

Written evidence from the Local Government and Social Care Ombudsman
(COV0162)

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 how our complaints handling will consider the impact of the actions of care providers and councils to individuals' human rights.

Ensuring compliance with the Human Rights Act

4. In ensuring the Government's response to the Covid-19 pandemic is compliant with the Human Rights Act, it is vital that members of the public have effective redress mechanisms through which to voice their experiences. The LGSCO is one of the few genuinely independent bodies with expertise in the areas of local government and social care, which can address concerns from members of the public about failures to protect their human rights during the pandemic.
5. The LGSCO can make decisions about whether a council service or care provider has had due regard to an individual's human rights as part of our consideration of a complaint. We have been given the same powers as the High Court to access information, so we can get to the facts, and make an impartial and independent judgement on whether human rights considerations were properly taken into account, and determine the consequential injustice where we find evidence of failings.
6. Our investigations are as much about serving the wider public interest as they are about a personal remedy. We draw from our findings on individual complaints to provide redress for others similarly affected and to avoid the same problems recurring in future, by recommending changes to policy, practice, and behaviour. Our recommendations to put things right are proportionate, fair, and complied with in the overwhelming majority of cases.
7. The insights we share are always based on hard evidence from our casework; and our advice is realistic and proportionate.

The impact of Government measures

8. Our assessment of the impact of the Government's response to the Covid-19 pandemic will be informed by the complaints we receive. We made the decision to pause all casework that required input from councils and care providers at the end of March 2020 to protect frontline services. We resumed our full service on 29 June 2020, and we have now begun to receive our first complaints about services provided during the pandemic.

9. To ensure consistency, fairness and objectivity in our investigations, we have created a specialist unit of investigators to consider complaints about events where the Coronavirus Act 2020, other Covid-19 related legislation or guidance (statutory or non-statutory) is engaged in the substantive matter complained about.
10. Our investigations cut across all areas of local authority and care services, and we will pay close attention to whether councils and care providers took account of their duties under the Human Rights Act when providing or restricting services under the new legislative landscape, particularly where other pre-existing statutory obligations and duties were diluted.
11. While we cannot predict the types or volumes of complaints we will receive, we are mindful the Government's measures weigh heavily on services where we already had the highest volume of upheld complaints prior to the pandemic; specifically, in the areas of special educational needs provision for children, and adult social care services.
12. We can say with confidence that human rights will be central to any complaint about adult care services provided by councils which enacted the so called 'easements' under the Coronavirus Act, where councils were only required to meet an individual's eligible care needs when a failure to do so would have breached their human rights.
13. More broadly, we consider the following Articles will be most relevant to the complaints we may receive:

Article 2 – The right to life

We may receive complaints about services in a care setting where an individual's death may have been prevented but for a fault which occurred in their care and treatment. In such circumstances, we will consider whether the council or care setting had regard to their duties under Article 2.

Protocol 1, Article 2

This Protocol may be relevant if we receive complaints about a failure to provide education or arrange support services for children with Education Health and Care Plans.

Article 3 – Freedom from torture and inhuman or degrading treatment

If we receive cases which involve neglect, social isolation, improper restraint or inadequate personal care, we will consider whether the council or care provider had due regard to its Article 3 obligations.

Article 8 – Respect for private and family life, home and correspondence

The right to private and family life may be relevant in cases where there has been poor quality of care; a failure to respect an individual's right to privacy in their own home, a care setting, or elsewhere in the community; failure to maintain personal relationships with family members or others; or in cases involving decisions around consent to medical treatment, personal care or forms of restraint.

We recognise Article 8 is a qualified right, and we will take account of the unique and challenging circumstances councils and care settings faced when providing services during the pandemic.

Article 6 – The right to a fair trial

With regulations allowing for remote council hearings and school admission appeal panels, we will consider whether the council took into account an individual's right to a fair hearing as part of these new processes.

Article 9 – Freedom of thought, belief and religion

We may receive complaints about the disposal of dead bodies during the pandemic. We will consider whether the council had due regard for people's wishes and religious beliefs.

Groups disproportionately affected

14. Our specialist team will regularly review our casework to identify trends and recurrent issues emerging from the complaints. Our decisions – all of which are published online – will explicitly highlight any failures to protect human rights. If we find evidence that certain groups of people, areas, or services have been disproportionately affected, we may publish thematic reports on this issue.
15. At a local level, we expect councils and care settings to respond appropriately to any complaints during this time, and properly consider whether they have protected individuals' human rights. Although council and care provider's complaint handling capacity will probably be reduced for a time, it is important authorities can still deal effectively with the most serious and high-risk issues brought to them.
16. We would encourage councils and care setting to use complaints as an effective and immediate form of feedback during the crisis, and a tool to drive continuous improvement. Complaints can continue to inform services where new challenges are developing and where things are going wrong.
17. 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 if that would assist.

Yours sincerely,



Michael King
Local Government and Social Care Ombudsman for England
Chair, Commission for Local Administration in England

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