the Executive are informed of the Annual Review letter to enable proper oversight of complaints.

7. Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

8. Background Papers

- 8.1 None identified.

9. Appendices

- 9.1 Appendix 1- Implications
- 9.2 Appendix 2 – Annual Review letter
- 9.3 Appendix 3 – Details of the 20 upheld cases

10. Recommendation

- 10.1 That Cabinet notes the Annual Review letter of the Local Government and Social Care Ombudsman for the year ending 31 March 2023.

11. Reasons for Recommendation

- 11.1 To ensure that the Executive is aware of the contents of the LGSCO Annual Review letter and has oversight of complaints made.

12. Is it necessary to waive the call-in period?

- 12.1 No

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Implications

Financial

- 1.1 Payments have already been made to the complainants in accordance with the recommendations of the LGSCO.

Legal

- 2.1 The Local Government and Social Care Ombudsman's powers are defined by the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007.
- 2.2 The LGSCO cannot question whether a Council's decisions are right or wrong simply because the complainant disagrees with them. He must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3)).
- 2.3 The LGSCO will generally only investigate a complaint where the complainant has exhausted the council's corporate complaints process. It is therefore important that the council maintains a robust complaints procedure.
- 2.4 The LGSCO has the power to make recommendations to a public authority following a complaint, however the recommendations are not mandatory. Findings and recommendations are however published by the LGSCO.
- 2.5 Section 31 of the Local Government Act 1974 requires a report to be submitted to "the authority" when a report on maladministration is received from the Local Government and Social Care Ombudsman. The specific requirement is that the report to "the authority" is made to the "executive" i.e. Cabinet (s.25(4ZA) Local Government Act 1974) where the matter relates to executive functions and Council or a Committee where the matter relates to non-executive functions. During the period April 2022 – March 2023 no such reports of maladministration have been received from the LGSCO. However, complaint 21/018/475 (referred to in appendix 3) is a matter where the Ombudsman found fault, causing injustice, and determined that two key aspects of the Home to School Transport Policy did not comply with legislation and statutory guidance. Section 5A of the Local Government and Housing Act 1989 imposes a duty on the Monitoring Officer to prepare a report to the

Executive if at any time it appears to her that any proposal, decision or omission would give rise to a contravention of any enactment or rule of law in the exercise of its functions. Therefore, a report was presented to Cabinet on 18 May 2023 and approval was given for amendments to the Council's Home to School Transport Policy for children of compulsory school age to ensure compliance with statutory responsibilities.

- 2.6 The Council's Constitution provides that one of the roles and function of the Governance, Ethics and Standards Committee is '11. *To receive regular reports on the of the Corporate Complaints process, Local Government Ombudsman referrals and to recommend revisions to related policies and procedures as appropriate*'. A report will therefore also be prepared for the Committee.

Human Resources

- 3.1 None directly arising from this report.

Information Technology

- 4.1 None directly arising from this report.

Equalities Impact

- 5.1 As this is a statutory report in response to the findings of the Local Government and Social Care Ombudsman no equality impact assessment has been prepared.

Corporate objectives and priorities for change

- 6.1 None

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

- 7.1 None directly arising from this report.