



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

GOVERNANCE, ETHICS AND STANDARDS COMMITTEE

1 JULY 2021

Report of the Director of Legal and Democratic Services

**REPORT OF THE LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN
- INVESTIGATION INTO COMPLAINT NO 18/000/932 AGAINST
DERBYSHIRE COUNTY COUNCIL**

1. Purpose

- 1.1 To inform the Governance, Ethics and Standards Committee of a recent case investigated by the Local Government and Social Care Ombudsman (LGSCO) who has made a finding of fault by the Council causing injustice to the complainant.

2. Information and Analysis

- 2.1 Members are aware that if an individual is dissatisfied with the service provided by the Council he/she may complain under the Council's Corporate Complaints Procedure. If a complainant remains dissatisfied they are able to refer the complaint to the Local Government and Social Care Ombudsman. If the LGSCO decides to investigate a complaint he will determine whether, in his opinion, the Council has been guilty of "maladministration" and if so whether the complainant has sustained "injustice" in consequence.
- 2.2 Section 5A of the Local Government and Housing Act 1989 imposes a duty upon the Monitoring Officer to prepare a report to the Executive if at any time it appears to her that there has been maladministration in the exercise of its functions. This duty has arisen in respect of this finding of maladministration by the LGSCO because the LGSCO has

conducted an investigation. The Monitoring Officer's report was considered by Cabinet on 17 June 2021 and a copy of the report has been provided to each member of the Council in accordance with statutory requirements. A copy of the report to Cabinet which contains the detail of the complaint, a copy of the LGSCO's report and the Council's response is attached at Appendix 2.

2.3 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'. This is the basis on which this report is submitted to this Committee.

2.4 Members of the Committee will note that from the report to Cabinet that the Council has accepted the LGSCO's findings and agreed to the recommendations. The Council has already apologised fully to Ms X for the faults identified and paid Ms X on behalf of herself and Z, £1,000. In addition, it is important to recognise that significant change has taken place within the SEN assessment team to address the matters that have arisen in the history of this complaint. It is therefore proposed that no further revisions to the Council's policies and procedures are recommended at this stage.

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 – Report to Cabinet dated 17 June 2021 and Report of the Local Government & Social Care Ombudsman

8. Recommendations

That Committee:

- (a) notes the findings of the Local Government and Social Care Ombudsman set out in the report at Appendix 2 and the actions which have been taken by the Council in response to that report and more generally to prevent further escalations of complaints;
- (b) notes that the report was considered by Cabinet on 17 June 2021 and circulated to all members of the Council; and
- (c) confirms that no revisions to the Council’s policies and procedures are recommended following consideration of the report.

9. Reasons for Recommendations

9.1 To ensure compliance with the Council’s Constitution.

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This report has been approved by the following officers:

<p>On behalf of: Director of Legal Services and Monitoring Officer Director of Finance and ICT Managing Executive Director Executive Director(s)</p>	
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Implications

Financial

- 1.1 Payments have already been made to the complainant in accordance with the recommendation 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. The LGSCO may investigate complaints of maladministration causing injustice.
- 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 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).
- 2.4 The Director of Legal and Democratic Services' report is made to the "executive" under the Director's role of Monitoring Officer (s.5A Local Government and Housing Act 1989). In the role of Monitoring Officer the Director of Legal and Democratic Services is also obliged to consult with the Head of Paid Service and S151 Officer when preparing the report. The report must be sent to each member of the Council and Cabinet must meet to consider the report within 21 days of the report being sent to the Executive.
- 2.5 The Council is required to give public notice by advertisements in two local newspapers stating that copies of the LGSCO's report will be available to inspect by the public at the Council's offices for a period of three weeks (s.30 Local Government Act 1974). In view of Covid restrictions the Council intends to go further than this and the public notices will state that the Council will send a copy of the report by post or email and it will also be available on the Council's website and the LGSCO's website.

2.6 The LGSCO's recommendations are not legally enforceable although it is extremely unusual for a Council not to accept them. The Council must inform the LGSCO of the actions it proposes to take within 3 months of the date on which the Council received the report. If the Council fail to do this or the LGSCO is not satisfied with the action proposed by the Council then the LGSCO can issue a further report.

2.7 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'.

This is the basis on which this report is submitted to this Committee.

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.