

By: Chief Executive

To: Governance and Audit Committee – 16th September 2009

Subject: OMBUDSMAN COMPLAINTS

Accountable Officer: Corporate Access to Information Coordinator

Classification: Unrestricted

Summary and Recommendations: To report:-
the latest position on complaints to the Local Government Ombudsman against the County Council;

FOR INFORMATION

1. New Local Government Ombudsman Complaints since 1st October 2008

(1) In the six months from 1st October 2008 to 31st March 2009, 30 new complaints about the County Council were made to the Local Government Ombudsman. This excludes the 10 additional complaints which were classified by the Ombudsman as “premature” (i.e. the Ombudsman considered that the Council had not yet had sufficient opportunity to consider them first) and which will not therefore be included in the annual statistics on complaints when it is published by the Ombudsman shortly. The latest position in the Ombudsman’s consideration of these 30 new complaints and brief details of them on a Directorate by Directorate basis are set out in Tables A and B respectively:-

Table A

Total new complaints 1/10/08 – 31/3/09	30
<i>of which:-</i>	
KCC investigating/collating information	0
Ombudsman’s decision awaited	10
Complaint closed - local settlement	5
Complaint closed - Ombudsman’s discretion	8
Complaint closed - outside Ombudsman’s jurisdiction	4
Complaint closed - no evidence of maladministration	3

Table B

Adult Social Services	1
Chief Executives	3
<i>of which:-</i>	
Commercial Services	2
Miscellaneous/policy	1
Children, Families and Education	13
<i>of which:-</i>	
School Transport	1

Special Educational Needs	1	
Children's Social Services	9	
Other	2	
Communities		1
<i>of which:-</i>		
Trading Standards	1	
Environment and Regeneration		12
<i>of which:-</i>		
Kent Highway Services	8	
Planning Applications	1	
Environment & Waste/Public Rights of Way	3	

2. Current position on existing cases received in the financial year 2007/2008 and still under investigation by the Ombudsman

The Ombudsman has now issued a decision on all eleven cases that were received in 2007/2008 that were still outstanding at the time of my last report (December 2008).

Complaint 07/A/03721 – Special Educational Needs

A summary of this complaint as the Ombudsman understands it is that the Council

- (i) Delayed unreasonably in assessing complainant's stepson and issuing a Statement of Special Educational Needs
- (ii) Unreasonably asked complainants to visit several schools within the county which were not suitable for their step-son's needs.
- (iii) Unreasonably refused to consider a residential placement until just before the SENDist hearing was about to take place and
- (iv) Failed to provide suitable education while stepson was excluded from his mainstream school

The Ombudsman's proposals for settlement, which the Council contested is that the Council pay £39,395 compensation to the stepson for the education he missed for half a term and £5,300 compensation to the complainant to cover some of his legal fees. The Council has agreed to pay £6,868 for the loss of day provision, £750 for legal fees and £1000 to complainant for time and trouble in pursuing complaint. Having considered the Council's arguments, the Ombudsman accepted a local settlement of £13,962 which was duly paid to the complainant.

Complaints 07/A/15602, 16249, 16250, 16251 & 16435 – Failure to keep adequate records re the highway status of Longfield Place

A summary of these complaints from residents as the Ombudsman understands it is that there is an administrative fault in the Council's failure to keep adequate records of the highway status of Longfield Place, Maidstone and in its inconsistent or inaccurate advice to Maidstone Borough Council and others about that matter. This has resulted in development of land opposite the complainants residences which a ransom strip that they purchased was supposed to prevent. Following an inspection of the Council's records, the Ombudsman recommended that the Council pay each complainant £500 compensation to settle the matter locally as the Ombudsman recognised that the complainants could have pursued the land issues through the courts for a definitive position.

Complaint 07/A/12559 – Refusal to address traffic issues

A summary of this complaint as the Ombudsman understands it is that the Council has failed to consider properly alternative measures to address the problem of speeding traffic on Church Road, Eastchurch. Following their investigation, the Ombudsman considered there was no evidence of maladministration.

Complaint 07/A/14391 – Refusal to address traffic issues

A summary of this complaint as the Ombudsman understands it is that the Council has failed to take adequate steps to address the issue of speeding cars on Charing Hill. Following their investigation, the Ombudsman considered there was no evidence of maladministration.

Complaints 07/A/16114 & 16081 – Removal of specialist services without notice/consultation.

A summary of this joint complaint as the Ombudsman understands it is that the Council is at fault in that

(a) it removed specialist services provided by organisation KIDS to the complainants' children in January 2007 without reasonable notice or consultation and

(b) it has failed to make adequate or appropriate alternative provision since January 2007.

The Ombudsman's proposals for local settlement, which the Council accepted, are that the Council pay £1250 compensation to one complainant and £2000 to the other.

Complaint 07/A/07845 – Unfair action re trees & hedges

A summary of this complaint as the Ombudsman understands it is that the Council has taken unnecessary and unfair action against complainant in respect of trees and a hedge on her property. Following their investigation, the Ombudsman considered there was no evidence of maladministration.

3. Current position on existing cases received last financial year (1st April 2008 to 31st March 2009) and still under investigation by the Ombudsman

Complaint 08 007 079 – Failure to provide full-time education following exclusion

A summary of this complaint as the Ombudsman understands it is that the Council has failed to provide the complainant's son with full time education since he was excluded in November 2007. It has also failed to provide the support to complainant's son which is indicated in his statement of Special Educational Needs. This has caused a financial loss for the complainant who runs a small business but is unable to work when son is at home.

The Ombudsman has suggested that the Council pay £4000 in compensation for loss of educational provision and a further £1000 to the complainant for injustice and loss of business. The Council are still deliberating this local settlement proposal

Complaint 08 011 660 – Maintenance of Customer Care Plan

A summary of this complaint as the Ombudsman understands it is that the Council has failed in its duty of care towards complainant. In particular, it has not provided him with the care services specified in his Care Plan since July 2007, or appointed a replacement Care Manager for him. Nor has the Council responded appropriately to complainant's enquiries and complaints about this lack of provision and other related issues.

This is actually an NHS Trust matter and the Ombudsman has been made aware.

Complaint 08 005 202 – Review of family’s needs

A summary of this complaint as the Ombudsman understands it is that the Council has failed to fulfil its statutory duty to carry out reviews of complainant’s family’s needs even when recommended to do so by a Complaints Review Panel and that this failing has resulted in complainant’s family not receiving the level of support it requires.

Following investigation, the Ombudsman has issued a report indicating that the Council is guilty of maladministration causing injustice and has indicated that the Council should pay the complainant £12,500 in recognition of missed direct payments and time and trouble in pursuing complaint.

Complaint 08 013 106 – Dispute with B&Q

A summary of this complaint as the Ombudsman understands it is that there is an administrative fault in the Council's willingness to allow B&Q to sell as new products which have been returned by customers and the way in which the Council considered the complainant’s complaint about this issue.

Following their investigations, the Ombudsman has suggested the Council issue a “modest apology” to conclude matters but has asked to delay sending this until a final decision has been made.

Complaint 08 012 031 – InsideOut, Personal Financial Losses, Approved Contractors List and Tendering Process

A summary of this complaint as the Ombudsman understands it is that the Council has attempted to remove the complainant’s company from the Approved List on two occasions without valid reason; has set up its own company, subsidised by Kent taxpayers and not subject to the same costs and overheads, and with which the complainant’s company cannot reasonably compete; has attempted to block the tendering opportunities available to the complainant’s company; and has interfered with the tendering process when the complainant’s company has been awarded the contract.

The Council has provided the information requested by the Ombudsman to the Ombudsman and is awaiting the outcome of the Ombudsman’s investigations

Complaint 08 008 346 – Children’s’ social services

A summary of this complaint as the Ombudsman understands it is that the Council has failed to properly consider complaints regarding his concerns about his children.

The Council has provided the information requested by the Ombudsman to the Ombudsman and is awaiting the outcome of the Ombudsman’s investigations

Complaint 08 017 038 – Development of North Barracks at Deal

A summary of this complaint as the Ombudsman understands it is that both the District & County Councils have failed to take action on various issues (road condition, adoption of roads, sewerage, landscaping, yellow lines, access etc) raised by residents who have purchased properties whilst the development of this site is ongoing.

The Council has provided the information requested by the Ombudsman to the Ombudsman and is awaiting the outcome of the Ombudsman’s investigations

Complaint 08 017 112 – Traffic problems at A228 Mereworth

A summary of this complaint as the Ombudsman understands it is that Kent Highways Services’ transport policy does not take account of the effect on the complainants and their neighbouring

residents of the impact of heavy traffic using the A228 which bisects their road. They are also concerned about lack of visibility at the exit from the road on to the A228; lack of safe provision for pedestrians crossing the A228; and lack of routine and planned maintenance.

The Council has provided the information requested by the Ombudsman to the Ombudsman and is awaiting the outcome of the Ombudsman's investigations.

Complaint 08 017 678 – Special educational needs

A summary of this complaint as the Ombudsman understands it is that the Council delayed unreasonably in making appropriate special educational needs provision for complainant's son with the consequence that son left school without GCSEs.

The Council has provided the information requested by the Ombudsman to the Ombudsman and is awaiting the outcome of the Ombudsman's investigations

Complaint 08 019 073 – Assisted home-to-school transport

A summary of this complaint as the Ombudsman understands it is that there was administrative fault in the Council's consideration of the complainant's application and appeal for free transport for his son, between his home, and Sir Roger Manwood's Grammar School, Sandwich.

The Council has provided the information requested by the Ombudsman to the Ombudsman and is awaiting the outcome of the Ombudsman's investigations

Complaint 08 013 687 – Claim to have route recorded as Byway Open to all Traffic

A summary of this complaint as the Ombudsman understands it is that that the Council has failed to properly consider complainant's request for a route between Foxes Cross Road and Pean Hill, Whitstable to be recognised as a byway open to all traffic and recorded as such on the Council's definitive map. Complainant has also complained about the Council's decisions on her claims made in 1991 and 1997 and the Council's delay in considering her requests.

The Council has provided the information requested by the Ombudsman to the Ombudsman and is awaiting the outcome of the Ombudsman's investigations

3. Local Government Ombudsman Annual Letter 2008/09

(1) Each year the Local Government Ombudsman produces an individual Annual Letter for every Council. The Annual Letter for 2008/09 is attached as Appendix 1 to this report.

(2) The purpose of the Annual Letter is to help Councils learn from the outcome of complaints to the Ombudsman, underpin effective working relationships between Councils and the Ombudsman's office, identify opportunities for the Ombudsman and his staff to provide assistance that a Council may wish to seek in bringing about improvements to its internal complaint handling, and generally provide complaint-based information which the Ombudsman hopes Councils will find useful in assessing and reviewing their performance.

(3) The Annual Letter reflects the generally good working relationship which exists between the County Council and the Ombudsman's office.

4. Complaints Statistics

(1) The Ombudsman has changed the reporting format slightly this year; appendix 2 of his letter contains detailed statistics relating to complaints made to the Ombudsman against KCC for the last financial year only whereas in the past, complaints received for the two years prior to that were also shown. The statistics compare KCC's response times to first enquiries over the past three years and compare KCC's performance in this respect with other councils.

(2) The figures tabled in appendix 2 shows that 164 complaints about KCC were received by the Ombudsman in 2008/09 compared to 146 in 2007/08 and 148 in 2006/07. (These figures include premature complaints, that is ones that the Ombudsman was unable to investigate because he didn't feel that KCC had had the opportunity to look at the complaint first and try and resolve it). This appears to be due to an increase in complaints about Children & Family Services (30, 8 more than last year), Transport & Highways (30, 7 more than last year) and "Other Service Areas" – this includes planning applications, consumer affairs, trees and waste management – (17, 9 more than last year). The number of Education complaints has fallen for the third year in a row.

(3) A main criticism of KCC in this year's letter is the deterioration of the Council's response times to their enquiries from 29.4 days in 2007/08 to 38.1 in 2008/09. The Ombudsman expects a response to their initial approach within 28 calendar days and the Council was well outside of this target. Although some responsibility does lie with a few operational units who have been slow to provide the Council's designated link officer (Caroline Dodge, Corporate Access to Information Coordinator) with the information requested by the Ombudsman, the link officer's own lack of resources, increased workload and her prioritising responses to FOI requests (which have a statutory deadline to meet) over complaints were primary factors. However, a new member of staff was recruited at the beginning of this financial year and Claire has already had a positive effect; the average number of days to respond to the Ombudsman has fallen to 21.4 so far this year, well within the Ombudsman's target. Another criticism is KCC's reluctance to settle complaints locally until ordered to do so by the Ombudsman. If KCC was perhaps more proactive or creative in trying to resolve complaints, then the 35 local settlement decisions may not have escalated to the Ombudsman in the first place.

(4) On a positive note, there were no reports of maladministration, so 90 of the 125 complaints that the Ombudsman issued a decision on, couldn't have been avoided as KCC had done nothing wrong but the complainant was simply unhappy with perhaps a decision or policy that went against them.

5. Further Information

Further information about any of the complaints, statistics or other matters mentioned in this report can be obtained from the Corporate Access to Information Coordinator.

Caroline Dodge
Corporate Access to Information Coordinator
Ext 1652