



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**10 October 2024**

**Report of the Director of Legal and Democratic Services**

**Annual Review Letter of the Local Government  
and Social Care Ombudsman 2023/24**

**1. Purpose**

- 1.1 To inform the Committee of the Local Government and Social Care Ombudsman's (LGSCO) Annual Review Letter for the year ended 31 March 2024.

**2. Information and Analysis**

- 2.1 The terms of reference for the Governance, Ethics and Standards Committee include *"to receive regular reports on Local Government Ombudsman referrals"*. Therefore, the Committee is invited to receive the Annual Review Letter from the LGSCO, giving details of the total number of complaints for Derbyshire County Council for the year ending 31 March 2024. The letter is attached at Appendix 2 for consideration.
- 2.2 All of the Ombudsman's annual review letters are published on their website ([www.lgo.org.uk](http://www.lgo.org.uk)) and copied to the Audit Commission.
- 2.3 The aim of the Annual Review Letter is to provide councils with information which will help them assess their performance in handling complaints.
- 2.4 The Council has a Corporate Complaints Procedure which sets out how complaints will be dealt with. If the complaint is not resolved and a

complainant remains dissatisfied, they are able to refer the complaint to the LGSCO. By way of background and context to the LGSCO Annual Letter, Derbyshire County Council has hundreds of thousands of direct contacts with residents every year. As examples, Call Derbyshire receives around 30,000 calls each month and the Highways team receives over 90,000 enquiries annually. The number of compliments and complaints should be viewed in the context of the bigger picture of resident interaction.

- 2.5 Children's Services complaints and Adult Care complaints are dealt with under a statutory complaints procedure. Under the statutory procedure Children's Services complaints are required to be dealt with within 20 working days or within 65 working days if the complaint proceeds to stage 2 of the statutory complaints procedure. Under the statutory procedure Adult Social Care complaints are required to be dealt with within 20 working days or within 40 working days if the matter is particularly complex. There is a second stage complaint review where a response needs to be made within 20 working days. Corporate Complaints are dealt with under the Council's Corporate complaints procedure and are required to be dealt with within 28 calendar days, but this can be extended where a full investigation is needed. In exceptional circumstances, where the complaint is complex, the complaint may take up to 90 calendar days, in which case the complainant should be informed at the earliest possible point, provided with an interim response, and a timescale for the necessary action.
- 2.6 In 2023/24 the Council recorded 1671 compliments. This is an increase from 2022/23 where 1558 compliments were recorded. In 2023/24, the Council received 1948 complaints. This is an increase from 1064 complaints received in 2022/2023. There has been an increase in complaints across all departments, with the exception of Corporate Services and Transformation which has seen a 25% decrease. In 2023/24, 47.2% of complaints were upheld or partially upheld by the Council. This was a higher percentage of complaints upheld compared to the previous year. In 2023/2024, Children's Services upheld the largest percentage of complaints. The percentage of upheld complaints have slightly increased year on year for the past three years. This target was met for 58.2% of complaints during 2023/24 as set out below. This is a decrease from the previous year when 66.2% of complaints were responded to within target.

A detailed report on complaints and compliments reported to the Council during 2023/24 and trend analysis for the last eight years was

presented to Governance, Ethics and Standards Committee on 11 July 2024 and the table below provides a summary:

Department	Number of compliments received	Number of complaints received	Number of complaints upheld or partially upheld	Response times
Adult Care	601	614	28.0%	82.2%
Children's Services	615	1159	47.4%	39.9%
Place	370	160	23.1%	95.0%
CST	85	15	13.3%	93.3%
Total	1671	1948	47.2%	58.2%

2.7 The way the Council annually reports on complaints is currently being re-evaluated as part of a cross-council working group's activities, which is looking at the complaints procedure and guidance for departments, and is incorporating feedback from a recent internal audit report on complaints and compliments while also taking into account the recent LGSCO recommendations on complaint reporting.

The complaints working group is also reviewing the future complaints and compliments reporting model and methodology.

2.8 For the period ending 31 March 2024, the LGSCO received 158 complaints and enquiries relating to Derbyshire County Council. The 158 complaints compares to 97 complaints for Derbyshire in the period 2022/23 (an increase of 61.39 %).

2.9 Looking specifically at the decisions made by the LGSCO for the period ending 31 March 2024, there were 55 detailed investigations carried out, of which 8 were not upheld and 37 were upheld. This gives an upheld rate of 85%, which is an increase from 80% from 2022/23, but comparable to similar organisations. By way of comparison in 2022/23 the LGSCO investigated 25 complaints against the Council, this represents a substantial increase in complaints investigated in 2023/24 of 110%.

2.10 In respect of the 47 complaints upheld by the LGSCO in 2023/24 the LGSCO found fault and suggested a remedy in respect of each case and the remedies were acceptable to the Council.

2.11 In terms of the 158 complaints made and 47 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	4
Children's Services	110	43
Place	14	0
CST	4	0
Other (did not supply enough detail to categorise the complaint)	1	0

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

2.12 In respect of compliance with the LGSCO's recommendations, of the 41 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%. This compares to an average of 100% in similar organisations.

2.13 Of the 47 upheld decisions the Ombudsman found the Council had provided a satisfactory remedy in 6% of the cases before the complaint reached the Ombudsman. This compares to an average of 7% in similar organisations.

2.14 The LGSCO has noted that during the year 2023/24 there were many occasions where responses to the LGSCO were delayed. 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. 40% of the responses to the LGSCO's enquiries were late. The delays were mainly within Children's Services but there was also a small proportion of Adult Care cases where there were delays in sending responses. These delays were mainly attributable to staff shortages and, particularly in Children's Services, a substantial increase in the number of complaints made and the number of complaints which were investigated. Notwithstanding the lateness of submissions from Children's Services there were no late

submissions relating to safeguarding complaints, although these complaints made up a very small percentage of Children's Services complaints. In the majority of cases 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.

The substantial increase in Children's Services complaints and investigations has meant that the additional staffing capacity in Children's Services has been absorbed and this is having an impact in the SEND team and Quality Assurance Team within Children's Services. While the LGSCO has identified areas which can be improved, particularly relating to SEND issues there remains a need to fully implement the learning so that they can see the impact of reviewing the service. However, the substantial increase in complaints and investigations has meant there has been insufficient time to make an impact.

2.15 The LGSCO Annual Letter refers to a particular case which was submitted late and where the Council had to be reminded about the LGSCO's powers, including powers to issue a witness summons. The complaint referred to was a Children's Services SEN case which took a relatively long time to deal with as it had not initially been considered under the Council's Complaints process. This consideration, therefore, took place and the complaint then travelled through the LGSCO complaints process. The Council forwarded the necessary information to the LGSCO, who requested further information. However, the request for further information was not received by the Council, and this resulted in the LGSCO issuing a final request which was received and responded to, and an appropriate apology sent.

2.16 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 issue. Children's Services have provided the following information in connection with specific actions they are taking following recommendations from the LGSCO on specific complaints.

Learning is an important aspect of the complaints procedure and significant changes have taken place in Derbyshire, particularly in the SEND service in order to reduce delays in the education, health and care plan process and improve communication with the parents of children and young people.

A re-model of the SEND assessment service took effect on 20 February 2023. This was in preparation for a full-service redesign which is at the final planning stage at the time of this report.

Prior to 20 February 2023 the service worked in a locality model. There were six localities, each with a lead SEND officer and four SEND officers.

Since the remodel, the service has an assessment team which undertakes new assessments and processes incomers to Derbyshire, two primary review teams and two secondary review teams, each maintaining EHC plans and managing the annual review process. There is a dedicated tribunal team, two SEND transport officers and two complaints officers. Additional business support officers have been attached to the SEND assessment service to support the new service structure.

The service previously recruited plan writers in the assessment team to address the backlog, this has now significantly reduced. Therefore, they have now disbanded the team of plan writers and replaced them with interim senior officers, this has doubled the assessment team capacity in order to improve our timeliness.

Interim staff are in place until the full restructure is put into place and permanent staff are then to be recruited.

The impact of the changes is being monitored and further additional business support assistants were moved to the assessment team when it was identified that draft EHC plans which had been written, and EHC plans which could be finalised, were not being issued in a timely manner due to business support capacity issues.

On-going additional training is being delivered to all officers in the SEND assessment service due to the number of new staff recruited since February 2023, and due to the changes in practice resulting from the council's determined efforts to reduce delays in completing Education, Health and Care Needs Assessment (EHCNAs) and increasing compliance with statutory timescales for issuing final EHC plans.

As the backlog of EHCNAs is being addressed and the service settles into the new way of working, communication with parents and schools is improving. Schools once again have access to manager's individual email addresses to escalate cases.

Derbyshire have also completed the IDOX purchase- EHC Hub to improve the following:

- Ensuring that the child or young person is at the centre of everything we do.
- Process and decision transparency: Clear, accessible, and timely information for all stakeholders.
- Easing the administrative burden: Efficient recording, supporting The Golden Thread.
- A truly collaborative approach to assessment, planning and review: Secure and easy multi-agency working.
- Supporting compliance whilst driving practice improvement.
- A robust and effective EHCP review process with clear outcome measurement.
- A vehicle for cultural change – True digital transformation.

In response to data and information linked to SEND and inclusion as well as the nature of complaints across the system, the strategic approach to enable inclusion is proactive and aimed at improving the experiences of children and young people and their families, simultaneously reducing the levels of dissatisfaction leading to complaints. As well as the significant changes to the service delivery of the SEND team, there has been a remodel of other services within Schools and Learning to proactively support and develop the inclusive capacity of mainstream schools. Every school in Derbyshire will have an allocated Inclusion Support Advisory Teacher who will develop an 'Inclusion Framework' with the school to identify and plan to improve areas of development and to improve earlier intervention and ensure the right support at the right time. A SENDCo Network and SENDCo Helpline has also been launched to support and develop the leadership and implementation of a graduated response to SEND support in schools and settings, again to improve the experiences of the children and young people and their families.

2.17 As a result of findings and recommendations from LGSCO complaints the following actions have been carried out in the Council's Adult Social Care Department;

Learning from LGSCO recommendations was identified in relation to Mental Capacity Act 2005 assessments. To respond to this the adult social care quality team have implemented a new learning form for all complaints, including LGSCO complaints.

This has provided an opportunity to improve and shape service delivery, for example, bespoke training sessions in Mental Capacity Act Assessments. The quality team also meet with area Group Managers to look at performance themes and learning on a quarterly basis to embed learning from feedback received.

To improve processes relating to 'top up fees', a financial review panel has been implemented. This is to ensure that a review takes place where there is a concern or challenge relating to charging. The review or challenge is made from a person receiving a service, an advocate, or their representative. This gives assurance that there is a consistent approach to implementation of top up fees across the Adult Social Care Department.

In all cases where training has been implemented or policy updated as a result of LGSCO decisions, actions are completed to make sure that changes are made, for example amendments have been made with in the Adult Social Care Complaints policy. This learning has been also shared on Adult Care's intranet webpage to share themes and learning to improve practice.

Adult Social Care LGSCO complaints have a 14% upheld rate, which represents a 4% decrease from the previous financial year.

- 2.18 The LGSCO annual report will be reported to Cabinet on 17 October 2024.

### **3. Alternative Options Considered**

- 3.1 Not to report the LGSCO report to Governance, Ethics and Standards Committee, however the remit of the Committee included in the Constitution envisages such reports will be considered.

### **4. Implications**

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

### **5. Consultation**

- 5.1 Not applicable.

### **6. Background Papers**

- 6.1 None identified.



## **7. Appendices**

7.1 Appendix 1 – Implications.

7.2 Appendix 2 – Annual Review letter of the LGSCO.

7.3 Appendix 3 – Details of the 47 cases upheld by the LGSCO.

## **8. Recommendations**

That Committee notes the Annual Review Letter of the Local Government and Social Care Ombudsman for the year ending 31 March 2024 and notes that a report on this matter will be considered by Cabinet on 17 October 2024.

## **9. Reasons for Recommendations**

9.1 To ensure compliance with the Council's Constitution.

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## Implications

### Financial

- 1.1 Payments have already been made to the complainants in accordance with the recommendations of the LGSCO.
- 1.2 For the financial year 01 April 2023 to 31 March 2024, Children's Services paid a total of £238,324.08 in remedy payments, relating to LGSCO complaints. Of this total amount, an amount of £232,212.48 related to SEND.
- 1.3 By way of comparison, between 01 April 2022 and 31 March 23 Children's Services paid a total of £36,012.75 in remedy payments relating to LGSCO complaints. There is no breakdown recorded on what percentage of the total related to SEND complaints, but it is estimated that the majority of the compensation paid out was for SEND.

### Legal

- 2.1 The terms of reference for the Governance, Ethics and Standards Committee include *"to receive regular reports on Local Government Ombudsman referrals"*.
- 2.2 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.
- 2.3 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)).
- 2.4 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.
- 2.5 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.

2.6 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 2023 – March 2024 no such reports of maladministration have been received from the LGSCO.

### **Human Resources**

3.1 None directly arising out of this report.

### **Information Technology**

4.1 None directly arising out of this report.

### **Equalities Impact**

5.1 None directly arising out of this report.

### **Corporate objectives and priorities for change**

6.1 None directly arising out of this report.

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

7.1 None directly arising out of this report.