



To:
All members of the
Council

Please reply to:

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Date: 13 October 2022

Supplementary Agenda

Council - Thursday, 20 October 2022

Dear Councillor

I enclose the following items which were marked 'to follow' on the agenda for the Council meeting to be held on Thursday, 20 October 2022:

12. Annual report on complaints 2021-2022

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To note a report from the Monitoring Officer on an annual review of complaints investigated by the Local Government and Social Care Ombudsman.

Yours sincerely

Karen Wyeth
Committee Services

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To the members of the Council

Councillors:

S.M. Doran (Mayor)
D. Saliagopoulos
M.M. Attewell
C.F. Barnard
C.L. Barratt
R.O. Barratt
C. Bateson
I.J. Beardsmore
M. Beecher
J.R. Boughtflower
A. Brar
S. Buttar
J. Button

R. Chandler
J.T.F. Doran
R.D. Dunn
S.A. Dunn
T. Fidler
N.J. Gething
M. Gibson
K.M. Grant
A.C. Harman
H. Harvey
I.T.E. Harvey
N. Islam
T. Lagden

V.J. Leighton
A.J. Mitchell
S.C. Mooney
L. E. Nichols
R.J. Noble
O. Rybinski
J.R. Sexton
R.W. Sider BEM
V. Siva
B.B. Spoor
J. Vinson
S.J Whitmore

Council



20 October 2022

Title	Annual Report on Complaints 2021-2022
Purpose of the report	To note
Report Author	Farida Hussain, Monitoring Officer Sandy Muirhead, Group Head Commissioning and Transformation
Ward(s) Affected	All Wards
Exempt	No
Exemption Reason	Not applicable
Corporate Priority	Service delivery
Recommendations	Council is asked to note the report.
Reason for Recommendation	Not applicable

1. Summary of the report

- 1.1 This report seeks to inform Council of the 2021-22 Annual Report from the Local Government and Social Care Ombudsman (the Ombudsman). It also outlines the number of complaints considered by officers in accordance with the Council's Corporate Complaints Policy.

2. Key issues

Annual Report from the Local Government and Social Care Ombudsman

- 2.1 There is a duty under section 5(2) of the Local Government and Housing Act 1989 for the Monitoring Officer to report Local Government and Social Care Ombudsman findings and recommendations to the Council where, following an investigation into a complaint, the Ombudsman has made a finding of fault.
- 2.2 The Ombudsman has issued guidance to authorities about how they should report findings on its investigations to elected members and is supportive of a flexible approach to discharging this duty.
- 2.3 As a general guide the Ombudsman has suggested that where his office has made findings of maladministration/fault in regard to routine mistakes and service failures, and the authority has agreed to remedy the complaint by implementing the recommendations made following an investigation, the duty is satisfactorily discharged in a small authority if the Monitoring Officer summarises the findings on all upheld complaints over a specific period, in an annual report to the Council.

- 2.4 The Ombudsman has recently circulated its Annual Review letters for 2021-2022 to all local authorities.
- 2.5 The Annual Review letter includes a breakdown of complaints received to show how they were dealt with. The attached breakdown of complaints about Spelthorne Borough Council (**Appendix 1**) shows the Ombudsman received 16 complaints. Only 1 of these was investigated, as a result of which the Ombudsman made a finding of maladministration and injustice.
- 2.6 This is a very good outcome, particularly when viewed against the number of complaints dealt with by staff at Stages 1 and 2 of our internal Complaints procedure.
- 2.7 The requirement to report findings of fault by the Ombudsman applies to all such complaint decisions, not just those that result in a public report. It is therefore a significant statutory duty that is triggered in most authorities every year.
- 2.8 The one upheld complaint in April 2021 (which completed the Council's complaints procedure in August 2020), was in relation to a service failure and I can confirm that the authority remedied the complaint by implementing the recommendations made by the Ombudsman, within one week of its decision.
- 2.9 The Ombudsman's full decision in respect of the upheld complaint is attached at **Appendix 2**. Members will note that the report has been anonymised to protect the identity of the complainant.
- 2.10 In summary the Ombudsman found that, "Mr X complained about the Council's decision not to let him see his father when he visited a day centre; its failure to contact him after he left his contact details at the day centre and its decision to limit his future contact with staff at the day centre. Mr X says the actions of the Council caused unnecessary distress. The decision not to let Mr X see his father was based on a duty of care and Mr X was correctly referred to Adult Social Care. There is no fault in the procedure followed to limit Mr X's ongoing contact with the day centre staff. There was fault by the Council in taking Mr X's contact details when it had no intention of using them to contact him.
- 2.11 The Ombudsman publishes [an interactive map](#) containing the complaint data for each local authority in England in a searchable format. It collates the annual letters sent to each local authority, how often they complied with the Ombudsman's recommendations, the improvements they have agreed to implement and published decisions.

Council's Corporate Complaints

- 2.12 Formal complaints about unsatisfactory service or the behaviour of staff raised by residents or members are considered in accordance with the Corporate Complaints Policy.
- 2.13 In 2021-2022 we received:
- 21 complaints which received a response from a senior officer within the service concerned at Stage 1 of the complaints process.
 - 16 (of the 21) complaints were escalated to Stage 2 for an independent investigation and response from the Group Head for Commissioning and Transformation.

- a further 4 complaints were considered directly at Stage 2.
- 2.14 As a result of the 20 Stage 2 investigations, the Council accepted it had been at fault to some degree in relation to 6 and took steps to address the failures identified as well as offering an apology. None of the upheld complaints were raised with the Ombudsman.
- 3. Options analysis and proposal**
- 3.1 This report is for information and there are no options arising.
- 4. Financial implications**
- 4.1 There was no financial remedy arising from the Ombudsman's finding of fault.
- 5. Risk considerations**
- 5.1 The Monitoring Officer routinely reviews and reports on complaints data to ensure our processes are effective and to minimise any risk
- 6. Procurement considerations**
- 6.1 There are no procurement considerations arising from this report.
- 7. Legal considerations**
- 7.1 There are no legal considerations arising from this report.
- 8. Other considerations**
- 8.1 There are none.
- 9. Equality and Diversity**
- 9.1 There are no equality and diversity considerations arising from this report.
- 10. Sustainability/Climate Change Implications**
- 10.1 There are no sustainability or climate change implications arising directly out of this report.
- 11. Contact**
- 11.1 Gillian Scott, Corporate Governance Support Officer, 01784 444243

Background papers: There are none.

Appendices:

Appendix 1 – Table of decisions made by the Ombudsman in 2021-22

Appendix 2 – Ombudsman 'finding of fault' decision on a complaint by Mr X

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Reference	Authority	Category	Decided	Decision	Decision Reason	Remedy	Service improvement
20000905	Spelthorne Borough Council	Corporate & Other Services	22/04/21	Referred back for local resolution	Premature Decision - referred to BinJ		
20007341	Spelthorne Borough Council	Corporate & Other Services	14/04/21	Upheld	Maladministration and Injustice	Apology, Provide training and/or guidance	Remind staff not to raise expectations by promising to do something it has no intention of doing.
20013396	Spelthorne Borough Council	Corporate & Other Services	17/05/21	Closed after initial enquiries	Not warranted by alleged injustice		
21000967	Spelthorne Borough Council	Housing	06/05/21	Referred back for local resolution	Premature Decision - referred to BinJ		
21002008	Spelthorne Borough Council	Housing	27/07/21	Closed after initial enquiries	Not warranted by alleged mal/service failure		
21004320	Spelthorne Borough Council	Corporate & Other Services	28/07/21	Closed after initial enquiries	Other Agency better placed		
21005959	Spelthorne Borough Council	Corporate & Other Services	29/09/21	Referred back for local resolution	Premature Decision - referred to BinJ		
21007351	Spelthorne Borough Council	Planning & Development	15/10/21	Closed after initial enquiries	Not warranted by alleged injustice		
21007861	Spelthorne Borough Council	Environmental Services & Public Protection & Regulation	31/08/21	Incomplete/Invalid	Insufficient information to proceed and PA advised		
21008001	Spelthorne Borough Council	Planning & Development	02/09/21	Referred back for local resolution	Premature Decision - advice given		
21008333	Spelthorne Borough Council	Highways & Transport	24/09/21	Closed after initial enquiries	26(6)(a) tribunal TPT/PATAS		
21010399	Spelthorne Borough Council	Housing	15/10/21	Referred back for local resolution	Premature Decision - advice given		
21014381	Spelthorne Borough Council	Housing	04/02/22	Closed after initial enquiries	26(6)(c) Court remedy		
21016887	Spelthorne Borough Council	Planning & Development	17/02/22	Referred back for local resolution	Premature Decision - advice given		
21018031	Spelthorne Borough Council	Planning & Development	09/03/22	Referred back for local resolution	Premature Decision - advice given		
21018821	Spelthorne Borough Council	Housing	25/03/22	Referred back for local resolution	Premature Decision - advice given		

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The Ombudsman's final decision

Summary: Mr X complained about the Council's decision not to let him see his father when he visited a day centre; its failure to contact him after he left his contact details at the day centre and its decision to limit his future contact with staff at the day centre. Mr X says the actions of the Council caused unnecessary distress. The decision not to let Mr X see his father was based on a duty of care and Mr X was correctly referred to Adult Social Care. There is no fault in the procedure followed to limit Mr X's ongoing contact with the day centre staff. There was fault by the Council in taking Mr X's contact details when it had no intention of using them to contact him.

The complaint

1. Mr X complained about the Council's decision not to let him see his father when he visited a day centre; its failure to contact him after he left his contact details at the day centre and its decision to limit his future contact with staff at the day centre.
2. Mr X says the actions of the Council have been unpleasant and caused unnecessary distress and upset.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. As part of the investigation, I have:
 - considered the complaint and the documents provided by the complainant;
 - discussed the issues with the complainant;

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- sent my draft decision to both the Council and the complainant and taken account of their comments in reaching my final decision.

What I found

6. Mr X has not been in regular contact with his father for about 35 years. In January 2020, Mr X visited his uncle who told him his father's health wasn't great and he appeared to be declining. The uncle mentioned to Mr X that his father went to a local day centre each Friday.
7. Mr X visited the day centre on 17 January 2020. He was able to walk in and met with his father. Mr X says the visit was emotional for them both but his father indicated he wanted to see Mr X again along with his sister.
8. Mr X revisited the day centre two weeks later. Mr X says his father was not there that day but he spoke to a staff member and explained the purpose of his visit. Mr X left his contact details and asked the staff member to let his father know he had visited and that he would like to visit again if his father agreed.
9. Mr X says that three weeks later his sister, who lives abroad, was in the country. They went to the day centre to visit their father. Mr X says they were asked to sign in and were then taken into an office to speak with the centre manager. He said that as he had not heard anything since he last visited and left his details, he assumed it was okay to visit.
10. Mr X says the manager would not allow him to see his father. The day centre manager phoned senior managers and Adult Social Care officers to seek their advice. Both said that Mr X should not be allowed to see his father until Adult Social Care had spoken to his father. Mr X says he asked the manager to speak with his father and find out if he wanted to see him. He says the manager used terminology he was not familiar with but he concluded this related to his father's mental condition and cognitive state.
11. Mr X says the manager asked for personal information about criminal convictions and why he had been estranged from his father for so many years. Mr X says, although he was uncomfortable providing this personal information, he answered all the questions only to be told that under no circumstances could Mr X use the day centre to meet his father.
12. The Council says that the day centre manager subsequently phoned Mr X to say that Adult Social Care would visit his father at home to see if he wanted to meet Mr X and his sister. Adult Social Care subsequently carried out three separate visits to Mr X's father to discuss the possibility of Mr X and his sister meeting with him.
13. Mr X made a formal complaint to the Council on 27 February. The Council responded saying while it understood this was difficult situation for Mr X and his family, the Council had a duty of care to all members of the high needs group which his father attends. It said that Mr X's first, unannounced visit had caused his father to be extremely upset and this had a knock-on effect to the whole group. It said its duty of care was first to the day centre users to ensure they are safe and happy both physically and mentally. The Council said senior managers had been involved in the decision not to allow him to see his father without checking with Adult Social Care who referred his father to the service.
14. Mr X responded saying the Council had not addressed the issue of no-one contacting him after his first visit. He felt there would have been contact if he had

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- caused the level of disruption claimed. He said this lack of action or “cant be bothered” attitude and unkindness had caused him great upset. Mr X said the social worker had visited his father who wanted to have contact with Mr X’s sister. Mr X said he was considering legal action as the Council’s actions had added an extra bit of unpleasantness to an already difficult situation.
15. Mr X continued to email the Council about the situation. He informed the Council that it was his step-sister who issued the instruction to prevent him seeing his father. He also said that he had been in contact with the Office of the Public Guardian. The Council said on 16 July that it understood his position but that it hoped he appreciated that a “stranger” entering a building with vulnerable people in is of concern to the staff. It said that as this was mainly a family issue and Mr X has been advised to go to court to resolve it, the Council could not be of any further assistance.
 16. The Council sent Mr X the response to his stage two complaint on 23 July. It said it was not upholding his complaint as the staff had acted in good faith and in line with their duty of care to his father, social care and General Data Protection Regulation (GDPR) requirements.
 17. On 6 August, Mr X emailed the Council saying the day centre manager’s daughter had been to his property and threatened him. Mr X reported the matter to the police.
 18. The Council wrote to Mr X on 11 August. It said it had carried out a review of this case under the section of its Complaints Procedure titled “How we manage unreasonable complaint behaviour”. It provided a link to this procedure. The letter said the Council considered Mr X’s behaviour to be aggressive, hounding and unreasonable. It set out its proposed actions saying it would not enter into further correspondence about visiting his father at the day centre and Mr X should direct all correspondence to Surrey County Council Adult Social Services. It also said Mr X should not attend, telephone or correspond with any staff at the day centre.
 19. The letter set the reason for the Council taking this position and invited Mr X to provide his observations on the proposed actions before the Council would reach a final decision.
 20. Mr X submitted his comments. He refuted all the allegations and said the remarks were uncalled for and slanderous. He asked the Council to withdraw its letter. The Council wrote to Mr X on 25 August confirming its final decision in the terms previously set out. It said the decision would be reviewed in six months.
 21. Mr X contacted the Council asking it to substantiate the allegations or retract them. He said the Council had failed to address his complaint about the day centre manager’s daughter harassing him which was a breach of confidentiality. He said until these matters were addressed he would not accept any restrictions.

Analysis

22. Mr X complains about the actions of the day centre staff when he visited in February with his sister. Mr X says he was refused entry by the staff even though he had seen his father on an earlier visit. Mr X is upset that the day centre staff refused to ask his father at that time whether he wanted to see him.
23. I agree with the Council that its first duty is to the safety and well being of the service users at the day centre. There is evidence that Mr X’s previous visit had affected his father. Mr X himself describes them as both being very emotional.

The Council's interpretation is that it upset Mr X's father and other service users. I am satisfied the day centre staff were entitled to use their professional judgement on the day and prevent Mr X meeting with this father.

24. Mr X believes the staff should have asked his father if he wanted to meet with him and complains this did not happen. I am aware the day centre staff took advice from senior managers and followed their instructions not to let Mr X meet his father. While I appreciate this was upsetting for Mr X, I am satisfied this was a decision the Council was entitled to take and on that basis it was not a decision for Mr X's father to make and so there was no reason for staff to approach him on that day.
25. Mr X also complains that he previously left his contact details with the day centre staff and asked them to contact him about meeting his father at the day centre. Mr X says that the member of staff concerned threw his details in the bin which he thought was terrible. He says that when no-one contacted him after a few weeks he thought this meant it was okay for him to visit.
26. The information I have seen includes emails between staff about the situation. In one email, it says that the staff member took Mr X's contact details in order to get him to leave the building because he was being aggressive.
27. I cannot take a view on whether Mr X was being aggressive as I was not present. However, it does seem clear that a staff member took Mr X's contact details and agreed to contact him without any intention of doing so. This is fault. Agreeing to contact Mr X and then not doing so mismanages Mr X's expectations and causes further upset. A timely telephone call explaining the situation to Mr X could have prevented his third visit and the distress that caused.
28. Mr X also complains about the Council limiting his future contact with it. The Council contacted Mr X by email in August explaining what it intended to do. The email contacted a link to the Council's complaint procedure and drew his attention to the section "How we manage unreasonable complaint behaviour."
29. The Council took the view Mr X's behaviour was unreasonable and so it wanted to take action. I note Mr X completely disagrees with the Council's assessment of his behaviour. I am not taking a view on Mr X's behaviour or the Council's response to it. However, I am satisfied the Council has correctly followed the procedure to reach this position.
30. The Council wrote to Mr X explaining the restrictions and the reasons it had made the decision. It invited Mr X to make representations before formally implementing the restrictions. It said it will review the situation in six months. While noting Mr X's disagreement, I find no fault in the procedure used by the Council to put restrictions on Mr X under its procedure for managing unreasonable complaint behaviour.

Agreed action

31. The Council should provide a written apology to Mr X for its failure to contact him after saying it would. The Council should also remind staff not to raise expectations by promising to do something it has no intention of doing. The Council should take this action within one month of my final decision.

Final decision

32. I have completed my investigation with a finding of fault for the reasons explained in this statement. The Council has agreed to implement the actions I have recommended. These appropriately remedy any injustice caused by fault.

Investigator's decision on behalf of the Ombudsman

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