Local Government & Social Care OMBUDSMAN

Review, Refresh, Renew

Triennial Review of Local Government and Social Care Complaints and Public Accountability Arrangements

The Commission for Local Administration in England

Triennial Review of Local Government and Social Care Complaints and Public Accountability Arrangements

A statutory review of the operation of:

- Part 3 of the Local Government Act 1974 concerning 'Local Government Administration', and
- Part 3A of the Local Government Act 1974, concerning the 'Investigation of Complaints About Privately Arranged or Funded Adult Social Care'.

Local Government Act 1974

Part 3: Local Government Administration

Section 23(12)

In the financial year beginning on 1st April 1990, and in every third financial year afterwards, the Commission shall review the operation (since the last review was made under this subsection) of the provisions of this Part of this Act about the investigation of matters, and shall have power to convey to authorities to which this Part of this Act applies or to government departments, any recommendations or conclusions reached in the course of their reviews, and shall send copies of those recommendations or conclusions to the representative persons and authorities concerned.

Part 3A: Investigation of Complaints About Privately Arranged or Funded Adult Social Care

Section 34R(1)

In each financial year in which the Commission conducts a review under section 23(12), it must also review the operation (since the last review was made under this subsection) of the provisions of this Part about the investigation of matters.

Published by the Commission for Local Administration in England in compliance with Section 23(12) and Section 34R(1) of the Local Government Act 1974

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Chair's foreword: levelling up through speaking up

The three-year period covered by this review, 2021 to 2024, marks fifty years since the Local Government and Social Care Ombudsman (LGSCO) was formed. From our earliest days, 'levelling-up' has been at the heart of what we do – levelling the playing field for the individual citizen to challenge flawed and sometimes out-of-touch bureaucracy. Our service is rooted in everyday experience, making sure the things that concern people on their doorsteps will be taken seriously.

Now, with levelling-up at the heart of public policy, my office can do even more to ensure that no one need feel marginalised or ignored when they have legitimate concerns about what matters most to them and to their community.

The 'ombudsman' model of independent public redress has stood the test of time well. It has proved to be a highly effective mechanism to investigate and remedy everyday injustices for individual citizens, while also sharing learning and driving improvement in local services for everyone's benefit. It is a model that works largely by consent, bringing impartial scrutiny in the public interest, while respecting the sovereignty of local democracy.

Building on that success, we believe that wider sectoral reform to create a single public services ombudsman for England would provide the best service for the public in future. However, underpinning this report is the firm belief that the basic principles upon which the local ombudsman

service was founded are as valid today as they were 50 years ago. Our demonstrable independence has maintained high levels of public trust in the system. The flexibility inherent in our work has enabled us to adapt and innovate. And the legal discretion afforded to my office allows us to focus on those complaints that generate the greatest public value. The changes we propose in this report are therefore simple and achievable improvements to strengthen and modernise a system that works well, rather than a radical re-design.

A lot has changed in local government and social care over the first fifty years of the Ombudsman's work. The two sectors in which we operate have been at the leading edge of innovation in public service delivery, bringing radical changes in roles, structures, and business models. Increasingly, the incremental amendments made to our founding legislation are struggling to keep pace. As a result, I believe the time has come to review, refresh, and renew our remit to reflect twenty-first century realities. There is an opportunity now to simplify our remit for the benefit of the public, and the bodies in our jurisdiction, while also filling some obvious gaps that have developed in the accountability framework.

We have also seen significant changes in public expectations over time. Increasingly, the people who come to us are not just interested in resolving a narrow personal dispute. They want to see meaningful change and learning flow from the concerns they raise when poor local administration touches their lives, their families, and their neighbourhoods.

But we are hamstrung in that work by outdated legislation, rooted in a 1970s conception of public concerns which does not match contemporary public expectations. Evidence from our complaints, including those we are unable to investigate, shows that some still feel their voice is not being heard and local interests have been overlooked.

As an organisation driven solely by independent investigations into grassroots public concerns, we are ideally placed to help address that deficit. In this report we set out a series of simple, practical steps to review, refresh, and renew the existing system and make it work more effectively for everyone.

I am grateful to our sponsor department, The Department for Levelling Up, Housing and Communities, for its positive engagement and support throughout this review. Although we are independent of Government, I am delighted that many of my Commission's proposals have been discussed and developed in a spirit of partnership and shared endeavour. I look forward to working in a similar fashion with the other Departments to which this report is also addressed

If we seize this opportunity now, I believe we can strengthen the voice of the public in every community, in every part of this country.

By helping people to speak up, we can help to level up.

Michael King

Chair of the Commission for Local Administration in England

December 2021

Introduction: The Triennial Review

The Commission for Local Administration in England has three statutory functions:

- To operate and oversee the Local Government and Social Care Ombudsman service in England (LGSCO)
- To issue guidance to the local government and social care sectors on good administrative practice, and
- To carry out a review every three years of the effectiveness of the complaints and accountability arrangements for local government and social care.

This review fulfils the third of those statutory functions.

The proposals set out in this report are drawn from LGSCO's in-depth experience of investigating public concerns. In the three years since the last Triennial Review in 2018, we have investigated more than 14,300 complaints across every dimension of local service provision, delivered by a wide range of bodies across the public, private, and charitable sectors. That work provides a unique insight into the effectiveness of public redress and accountability systems, as experienced by the people who use those services.

In preparing this report, we have engaged widely with sector representatives, both individually and through meetings of the Local Government Accountability Framework Review Panel convened by the Department for Levelling Up, Housing and Communities (DLUHC).

Prior to publication, we consulted formally with:

- Department for Levelling Up, Housing and Communities (DLUHC)
- Department for Health and Social Care (DHSC)
- The Department for Education (DfE)
- The Local Government Association (LGA)
- The National Audit Office (NAO)
- Lawyers in Local Government (LLG)
- The Chartered Institute of Public Finance and Accountancy (CIPFA)
- The Centre for Governance and Scrutiny (CFGS)
- The National Association of Local Councils (NALC)
- The Public Sector Ombudsman Group (PSOG)
- Representatives from the adult social care sector

We are grateful for the comments received, both formally and informally. This feedback has been enormously helpful in shaping these proposals. However, the Commission for Local Administration remains solely responsible for the content of this report and we imply no endorsement from the bodies that have been generous enough to inform our thinking.

The report itself is split into four sections, cutting across different aspects of our legislation. The proposals within each area are set out in brief to provide a short summary of the issue to be addressed.

A large amount of further detail and casework examples underpin each of the proposals. This has not been included here to aid accessibility and readability of the document. Similarly, estimates for the cost of implementing these proposals or of raising a fee from the bodies in jurisdiction have not been included in the text, but are available separately.

Many of the suggestions made here to strengthen and modernise the current system of redress will, ideally, require legislative change. However, being mindful of the pressures on Parliamentary time, wherever possible we have set out options to achieve these goals through non-statutory means, or to test them through pilot projects.

Under Section 23(12) of the Local Government Act 1974, the conclusions and recommendations in this review are being formally addressed to:

- The Department for Levelling Up, Housing and Communities (DLUHC)
- The Department of Health and Social Care (DHSC)
- The Department for Education (DfE)
- The Cabinet Office (CO)

Copies of this review are also being shared with the relevant Parliamentary Committees and with sector representative bodies.

Executive summary of key recommendations

This document contains discussion of potential areas of change within four broad categories:

1. Updating our jurisdiction for local government
2. Strengthening the public voice in adult social care
3. Strengthening the public voice in education
4. Strengthening public services and care markets through improved complaints handling

Full discussion of these areas and the ideas underpinning them can be found from page 6.

Recommendations

1. Updating our jurisdiction for local government

1.1 Update the LGSCO's jurisdiction to ensure it accurately reflects all relevant local government arrangements and access to redress is ensured for all that need it.

1.2 Develop a pilot programme, working in partnership with NALC, DLUHC and a small number of volunteer local councils, to explore the practical challenges, viability, and resource implications of bringing a subset of the largest town and parish councils within the LGSCO's remit.

1.3 In line with the Committee on Standards in Public Life (CSPL) proposals regarding complaints about councillor conduct, give the LGSCO explicit powers to investigate complaints about councillor conduct where local systems have not achieved resolution. This should be a simple 'review' system where either councillors, or those making complaints about councillor conduct, can come to the LGSCO once the local complaints system has been exhausted.

1.4 Amend the LGSCO's remit to enable it to deal with legitimate complaints about maladministration bought by concerned local citizens, where that person has not suffered personal injustice, but where injustice exists. This could be achieved through a minor amendment to two sections of the Local Government Act 1974, thereby filling a significant gap in the accountability framework without unnecessary complexity.

2. Strengthening the public voice in adult social care

2.1 Extend the LGSCO's jurisdiction so it can consider complaints about all aspects of social care in every setting.

2.2 Introduce mandatory signposting by all adult social care providers to the LGSCO.

2.3 DHSC to provide support for an outreach programme to increase awareness of the LGSCO's role among care providers.

2.4 DHSC to give support to the LGSCO to provide guidance and offer training in complaints handling to every social care provider.

2.5 All adult social care providers and commissioners to have a legal obligation to produce and consider, at board level, an annual review of complaints, including a mandated data return, which is available to the public.

2.6 Give the LGSCO proactive investigation powers to look into issues on behalf of those who lack the ability to complain about care.

3. Strengthening the public voice in education

3.1. Give parents, pupils, and carers the right to an independent LGSCO investigation of complaints that have not been adequately resolved by their school.

3.2 Extend the LGSCO's jurisdiction to consider the actions of a school fulfilling an Education, Health and Care (EHC) plan and complaints about Special Educational Needs and Disability (SEND) provision within a school for children and young people without an EHC plan.

3.3 Extend the LGSCO's jurisdiction to bring academies and free schools into the powers it already has for 'maintained' schools for admissions, admission appeals and exclusion appeal cases.

4. Strengthening public services and care markets through improved complaints handling

4.1 Designate the LGSCO as the statutory Complaints Standards Authority for adult social care.

4.2 DLUHC to support the LGSCO to work with the Housing Ombudsman to develop a joint '*Code for Good Complaint Handling'*, setting out basic standards to apply to all councils and the services they provide. This should be accompanied by a simple self-assessment process requiring councils to confirm they are adhering to these standards.

Policy proposals

1. Updating our jurisdiction for local government

Updating the Ombudsman's statutory remit to reflect new structures of local government

The statutory framework for the LGSCO is the Local Government Act 1974. This legislation is rooted in a mid-20th century municipal model. Since then, successive reforms and devolution have resulted in a much-changed system, in which the routes to redress are not always clear for the public. Some post-1974 arrangements, such as the Mayor of London, and certain functions of this and other metro-mayors are explicitly within our remit, while for other bodies it is less clear.

This has created confusion for service users, practical difficulties in resolving simple problems and unnecessary complexity. It also undermines our ability to provide the public and the bodies in our jurisdiction with a coherent system of accountability that is easily understood and applied across the whole country. In some cases (for example, public transport matters), our ability to investigate varies from place to place depending on the specific enabling legislation for that function in the authority covering each location. This runs counter to our shared desire for a simple and accessible system of redress.

The current focus on devolution and levelling up is a welcome opportunity to re-set our jurisdiction and restore a simple, universal remit that is fit for current and future arrangements. This should be based on clear and unambiguous lines of public accountability, firstly through local complaints systems, and then to the LGSCO, for all local democratic entities (including all Mayoral authorities, Combined Authorities, and cross-regional bodies) and all the functions they deliver or commission.

This is not about expanding our remit, but instead making it clear on the face of the legislation that all English local government administrative functions and services should fall clearly and unambiguously within our jurisdiction. This could be achieved through a minor amendment to section 25(1) of the 1974 Local Government Act. This would make things simple, accountable, and clear for citizens, whatever the administrative complexity of the structures that lie beneath.

Recommendation 1.1

Update the LGSCO's jurisdiction to ensure it accurately reflects all relevant local government arrangements and access to redress is ensured for all that need it.

Strengthening the public voice in larger town and parish councils

Town and parish councils represent an important and valued tier of local democracy. The Government's localism agenda encourages these bodies to become accountable for delivering key public services. Local people, through the council tax precept, directly fund those services. However, we currently have no direct jurisdiction to look at complaints about the actions of these bodies.

With the growth of unitary authorities in some areas, the number of town and parish councils has increased, as has their status and profile. For example, when larger shire unitary councils have been created, towns that previously had district or borough councils (that were within our jurisdiction until abolition) have created new town councils (that are outside our jurisdiction). This has inadvertently created a loss of opportunity to seek independent investigation and redress. The range of services provided by some town and parish councils has also expanded over recent years, both in terms of those provided directly and those delivered on behalf of other authorities. Figures published by NALC show local councils make decisions that invest over £1 billion into local communities every year. Where these councils deliver services on behalf of principal authorities, we can investigate complaints about them. Where they deliver their own services, we cannot.

There are also a growing number of local councils that are already operating at a scale comparable to some of the bodies already within our jurisdiction. A recent Commons' library paper *Unitary authorities: the role of town and parish councils*[1] notes that the budgets of some larger town councils run to seven figures. The paper cites Weymouth Town Council (within the newly unitarised Dorset Council area) as having an income in 2019-20 of just under £5 million. This compares with, for example, the Isles of Scilly Council (a district council in our jurisdiction), whose total budget for 2020/21 was set at £5.242 million[2].

The Commons' report also notes that larger parish councils have substantial staff teams and budgets and may run commercial operations such as leisure centres or museums, parks, and community facilities. It also notes most parish councils do not have the means to run public services. Therefore, although the absolute number of councils is large, the potential impact on our role is, we believe, manageable.

Therefore, the rationale for this tier of local democracy to remain entirely outside the existing system of public accountability is questionable. Parliament has, until now, considered that the local ballot box provides adequate accountability for local councils. While in no way seeking to question that decision, we believe where such councils deliver important public services, people with complaints about alleged maladministration and service failure should have a right to seek independent redress.

There is also an expressed desire within the sector to bring larger local councils within the same arrangements as principal authorities, taking seriously their role as part of the landscape of local public service delivery.

In 2015 MHCLG consulted on proposals to bring a limited number of larger town and parish councils within our jurisdiction. That work did not proceed at the time due to changes in government. However, we actively supported this proposal, subject to developing satisfactory safeguards to ensure a proportionate, fully funded, and deliverable scope for any new jurisdiction.

We believe the existing characteristics of the ombudsman model are well suited to operate in this sector. The broad concept of maladministration and service failure can be applied equally to powers or duties exercised by town and parish councils. We can make discretionary decisions about which complaints to investigate, avoiding the potential to be drawn into high volumes of trivial or vexatious complaints.

With around 10,000 town and parish councils in existence, there must be a clear threshold to any expansion of our remit, so that only those relatively large bodies which are delivering public services similar to councils already in our jurisdiction, are included. This could be done by selecting those town and parish councils which cover the largest populations or those with the largest budgets. We estimate there would be fewer than 100 bodies that meet these thresholds. Alternatively, the thresholds could be decided by other means – for example by being linked to when responsibility for services is transferred from principal to local councils through local devolution deals.

We believe these assumptions would benefit from being tested in practice through a pilot.

Recommendation 1.2

Develop a pilot programme, working in partnership with NALC, DLUHC, and a small number of volunteer local councils, to explore the practical challenges, viability, and resource implications of bringing a subset of the largest Town and Parish Councils within the LGSCO's remit.

[1] Unitary authorities: the role of parish and town councils
[2] IoS Draft Accounts 2020-21

Bringing closure to complaints about the ethical standards and conduct of councillors

Unlike our equivalent bodies in Wales and Northern Ireland, we don't have clear, explicit powers to investigate complaints about the conduct and behaviour of individual councillors.

We look at complaints about alleged faults in the administrative actions of councils causing injustice. The decisions of standards committees and monitoring officers adjudicating on member standards complaints are administrative functions, as are most actions of councillors when working for the authority. Complaints that councillors have breached the code of conduct can be considered by the council's monitoring officer and then may be referred to its standards committee.

Where a member of the public complains to us about how a council has handled their complaint about the actions of a councillor, we apply our normal approach to decide whether or not to investigate. Frequently we decide not to investigate because the injustice to the complainant arising from the alleged fault is insufficient.

But when dealing with complaints made to us by councillors about how the council dealt with a standards complaint against them, we would currently be likely to decide not to investigate their complaint because these matters are so similar to "personnel matters" that expressly lie outside our jurisdiction. The claimed injustice – in the form of sanctions or suspension from council meetings – is very similar to the sort of sanctions imposed through a disciplinary process.

Similarly, it is unlikely we would be able to investigate complaints from a third party (for example another elected member dissatisfied with how the council has investigated their complaint about a fellow councillor) because they would not likely be able to show they experienced sufficient levels of personal injustice from the council's actions. They might be able to point to a sense of 'outrage' from the failure to follow accepted principles of administration. But the bar for this is high and unlikely to be met in most cases.

This is generally accepted as a gap in accountability across England. Although high standards of behaviour are maintained by most councillors, the sector consensus is that more action needs to be taken to deal with serious problems from a very small minority of councillors, such as bullying, harassment, dishonesty or abuse of position.

In January 2019[1], an independent report made several recommendations to Government on these matters, including introducing a new role for the LGSCO to provide an appeal mechanism for councillors suspended due to alleged misconduct. This envisaged us adjudicating on substantive standards issues and said our decisions on sanctions should then be binding.

The government has yet to respond to this report or bring forward any proposals. However, we support the importance placed by that report on our potential role offering independent redress. We believe our role in such cases should be applied in a way that is entirely consistent with our normal ombudsman-style approach to deciding whether administrative fault has caused injustice.

We should therefore be able to investigate complaints about how councils have dealt with matters of councillor conduct, having due regard to whether they have correctly followed their local policies and principles of good administrative practice.

This would include, for example, looking at whether the sanctions were applied in line with policy. We should be able to decide to investigate such matters whether the complaint was bought to us by the affected councillor or by a third party, subject to our normal public interest tests.

In most cases where we find fault in how the council has dealt with the allegations we would recommend it reconsider the matter properly, in accordance with its policy.

We stand ready to fulfil this role and believe it could be undertaken in a pragmatic way, without the need

[1] Local Government Ethical Standards. A review by the Committee on Standards in Public Life. January 2019.

for us to set up a separate regime and without the need to introduce new legally binding powers (as recommended in the 2019 report). Instead, we believe we could use our experience of handling a wide range of other complaints for nearly 50 years and adapt this accordingly. We would develop a simple, timely, common-sense system for dealing with the most serious issues and provide a filter to exclude trivial or clearly vexatious matters.

We are confident that applying our tried and tested approach to member standards complaints is a proportionate response to the current gap in redress. It would provide councils and complainants with an end of the line service to resolve seemingly intractable issues.

We recognise it is important to work with the local government sector, and relevant professional bodies to develop and refine this proposal, to ensure it is proportionate, supports local autonomy and reflects the diversity of approach in standards policies and procedures across local government.

Recommendation 1.3

In line with the CSPL proposals regarding complaints about councillor conduct, give the LGSCO explicit powers to investigate complaints about councillor conduct where local systems have not achieved resolution. This should be a simple 'review' system where either councillors, or those making complaints about councillor conduct, can come to the LGSCO once the local complaints system has been exhausted.

Giving a voice to concerned citizens who are currently silenced

Currently, for a complaint to be considered by the LGSCO the person bringing it must have suffered a 'personal injustice'. This means they must be personally and directly affected by the actions or decision of a body within our jurisdiction, such as a local authority.

However, this often means we are unable to consider legitimate complaints, that we would otherwise investigate, from members of the public who come to us altruistically with a complaint, where they believe maladministration has occurred, but where they are not the person who has suffered a personal injustice.

In these circumstances, the actions of the authority are within our jurisdiction to consider, the matters complained about are typical of those that we would routinely investigate, and we consider it possible that significant injustice may have occurred. But due to the status of the person bringing the complaint, we are unable to take it any further.

This accountability gap means we have no discretion to investigate important complaints from citizens raising legitimate concerns about injustice to others caused by alleged fault. It undermines public confidence and prevents us from carrying out a role most assume is already central to our purpose.

We therefore believe our legislation should be amended to enable us to deal with legitimate complaints bought by concerned citizens about instances of maladministration which are within our jurisdiction to address, irrespective of whether the complainant themselves is the one who has suffered the injustice. Our experience is that many people, including some leading parliamentarians, expect us to be able to investigate serious allegations of fault causing injustice. They expect this to be true whoever brings such allegations, with substance, to us.

We are already experienced in deciding whether to investigate complaints based on the likely injustice caused to the person affected, and whether sufficient attempt has been made to resolve the matter locally. We would apply a series of tests to these complaints, in line with our other complaints, to ensure we are filtering out vexatious complaints, or complaints about matters that are righty the preserve of local democratic decision-making. We would also establish the locus of the person complaining to ensure they have some defining characteristic that establishes a clear link with the alleged fault and injustice.

To be clear, we are not suggesting any amendment to legislation that would result in our role becoming in any way perceived or operating as a regulator. We would continue to make findings of whether there has been fault (maladministration and service failure) in an organisation's actions and if so, whether that fault has caused injustice. We would continue to have no powers or desire to question or be critical of decisions taken by organisations having followed the correct legislation, policies, procedures, and principles of sound administration. We would therefore resist being drawn into questions of political priority, best practice, or policy.

Our findings would, as is currently the case, be available for existing regulatory organisations – for example Ofsted and CQC – to use in their work. Our recommendations would continue to be non-binding and, for compliance, rely on the good working relationships we have with bodies in our jurisdiction.

Recommendation 1.4

Amend LGSCO's remit to enable it to deal with legitimate complaints about maladministration bought by concerned local citizens, where that person has not suffered personal injustice, but where injustice exists. This is something that could be achieved through a minor amendment to two sections of the Local Government Act 1974, thereby filling a significant gap in the accountability framework without unnecessary complexity.

2. Strengthening the public voice in adult social care

A clear and comprehensive jurisdiction for adult social care

Our jurisdiction for adult social care only allows us to look at the actions of providers directly registered with the CQC. This means there are whole sections of the care sector our jurisdiction does not cover. These include services such as day centres.

These parts of the care sector play a vital part in people's lives, promoting independence and enabling people to live the life they choose. However, there is currently no independent route for complaints about the quality of these services. This creates an accountability gap in the market and disempowers the consumers of these services.

It also prevents these providers from learning from complaints, which is a valuable way to improve the quality of their services.

To resolve this, we recommend we should be given the jurisdiction to look at complaints about all aspects of social care in every setting.

We would consider these complaints in the same way we do with all our casework, applying thresholds of fault leading to injustice. These complaints would fit well within our current complaints system, given our vast experience of dealing with adult social care complaints across a variety of issues and settings.

Recommendation 2.1

Extend the LGSCO's jurisdiction so it can consider complaints about all aspects of social care in every setting.

Mandatory signposting from adult social care providers to the LGSCO

Currently adult social care providers are not required by law to signpost users to (in other words tell them about) our service, even though we are part of the statutory complaints process. For adult social care funded or arranged by local authorities, this is generally not a problem, as escalating complaints to our service is a key part of local authority work in other areas.

However, in the 10 years since gaining jurisdiction for privately funded social care, our complaints from users of these services have remained starkly lower than for council provided care. Most notably the share of complaints we receive from users of privately funded social care is not reflective of their overall share of the market. We believe this is in part due to a lack of signposting from these providers to our service.

As there is currently no legislative means to ensure providers comply with the mandatory complaints process, there is a disincentive for some providers to do so, as increased complaints create temporary reputational risk. This allows some weaker businesses to undermine the market and disempower their consumers.

Mandatory signposting to our service would be a fundamental way to address this disparity. It would enshrine in law what providers should already be doing. It would increase access to complaints which would improve the quality of the sector. It would create a level playing field between the smaller and larger providers, by creating parity in consumer awareness.

Clear, accessible, and accurate information about the LGSCO and our role would be required on every care provider's website and in their published complaints procedure. To further support mandatory signposting, a physical sign in every residential care setting explaining a consumer's rights would be a simple means of ensuring people are more aware they can complain when things go wrong. Each sign

should outline how a person can make a complaint or raise a concern, who they can turn to for independent support if they want it, and that they have the right to go to the LGSCO if they remain dissatisfied.

Recommendation 2.2

Introduce mandatory signposting by all adult social care providers to the LGSCO.

Improving awareness of the role of the LGSCO

Another way to improve access to the LGSCO is to increase awareness of our role within the sector. We know from our dialogue with the sector, particularly smaller providers, there is often a lack of awareness of our service. Adult social care is a diverse market and there is no straightforward, low cost, way to reach all providers with information about the Ombudsman.

Increasing awareness could take the form of an outreach programme, backed by government, and aimed at harder-to-reach services. It would inform them of our role in the complaints system and the benefits we can bring. To be effective, increasing awareness would need to go hand-in-hand with mandatory signposting.

Recommendation 2.3

DHSC to provide support for an outreach programme to increase awareness of the LGSCO's role among care providers.

Ensuring training on good complaint handling is available to every social care provider

As part of our role in improving public services, we seek to improve the quality of complaints handling in the bodies in our jurisdiction. We do this by providing training, resources and guidance. Training is easily delivered to local authorities through our pre-existing strong links with this sector. However, since the adult social care sector has many smaller private providers, who often work in isolation, they can be harder to reach.

These smaller providers would benefit most from our training as they are not able to share information in the way councils do.

We could, if supported by government, offer training in complaints handling to every social care provider, in the way we currently do for local authorities.

Recommendation 2.4

DHSC to give support to the LGSCO to provide guidance and offer training in complaints handling to every social care provider.

Improving transparency in complaints handling

Good complaints handling is fundamental to providing good public services and driving competitive markets. Complaints allow providers to learn from mistakes and put things right for the consumer. Complaints also help to give the consumer a voice and a say in how a service is run. However, for complaints to be managed well, there must be transparency in the system.

Service providers need to be accountable for the way they respond to people's complaints. Strong local accountability requires strong local scrutiny. Complaints can provide a wealth of information to help inform the scrutiny process, whether through locally elected councillors or through independent board members of private providers. In every care business there should be a lead board member, partner, or director with responsibility for championing user complaints or concerns. Reviewing the lessons from complaints should be a standing item for boards and local government scrutiny committees, so that providers can be held to account for the service they provide and for the improvements they deliver in response to feedback.

As a minimum, all social care providers and commissioners should carry out an annual review of their complaints including a mandated data return. This would support the ownership of first tier complaints handling that is essential for achieving improvements. Putting complaints data at the heart of the suite of information that measures a provider's performance would also help to ensure service improvement is driven by consumer feedback.

A mandated data return from all social care providers about patterns of complaints, how they were dealt with, and the outcomes achieved, would shine a spotlight on local complaint handling. This could be a mandatory part of an annual review published on a council or provider's website for everyone to access and use.

Recommendation 2.5

All adult social care providers and commissioners to have a legal obligation to produce and consider, at board level, an annual review of complaints, including a mandated data return, which is available to the public.

Proactive investigations for those without a voice

We know that many people in receipt of care lack the ability to complain. They may not have mental capacity, they may be isolated and alone, they may have no living relatives or friends to speak on their behalf, or they might fear offending those who care for them. Despite that context, we do not have the ability to investigate proactively on behalf of care users, even where the evidence from our work suggests there might be problems. The law currently requires that a complaint must be brought to us by a person directly affected by the issue – something that is sadly not possible for many care users.

We do have the power in some circumstances to look more widely at the actions of a care provider and consider whether others have suffered injustice. But this must still originate in an individual complaint we have considered. And when this happens, we often experience resistance from bodies in jurisdiction, who do not fully recognise the breadth of our role.

Currently we collate evidence from our complaints, identify key themes and disseminate that information to support improvement in care services. That gives us a unique window into the areas where unspoken problems and concerns might exist. However, we do not have the power to act proactively on these findings, which may leave problems to continue unchecked and negatively affect countless other service users.

Giving us the power to investigate bodies within our jurisdiction based on evidence gained through our casework, without the need for a specific individual complaint, would mean we were able to use our evidence to its full potential to give a voice to the voiceless.

We are not suggesting amendments to legislation which would result in us operating as, or being perceived to be, a regulator. We would continue to make findings of whether there has been fault (maladministration and service failure) in an organisation's actions and if so, whether that fault has caused injustice. We would resist being drawn into questions of political priority, best practice, or policy. Our findings would continue to be available to the CQC to use in their work.

This power would clearly need to be used thoughtfully, sparingly, and proportionately. To achieve that, we would apply the same criteria of fault and injustice as we do for all cases. We would only investigate where our evidence is compelling: and tells us there are serious failings within a care provider or in a specific service

Recommendation 2.6

Give the LGSCO proactive investigation powers to look into issues on behalf of those who lack the ability to complain about care.

3. Strengthening the public voice in education

Empowering parents, pupils, and carers to speak up about schools

The Apprenticeships, Skills, Children and Learning Act 2009 previously allowed us to look at a wide range of complaints within schools, such as non-attendance within a school and so called 'off rolling'. These arrangements were subject to a successful pilot in schools across fourteen local authority areas. An evaluation by DfE, published in 2011 *'Parents' and Young People's Complaints about Schools*' found that expanding our jurisdiction in this way was received positively by local authorities, schools and parents, amongst others, and we were able to help improve local education services by promoting good practice.

Although this legislation was subsequently repealed, we believe it is time to look again at the potential for these reforms to strengthen accountability, increase satisfaction, and drive improvement in schools. Tried and tested changes to our role would enable pupils, parents, and carers to access an independent investigation into matters that had not been resolved locally, which concern:

a) an act of the governing body of the school; or

b) exercising, or failing to exercise, a prescribed function of the school's head teacher

This could be achieved simply by re-enacting our jurisdiction to consider complaints about schools, as set out in the Apprenticeship Skills Children's and Learning Act 2009, suitably expanded to encompass the growth in academies and free schools. This would allow all complaints about the welfare and wellbeing of children and young people in schools, unofficial exclusions, and alternative provision to be considered.

These arrangements already operate successfully in Northern Ireland, where the Ombudsman brings impartial and independent accountability to the education system – a role which is widely respected by stakeholders. The positive role that an independent ombudsman can bring to schools is also demonstrated in the United States where 'education ombuds' at a state and local level are a well-established and highly valued feature of the US education system.

Recommendation 3.1

Give parents, pupils, and carers the right to an independent LGSCO investigation of complaints that have not been adequately resolved by their school.

Closing the gaps in redress for children and young people with Special Educational Needs and Disabilities (SEND)

The reforms introduced by the Children and Families Act 2014 were intended to provide more integrated, person centred support for children and young people with SEND across education, health and social care. However, the complexity of the current system, combined with constraints on our existing jurisdiction, can make it difficult for parents and carers to access redress should something go wrong. In addition to it not being clear which bodies have responsibility for certain areas, there are definite gaps in redress. For example, we cannot look at the actions of the school in fulfilling an EHC plan or concerns around SEND provision for children without an EHC plan.

In the last year, we have found fault in more than three quarters of complaints investigated about Education and Children's Services (77%). A high proportion of these are about the provision of additional support for children and young people with additional educational needs. This is consistently a high area of concern for us, with families sometimes having no route for redress, and a large amount of confusion about who to go to and when.

There has been a significant increase in the number of requests for assessments and EHC plans issued since the SEND reforms. 190,000 more children and young people have a statutory plan in 2021 than in 2015. The are many complex reasons for this. But the legal protection afforded by a plan, and the lack of accountability and redress for those children and young people who fall below the threshold for a plan, makes it more likely parents and carers will ask for assessments and challenge any refusal. We could help address that pressure if we were given the ability to hold schools and academies to account when they fail to meet the needs of those children with SEND, but without an EHC plan.

To reduce confusion, and increase access to redress, we believe our legislation should be amended to allow us to look at and remedy all aspects of non-appealable matters about the provision of services and support for children and young people with SEND.

This position has been supported by the Education Select Committee. The 2019 report of the Education Select Committee SEND inquiry *Special educational needs and disabilities*[1] recommended that the department: "should, at the earliest opportunity, bring forward legislative proposals to allow the Ombudsman to consider what takes place within a school, rather than - in his words - only being able to look at "everything up to the school gate".

Recommendation 3.2

Extend the LGSCO's jurisdiction to consider the actions of a school fulfilling an Education, Health and Care (EHC) plan and complaints about SEND provision within a school for children and young people without an EHC plan.

[4] House of Commons Education Committee: Special educational needs and disabilities

Creating a simple and consistent route to complain about school admissions, admission appeals and exclusion appeals

The LGSCO has always been able to consider complaints about school admissions that have gone through the Admission Authority appeals system. However, as new types of schools have developed, the comprehensive jurisdiction we once held has narrowed, and now only covers two types of schools in England: local authority-maintained schools and 'church' or voluntary aided schools. That means we cannot consider complaints about academies, free schools, and trusts, which come under the authority of the Education and Skills Funding Agency (ESFA). This has inadvertently created a needlessly fragmented and confusing situation for parents who wish to challenge an admissions decision.

This can lead to a situation where, for example, a parent appeals for a place at a maintained school and for an academy. The academy may have asked the local authority to arrange the appeal on its behalf. Both appeals are unsuccessful, and the parent wishes to complain about how the appeals were conducted. Even though the local authority arranged and managed both appeals, we can only consider a complaint about the maintained school. The parent would have to make a separate complaint to the ESFA about the academy. The ESFA is not independent of government, does not have the same powers as we do to compel a body to provide evidence and cooperate with an investigation, nor does it have the option of issuing public reports if there is a failure to comply with recommendations.

This has left a fragmented system and gaps in redress, with different people having different avenues of redress depending on what school the child attends or what school they have applied or appealed to. These gaps in redress can cause significant delays, leave parents confused as to which body to complain to, lead to double handling of complaints, as well as inconsistent outcomes. We therefore recommend that our jurisdiction should be expanded to encompass academies and free schools into the powers we already have for 'maintained' schools for admissions, admission appeals, and exclusion appeals cases.

We are well placed to carry out this role and doing so would improve access to redress and reduce confusion for parents and carers. We have significant experience of dealing with complaints, making recommendations, and encouraging organisations to comply with our findings. The information we use from our complaints could also help to improve the school admissions and exclusions system as a whole

We therefore recommend that our jurisdiction should be expanded to encompass academies and free schools into the powers we already have for 'maintained' schools about admissions, admission appeals, and exclusion appeal cases.

Recommendation 3.3

Extend the LGSCO's jurisdiction to bring academies and free schools into the powers it already has for 'maintained' schools covering admissions, admission appeals, and exclusion appeal cases.

4. Strengthening public services and care markets through improved complaints handling

Creating a statutory Complaints Standards Authority for adult social care providers

Good complaints handling is one of the most direct and low-cost ways to improve care markets. Complaints not only give service providers the opportunity to learn from mistakes, but also enable consumers to make decisions about their care. Empowered and confident consumers can in turn drive a more competitive market for care.

One straightforward way to improve complaints handling at the local level is to have in place a statutory 'Complaints Standards Authority', which sets the standards of complaints handling for all the bodies in its jurisdiction. Its role is to improve and standardise complaints handling, by producing guidance, delivering training, and setting standards. The Scottish Public Services Ombudsman and The Northern Ireland Public Services Ombudsman already have this power in their respective remits.

Becoming a 'Complaints Standards Authority' would enable us to clearly set the standards of complaints handling we expect from care providers in our jurisdiction. This would help smaller care providers to understand and implement good practice in complaints handling and introduce a consistent level of service across the sector, empowering consumers and increasing accountability.

Our nearly 50 years' experience of dealing with complaints about adult social care puts us in the ideal position to take on this role.

As part of our complaints standards authority work, we could also facilitate peer support networks to underpin the improvement of complaint handling within the sector.

Recommendation 4.1

Designate the LGSCO as the statutory Complaints Standards Authority for adult social care.

Improving the standard of local authority complaint handling

Complaint handling is a key indicator of a local authority or care provider's culture and performance. By handling complaints effectively organisations can use their resources more effectively and capture learning to improve services. Increasing transparency around complaint handling performance empowers the public to speak up about problems and allows an organisation to show service users it is open to challenge and change.

There is a lack of consistency over what "good" looks like when it comes to complaint handling and using the learning from complaints to improve services. Most complaints are handled directly by the organisation providing the service with very little information published about their outcome, making it difficult to spot patterns and address issues early.

Although historically councils have tended to voluntarily adopt good complaints systems, concerns have grown over recent years about the erosion of some council complaints systems, and we have seen evidence of significant reductions in the capacity, status, and visibility of redress arrangements. We already issue guidance and provide training to the sector, but the level of engagement varies considerably. Influencing the minority of councils where the problems are greatest has been particularly problematic.

We think there needs to be a *'Code for Good Complaint Handling'* which applies to all councils, setting out core principles, standards and expectations for local authority complaint handling. This should be accompanied by a simple self-assessment process requiring councils to confirm they are adhering to these basic standards.

Ideally, such a code should have a statutory basis as it already does elsewhere in the UK. In Scotland, it has proven to be highly effective in highlighting areas of weakness and improvement. We are willing to work with others in the sector, such as the LGA, to develop a code without statutory backing, providing we have the support of DLUHC to do so, as this would help councils understand the importance of such a code.

We have committed to work with the Housing Ombudsman Service to develop a single code, and a single assessment process, which are supported by both Ombudsmen. This will take the Housing Ombudsman's current Complaint Handling Code as the basis. The Code has received positive feedback from local authorities and the Housing Ombudsman is reporting a positive impact on complaint handling performance. Consequently, our aim is to avoid significant changes from the existing code to minimise further disruption.

Recommendation 4.2

DLUHC to support the LGSCO to work with the Housing Ombudsman to develop a joint *'Code for Good Complaint Handling',* setting out basic standards to apply to all councils and the services they provide. This should be accompanied by a simple self-assessment process requiring councils to confirm they are adhering to these standards.

Conclusion

An effective ombudsman, with a remit that is relevant to contemporary experience and expectations, is essential to the health of the local government and social care sectors, and of the communities they serve.

This review sets out a practical, deliverable, and proportionate suite of recommendations across all aspects of our work. Each one is rooted in the evidence we gather from tens of thousands of public concerns each year. The common theme linking all these proposals is the opportunity to empower residents, service users, and consumers to have a greater voice in the local services that matter most to them. To level up, we must give people the opportunity to speak up.

These proposals include recommendations that would allow us to simplify complex complaint systems, close frustrating gaps in the right to redress, and help support practical improvements in the quality of the services within our jurisdiction.

The LGSCO has a long history of putting things right and is ideally placed to make these changes. We play an important role in improving public services, both through investigating complaints and by disseminating learning and guidance.

However, the COVID-19 pandemic has exacerbated and amplified many of the challenges we have highlighted in this review, putting even greater strain on local authority and care provider complaints systems that were already in need of modernisation. For this reason, we believe now is the right time to act to reinvigorate our role and our ability to provide redress. By doing so, we can take some simple and practical steps to ensure the voice of the public is at the heart of all we do to build back.

We would like to thank all who have worked with us to develop these recommendations and who have contributed valuable expertise and insights to our considerations. We look forward to working with our partners and stakeholders to implement these important changes.

The Commission for Local Administration in England

Appendix A: Other matters outside the scope of this review

There are a range of wider policy issues that lie outside the immediate scope of this review, but which remain relevant to understanding the environment within which the current recommendations have been framed. They are included here for context.

Sectoral reform of ombudsman schemes

In 2016, the Government published a draft Public Services Ombudsman Bill proposing a radical re-design of the English and UK Ombudsman landscape. At the heart of these proposals was a plan to bring together several ombudsman jurisdictions across the public and private sectors to create a simplified 'one-stop shop' for the public. These proposals were broadly welcomed by the ombudsman sector, including the LGSCO. They also prompted a wider debate about the need for any new ombudsman scheme to be equipped with updated powers and remit to match contemporary standards elsewhere in the UK and Commonwealth.

However, the 2016 Bill did not proceed, and the Government has confirmed that there are currently no plans to bring forward legislation on this topic. We welcome the clarity that the recent Government announcement on the Bill has brought and stand ready to re-engage constructively with discussions about wider sectoral reform should they re-commence.

Gaps in redress for housing complaints

Responsibility for housing complaints is split between the LGSCO and the Housing Ombudsman Service. The two schemes collaborate where issues overlap. However, it is apparent from that work that various gaps exist in the current landscape, where public concerns cannot be effectively addressed by either Ombudsman due to lacunas in existing legislation. Both Ombudsmen are keen to close those gaps and believe that, working together, we can identify the practical proposals needed to ensure seamless access to redress. We believe this could be achieved through a small number of simple and non-contentious amendments to existing law that would be supported by both organisations. Whilst recognising that these changes lie outside the immediate scope of this review, we are keen to contribute to their development and believe they are compatible with, and complementary to, the wider proposals set out in this report.

The impact of litigation on LGSCO legislation

In common with any public body, the quasi-judicial decisions made by the LGSCO are subject to public law challenges through judicial review. This scrutiny has exposed some historical weaknesses in our governing statute, the Local Government Act 1974. A recent challenge, for example, highlighted that the current law sets out clear parameters for the acceptance of complaints made on behalf of those who have died, but is silent on the status of complaints made on behalf of living people who lack mental capacity and whose complaint is made by a representative on their behalf. This omission is indicative of changes in social attitudes over the last fifty years which are not reflected in what is increasingly an outdated piece of legislation. This is just one example where litigation challenges point to a need for specific legal updates to the 1974 Act. We have not set out a schedule of the detailed changes that might be required. However, should legislative opportunities be identified to implement any of the substantive proposals in this review, we recommended that any minor, technical amendments needed to ensure that the Act remains legally sound should be considered at that point.

Appendix B: The Venice Principles

The Venice Principles were developed by the Venice Commission on the Protection and Promotion of the Ombudsman Institution. They set out 25 principles for the purpose of protecting and promoting the Ombudsman institution.

On 16 December the 2020 United Nations General Assembly adopted the Resolution A/RES/75/186 on *"The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law"*. The resolution provides endorsement of the Principles.

The UK Government was a sponsor of the Principles.

We are including the Principles in this appendix as we think they provide context to the recommendations of the review. They set out a vision of what the purpose and role should be of an Ombudsman service.

The Venice Principles

1. Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms. While there is no standardised model across Council of Europe Member States, the State shall support and protect the Ombudsman Institution and refrain from any action undermining its independence.
2. The Ombudsman Institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level.
3. The Ombudsman Institution shall be given an appropriately high rank, also reflected in the remuneration of the Ombudsman and in the retirement compensation.
4. The choice of a single or plural Ombudsman model depends on the State organisation, its particularities and needs. The Ombudsman Institution may be organised at different levels and with different competences.
5. States shall adopt models that fully comply with these Principles, strengthen the institution and enhance the level of protection and promotion of human rights and fundamental freedoms in the country.
6. The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution.
7. The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.

   The procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law.
8. The criteria for being appointed Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates. The essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms.
9. The Ombudsman shall not, during his or her term of office, engage in political, administrative or professional activities incompatible with his or her independence or impartiality. The Ombudsman and his or her staff shall be bound by self-regulatory codes of ethics.
10. The term of office of the Ombudsman shall be longer than the mandate of the appointing body. The term of office shall preferably be limited to a single term, with no option for re-election; at any rate, the Ombudsman's mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.
11. The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of "incapacity" or "inability to perform the functions of office", "misbehaviour" or "misconduct", which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament-

shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law.

12. The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms.

13. The institutional competence of the Ombudsman shall cover public administration at all levels. The mandate of the Ombudsman shall cover all general interest and public services provided to the public, whether delivered by the State, by the municipalities, by State bodies or by private entities. The competence of the Ombudsman relating to the judiciary shall be confined to ensuring procedural efficiency and administrative functioning of that system.

14. The Ombudsman shall not be given nor follow any instruction from any authorities.

15. Any individual or legal person, including NGOs, shall have the right to free, unhindered and free of charge access to the Ombudsman, and to file a complaint.

16. The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies. The Ombudsman shall be entitled to request the co-operation of any individuals or organisations who may be able to assist in his or her investigations. The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential. This includes the right to unhindered access to buildings, institutions and persons, including those deprived of their liberty.

    The Ombudsman shall have the power to interview or demand written explanations of officials and authorities and shall, furthermore, give particular attention and protection to whistle-blowers within the public sector.

17. The Ombudsman shall have the power to address individual recommendations to any bodies or institutions within the competence of the Institution. The Ombudsman shall have the legally enforceable right to demand that officials and authorities respond within a reasonable time set by the Ombudsman.

18. In the framework of the monitoring of the implementation at the national level of ratified international instruments relating to human rights and fundamental freedoms and of the harmonization of national legislation with these instruments, the Ombudsman shall have the power to present, in public, recommendations to Parliament or the Executive, including to amend legislation or to adopt new legislation.

19. Following an investigation, the Ombudsman shall preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts. The Ombudsman shall preferably be entitled to intervene before relevant adjudicatory bodies and courts. The official filing of a request to the Ombudsman may have suspensive effect on time-limits to apply to the court, according to the law.

20. The Ombudsman shall report to Parliament on the activities of the Institution at least once a year. In this report, the Ombudsman may inform Parliament on lack of compliance by the public administration. The Ombudsman shall also report on specific issues, as the Ombudsman sees appropriate. The Ombudsman's reports shall be made public. They shall be duly taken into account by the authorities. This applies also to reports to be given by the Ombudsman appointed by the Executive.

21. Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not

be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate.

22. The Ombudsman Institution shall have sufficient staff and appropriate structural flexibility. The Institution may include one or more deputies, appointed by the Ombudsman. The Ombudsman shall be able to recruit his or her staff.

23. The Ombudsman, the deputies and the decision-making staff shall be immune from legal process in respect of activities and words, spoken or written, carried out in their official capacity for the Institution (functional immunity). Such functional immunity shall apply also after the Ombudsman, the deputies or the decision-making staff-member leave the Institution.

24. States shall refrain from taking any action aiming at or resulting in the suppression of the Ombudsman Institution or in any hurdles to its effective functioning, and shall effectively protect it from any such threats.

25. These principles shall be read, interpreted and used in order to consolidate and strengthen the Institution of the Ombudsman. Taking into consideration the various types, systems and legal status of Ombudsman Institutions and their staff members, states are encouraged to undertake all necessary actions including constitutional and legislative adjustments so as to provide proper conditions that strengthen and develop the Ombudsman Institutions and their capacity, independence and impartiality in the spirit and in line with the Venice Principles and thus ensure their proper, timely and effective implementation.

Commission for Local Administration in England
PO Box 4771
Coventry
CV4 0EH

Phone: 0300 061 0614
Web: www.lgo.org.uk
Twitter: @LGOmbudsman