

Local Government and Social Care Ombudsman – written evidence (FGU0026)

House of Lords Constitution Committee Inquiry into the Future governance of the UK

About the Ombudsman

1. The Local Government and Social Care Ombudsman (LGSCO) investigates complaints about councils and some other authorities and organisations, including education admission appeal panels and independent adult social care providers, in England. It is a free service. Our role is to investigate complaints in a fair and independent way – we do not take sides.
2. Our experience of dealing with situations where things have gone wrong, puts us in a unique position to provide insight into what could be done to improve local public services. We welcome the opportunity to contribute to the call for evidence.
3. Due to the nature of our role, our response to this inquiry focuses on complaints handling and redress within local authorities in England arising from devolution and local government review. We do not hold a view on issues around devolution on a UK wide basis.
4. We also do not have a view on the desirability or otherwise of further devolution within English local government. Our focus is to help ensure whatever approach to further devolution is taken results in simple, transparent, 'no wrong door' accountability for citizens.
5. In addition, we have also set out some proposals for how our legislation could be amended to improve redress in local government.

Executive Summary

6. The statutory framework for the LGSCO is the Local Government Act 1974. This legislation is rooted in a mid-twentieth century municipal model. Since then, successive reforms and devolution have resulted in a fragmented and sometimes opaque system. Public routes to redress are not always clear. Some post-1974 arrangements, such as the Mayor of London, are hardwired into the framework, while others are left ambiguous.
7. All new local authorities and bodies in England should have in place a complaints system which replicates existing rights and jurisdictions, including escalation to the LGSCO. Devolution must not lead to an inadvertent reduction in public accountability or blurring of the right to redress.
8. To achieve this, all English local government administrative functions and services should fall clearly and unambiguously within our jurisdiction.
9. People should have access to redress when using any local services, irrespective of who they are delivered by. Therefore, we consider it desirable for our

jurisdiction to be extended to include where citizens have been let down by their parish or town council.

10. Our legislation should be updated to enable us to look at so called 'public interest complaints'. This would significantly improve redress in local government.
11. The LGSCO provides numerous resources that can and should be used by new bodies when creating their complaints handling processes.

Principles for devolution in England

12. The right to redress is fundamentally important in any restructuring or creation of new bodies. Service users and other concerned citizens should be able to access a coherent system of independent, impartial accountability that is easily understood and applied across England.
13. Clear pathways must be built into any new arrangements to address public complaints and signpost the right to independent redress through the LGSCO. These should, as a minimum, replicate existing rights and jurisdictions. Devolution must not lead to an inadvertent reduction in public accountability or blurring of the right to redress – particularly where new organisations are being created with which the public will be unfamiliar.
14. Where devolution results in powers drawn down from central government to local government (for example through Mayors and their leadership of combined Authorities), any potential accountability gap needs to be removed. Combined authorities currently draw together responsibility for certain functions that do not clearly fit within our jurisdiction, deriving their statutory authority from a wide range of pre-existing legislation.
15. A key, underpinning principle should therefore be to create clear and unambiguous lines of public accountability, firstly through local complaints systems, then to the Ombudsman for all local democratic entities (including Metro Mayors, combined authorities and cross-regional bodies).
16. This should also extend to all the functions the devolved structures deliver or commission. Where services are commissioned or delivered through public-public, public-private or public-third sector arrangements, accountability should remain with the commissioning organisation. This will robustly lock-in accountability through local democracy and then, as an independent backstop, to the Ombudsman.
17. To achieve this, all English local government administrative functions and services should fall clearly and unambiguously within our jurisdiction.
18. Our experience of over 40 years of local complaints handling, has shown us that 'getting the basics right' is fundamentally important when creating new systems and organisations. We know from our casework that if something is done right the first time, local authorities will save time and resources, and it will result in better decisions being made for service users. We would encourage all new bodies to embed good complaints systems, including a culture of welcoming and learning from complaints, and independent redress into their governance arrangements from day one.

19. Some combined authorities didn't have full complaints processes in place at their inception. As their remit is now expanding into service areas that are likely to generate complaints – for example around passenger transport, this is likely to cause problems downstream. We will continue to work with these and other newly created bodies to help develop effective complaint handling measures.
20. Restructuring or creation of new bodies can also represent an opportunity to simplify public access to redress and iron-out any gaps or confusion in the current landscape. We believe that, with the creation or expansion of every new devolved authority, there is the opportunity, and the necessity, to create a simple, integrated complaints system that will be:
 - a. better for the public
 - b. better for local accountability and scrutiny, and
 - c. better value for money
21. All newly created bodies should follow our *Principles of complaint handling in combined authorities and devolved settings*, including signposting to the LGSCO.

Proposals for improvement

In addition to the above principles for devolution in England, we have drawn up some proposals for changes to our legislation which we believe would improve redress within local government:

1. Updating the Ombudsman's statutory remit to reflect all relevant structures of local government

22. The current focus on devolution and in particular the potential Devolution White Paper, represents a welcome opportunity to re-set the LGSCO's jurisdiction and restore a simple, universal remit that is fit for current and future arrangements. This should be based on the clear and unambiguous lines of public accountability set out above. It should aim to tidy up current complexity, making it clear to the public, and to public bodies, what is in jurisdiction.
23. One example of a gap in local accountability is our inability to consider complaints about services provided by parish and town councils.
24. We can investigate complaints about principal authority services that are delegated to parish/town councils, for example through service-level agreements. This is because those services are provided by the parish council on behalf of the principal authority which therefore remains the body in jurisdiction against which a complaint is registered.
25. However, awareness of this is likely to be limited among parish councils and those in receipt of their services. They are unlikely to be signposted to the Ombudsman once local complaint resolution is exhausted. The problem will be exacerbated where services are fully devolved, rather than delegated from principal authorities. In such situations legal responsibility no longer remains with the principal authority. We therefore have no legal locus to investigate complaints about those services. A trend towards increasing devolution from the principal authority covers service areas such as, open spaces, sports pitches and street lighting. These are all areas that residents would have a right to raise complaints about with the LGSCO if they were the responsibility of the unitary authority.

26. The creation of unitary authorities can therefore see residents being left without a right of redress if, as part of that reorganisation, responsibility for services is given to parish and town councils.
27. We believe, as a matter of principle, that people should have access to redress when using any local service provided by a democratic organisation, irrespective of who they are delivered by. Therefore, we consider it desirable for our jurisdiction to be extended to become as comprehensive as possible, covering services delivered by all tiers of local government. This should include where citizens have been let down by their parish or town council. If this were to be pursued, we believe it needs to be done in a way that is proportionate and careful consideration of the practical implications would be needed, while also avoiding imposing any arbitrary limits on the availability of redress.
28. The Committee on Standards in Public Life report on *Local Government Ethical Standards*¹ also drew attention to this issue from the perspective of standards and ethical behaviour. The government has previously consulted on proposals to widen our jurisdiction to include larger town and parish councils.²

2. Complaints raised in the public interest

29. The current limitations around public interest disclosures (including some aspects of “whistleblowing”) create a clear gap in the system of local accountability. The current pathways to raise concerns are at best fragmented and do not provide a clear route for members of the public, councillors, MPs, or local authority staff to raise concerns about matters of public concern, as opposed to matters that affect them personally and directly.
30. While the LGSCO is empowered to carry out investigations into most local authority functions, the historic provisions governing who can make a complaint can sometimes be a barrier to investigating concerns of this nature. This can effectively prevent enquiries into disclosures in which the person is raising a matter of wider public interest, rather than a personal injustice they have suffered. These rules date from 1974, and do not reflect contemporary public expectations.
31. LGSCO regularly receives complaints of this type. Recent examples that illustrate the gap include:
 - a. An enquiry from a councillor alleging her authority was acting in breach of significant statutory requirements relating to its governance and transparency. She claimed to have raised this matter with the key statutory officers and with other members, but to no avail. Because of the restrictions outlined, it is unlikely LGSCO will be able to investigate her concerns, nor is there any other agency to which we can signpost her.
 - b. A referral from the Police asking the Ombudsman to look into allegations of corruption in the planning process made against local elected members, and
 - c. A complaint from an MP wishing to raise a concern about the loss of local control over a large travellers’ site.
32. These are matters about which the public and elected officials would reasonably expect to be able to raise their concerns with an independent body. However, in each instance the people raising the concerns did not have a ‘personal injustice’, meaning LGSCO could not investigate or had to apply a creative approach to bring the complaints even partially within scope.

¹ [Committee on Standards in Public Life: Local Government Ethical Standards: A Review by the Committee on Standards in Public Life](#)

² [MHCLG: Extending the remit of the Local Government Ombudsman to larger parish and town councils](#)

33. This is something that could be changed through a minor amendment to two sections of the Local Government Act (LGA) 1974, to insert reference to complaints relating to the public interest. It would fill a significant gap in the accountability framework without unnecessary complexity. It could also go some way to filling the assurance gaps highlighted in the recent independent review into local authority audit and financial reporting conducted by Sir Tony Redmond.
34. Further to this, our current legislation expressly limits our powers to only being able to make recommendations for action to remedy injustice sustained by the person affected and to prevent injustice caused in the future in consequence of similar maladministration and service failure.
35. Therefore, even though the courts have found this injustice can include “the sense of outrage aroused by unfair or incompetent administration’ even where the Complainant has suffered no actual loss” [R V Parliamentary Commissioner for Administration, ex parte Balchin [1996] EG 166 (CS)], our power to make recommendations where we find fault is limited by the LGA 1974.
36. We have investigated cases where identified fault has caused significant injustice to the wider environment – for example by denuding areas of high conservation or ecological value. Despite our findings, we have been constrained by the above legislation from proposing a ‘remedy for the environment’ as this would not be a recommendation that is in respect of injustice to the person affected, or relate to prevention of future injustice.
37. We are therefore proposing that our legislation should be amended to include an additional clause that would allow us remedy injustice in the wider public interest.
38. If the public interest amendments set out in this section were adopted, clearly the usual requirements would need to remain in place giving LGSCO discretion not to investigate trivial or vexatious complaints, and requiring any complaints to be made in the first instance to local statutory officers (with discretion for the Ombudsman to intervene early where appropriate).
39. We would also need to establish the locus of the person complaining (whether they have some defining characteristic that establishes a clear link with the alleged fault and injustice to them), ensuring we focus on complaints that go well beyond the frustrations of everyday life.

How we can support good complaints handling

40. Our website contains resources that new authorities can use when setting up a complaints handling process.
41. We have issued guidance on *Good Administrative Practice*³ since 1993. We use this as a benchmark for the standards we expect when we investigate the actions of local authorities. Local authorities should therefore be mindful of this when designing complaints handling and other administrative processes.
42. We have also published specific guidance for complaints handling aimed at combined authorities or other new structures, our *Principles of complaint handling in combined authorities and devolved settings*⁴. Drawing on our experience of

³ [LGSCO: Principles of Good Administrative Practice](#)

over 40 years of local complaints handling, we have created a series of principles that local authorities should use when designing a complaints handling system. This document also sets out some ways in which the local authority can work, including the responsibilities of the cabinet in processing learning from complaints.

43. We have also recently published our new *Guidance on Effective Complaint Handling for Local Authorities*. This is a practical guide to complaint handling for those who investigate and response to complaints⁵
44. In the past year our ability to provide training has been affected by the Covid-19 pandemic. However, despite only delivering courses for half of the year we delivered 79 online courses in 6 months, delivering 44 in the final quarter of 2020-21. This is part of our role in helping improve local complaint handling.
45. The complaints we receive are a vital source of information for local authorities, as they help them to understand where services may not be working as well as they could, and give local authorities the opportunity to learn from others.
46. We publish all our decisions on our website⁶ (unless there is a risk of identifying the complainant) to ensure openness and transparency and to allow lessons to be learnt. Where we find fault, we can make recommendations to put things right. Where we find fault with the local authority's procedures or practices, we will often recommend that the authority introduces changes so the same problem will not happen again. While our recommendations are not legally binding, the vast majority of authorities do comply with them (over 99%). The best councils take an open and mature attitude to complaints and see them as an opportunity to improve for all residents.
47. In addition, every year, we publish our complaint statistics for all councils in England. This includes information about the complaints and enquiries we received and the decisions we made, broken down for each local authority. We send this data to local authorities in the form of our 'annual letters', including any important issues or concerns we might have. We release this data to promote transparency, and local authorities can use it to improve their processes. We have also launched an interactive map on our website which sets out our local authority performance data in an accessible format.⁷
48. We also produce thematic reports which look in detail at individual complaints, or a group of complaints, where we think wider learning can be gained. These are published on our website and publicised widely. These can be used by local authorities to improve or design services.
49. We would encourage all relevant bodies to use these resources when setting up new processes, going through reorganisation, when creating a new body, or in their day to day work.
50. We hope this evidence and information will be of use to the inquiry and would welcome an opportunity to elaborate on any of the points in our submission.

30/04/2021

⁴ [LGSCO: Principles of complaint handling in combined authorities and devolved settings](#)

⁵ [LGSCO: Guidance on Effective Complaint Handling for Local Authorities](#)

⁶ [LGSCO: Our decisions](#)

⁷ [LGSCO: Your Council's performance](#)