

Article for Outlook – May edition

Complaints to the Local Government Ombudsman – new developments

The Local Government and Public Involvement in Health Act 2007 introduced some changes to the Local Government Ombudsman's jurisdiction and operation which will apply to complaints received by the Ombudsman with effect from 1 April this year.

This article summarises these changes, which are designed to improve the service offered by the Ombudsman to complainants, and enable the Ombudsman to take action following the failure of a local authority to deliver a service, even though this has not resulted in injustice to the complainant.

Making complaints

The Ombudsman will now accept complaints submitted by telephone, email and text, as well as in writing. In addition, the Ombudsman has established a new Advice Team in Coventry which will be the first point of contact for all new complainants, and will confirm the subject matter of complaints with the complainant before deciding on further action. As was previously the case, where the Advice Team considers that an authority has not had a reasonable opportunity to look at the complainant's concerns, the complaint will normally be referred to the authority as a 'premature complaint' for further investigation. Other complaints will be referred to the Ombudsman's investigation team in London (or Coventry or York, depending on the location of the authority being complained about).

Contact details for the new Advice Team can be found on Waverley's website, and will appear in the revised complaints leaflet to be published shortly.

Apparent Maladministration – Third party injustice

The Ombudsman can now investigate a matter where, during the course of an investigation, it appears that a third party member of the public has suffered an injustice, even though they have not made a complaint. For example, an investigation may find that a particular property should have been allocated to a third party who has not made a complaint, and the Ombudsman might ask the council to take action to remedy the injustice caused.

Maladministration without injustice

The Ombudsman already draws a Council's attention to faults that have been identified during the course of an investigation which have resulted in an injustice to the complainant. This is done through issuing a formal report - which the authority has to publish - that recommends action to prevent further injustice, or via a local settlement which is agreed with the council. Under the new legislation the Ombudsman is now able to issue such a report, even

though the maladministration identified has not resulted in an injustice to the complainant, in order to prevent injustice being caused in future by similar maladministration.

The Ombudsman has made no findings of maladministration by Waverley in the last 16 years.

Statements of reasons

The law now allows the publication of a 'statement of reasons' for the Ombudsman's decisions. This means that he may now give publicity to local settlements agreed with a council, without needing to publish a formal report.

Service failure

The Ombudsman can now make a finding of 'service failure' even though there has been no finding of maladministration. This could occur when the Ombudsman finds that a local authority has failed to provide a service which is its function to provide or, where a service is being provided, there have been errors in service delivery. For example, a service failure could be that home visits for benefits claimants were not being made when they should have been, or dustbins were not being emptied because of a strike. A service failure could result in the Ombudsman making recommendations for action.

In future, the Ombudsman will count findings of 'service failure' and 'maladministration' together in the annual letter and report issued to local authorities.

The Ombudsman will be preparing further guidance on 'service failure' in due course.

Partnership working

The Ombudsman has long held the view that where it is the local authority's function to provide a service, and it does so through a partnership with another body, accountability rests with the local authority. This is now established in the new legislation, which in turn highlights the need for councils to review complaint-handling arrangements within their partnerships.

Standards Committees

A separate part of the Act relating to Standards Committees is due to come into effect in the next few months. The changes introduced by the Act create the potential for complaints to be made to the Ombudsman about the process, administration and decision making of an authority's Standards Committee. The Ombudsman will be discussing with the Standards Board and Monitoring Officers the approach to be taken in investigating such complaints, and will provide guidance to local authorities in due course.