

Unrestricted

TO: THE EXECUTIVE
15 DECEMBER 2015

COMPLAINT AGAINST EMERGENCY DUTY SERVICE – OMBUDSMAN DECISION Monitoring Officer

1 PURPOSE OF REPORT

- 1.1 This report is to appraise the Executive of a decision by the Local Government Ombudsman (“the Ombudsman”) that there was maladministration by the Council in its approach to de-registering a volunteer from its Appropriate Adult service and that such maladministration resulted in the complainant suffering injustice.

2 RECOMMENDATIONS

That the Executive;

- 2.1 Notes the Ombudsman’s findings (Annex B) and endorses the steps set out in paragraph 6.10 of this report
- 2.2 Agrees that no further action needs to be taken in relation to the matter set out in this report
- 2.3 Notes that a copy of this report has been circulated to all members of the Council
- 2.2 Approves the draft report of the Executive attached hereto as Annex A

3. REASONS FOR RECOMMENDATIONS

- 3.1 To comply with the provisions of the Local Government and Housing Act 1989
- 3.2 To confirm that the steps taken by officers represent an appropriate response to the Ombudsman’s findings

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 In view of the fact that the Ombudsman has categorised the complaint as “Upheld: maladministration with injustice”, the statutory process for reporting the decision must be followed.

5 SUPPORTING INFORMATION

The Statutory Framework

- 5.1 The Ombudsman Service was established by the Local Government Act 1974. Any person who feels aggrieved in the delivery of a local authority service which is not covered by other statutory complaint processes may complain to the Ombudsman. The Ombudsman will almost invariably expect the complainant to exhaust the Council’s own complaints process before considering the complaint. If the Ombudsman does decide to investigate a complaint he/she will determine whether,

Unrestricted

in their opinion, the local authority has committed “maladministration” and if so whether the complainant has sustained “injustice” in consequence.

5.2 Section 5A of the Local Government and Housing Act 1989 imposes a duty upon the Monitoring Officer to prepare a report to the Executive if at any time it appears to him/her that there has been maladministration in the exercise of Executive functions. The duty does not arise unless the Ombudsman has conducted an investigation. The report is required to be copied to each Member of the Council.

5.3 As soon as practicable after the Executive has considered the Monitoring Officer’s report it must prepare a report which specifies:-

- (a) what action (if any) the Executive has taken in response to the Monitoring Officer’s report,
- (b) what action (if any) the Executive proposes to take in response to the report, and
- (c) the reasons for taking the action or for taking no action.

5.4 The Council has received a decision from the Ombudsman that there was maladministration by the Council in its failure to follow the proper procedure when de-listing a volunteer from its list of volunteers and in failing to give structured feedback to the individual. A copy of the decision is appended as Annex B to this report. It should be noted that this finding was made notwithstanding the fact that the Ombudsman acknowledged the steps the Council had taken in investigating the complaint internally, specifically finding in Mr B’s favour on the issue, apologising to Mr B and offering him an opportunity to make representations with a view to possible re-instatement. Having done this, the Council will not be using Mr B in a volunteer capacity in the future. The Ombudsman’s decision reflects a change in approach since 2014 on the part of the Ombudsman to complaints which would previously have been categorised as resolved by way of “local settlement”

6. **Background**

6.1 The Ombudsman’s report (**Annex B**) is self explanatory, but in summary the complainant (“Mr B”) served as a volunteer Appropriate Adult in the Council’s Emergency Duty Service (“EDS”) from 2012. Appropriate Adults provide independent advice to detainees at police stations who are under 17 or mentally vulnerable. In 2013, Mr B raised a number of concerns about EDS management citing;

- Lack of support and feedback and thus supervision of the service;
- Lack of continuing training
- Inconsistency in the standards of the service
- Lack of ID cards for Appropriate Adults
- Poor Data Protection practices
- Lack of Communication and difficulties in communication within the Council’s services

6.2 At around the same time, and as an unrelated process, Mr B was delisted as a volunteer due to a combination of factors. Specifically;

Unrestricted

- He had refused to undertake the standard training the Council provided for all volunteer Appropriate Adults.
 - He had repeatedly refused to comply with the set role as an Appropriate Adult, for example in querying with the Police the operational arrangements, and in retaining confidential case notes.
 - Social workers in the EDS had made representations to Council management that they would not be prepared to work with him again, and that breakdown in trust was viewed by officers to be unresolvable.
 - It was felt that he had been unreasonable and occasionally uncivil in his dealings with Council officers, and he had demanded undue attention from busy officers.
- 6.3 His complaint was in any event considered under the Council's Corporate Complaints procedure and an Investigation Report produced by a Manager independent of the EDS in August 2013. The report upheld that element of his complaint relating to his delisting without reasons from the EDS Appropriate Adult Register but did not uphold his complaints about the service itself.
- 6.4 The Council did in due course reconsider its decision to delist Mr B and invited him to make representations to a senior officer not connected to the complaint. However this offer was not taken up by Mr B

The Ombudsman's Decision and Subsequent Consideration

- 6.5 The Ombudsman served a draft decision report on the Council dated 29th May 2015. In this draft he concluded:-
- "In responding to concerns from a volunteer the Council failed to explain why it did not use its Whistleblowing Procedure. It failed to separate its investigation into a volunteer's fitness to continue on its register and properly tell the volunteer about the allegations and decisions".*
- 6.6 The Council in its response to that and a subsequent draft, asserted that it did not accept two of the three limbs of maladministration found by the Ombudsman.
- 6.7 As a consequence of the Council's representations, the final Ombudsman's report dated 4 September omitted two of the three limbs of maladministration against the Council. The revised decision stated as follows:-
- "I uphold the complaint that there were faults in the Council's management of Mr B's volunteer activity for which it has offered an apology and a further meeting and consideration of any representations he wished to make. It considered his concerns about the service without fault having exercised its discretion to use the complaints process to do so".*
- 6.8 It is unfortunate however that notwithstanding the representations made by the Council, or the fact that only one limb of the original complaint was being upheld, the decision was still categorised by the Ombudsman as "*upheld: maladministration and injustice*". On this aspect the Ombudsman advised that as the Council had previously acknowledged the fault and remedied it, the Ombudsman had no alternative but to conclude that there had been maladministration and injustice.

Unrestricted

6.9 In this regard it should be noted that that the Ombudsman decided to re-categorise complaints with effect from 1 April 2014. As a result of this change in decision reasons, complaints which would previously have been categorised as “local settlement” or “investigation complete and satisfied with authority actions or proposed actions and not appropriate to issue report” are now categorised as maladministration

6.10 Whilst the decision is disappointing, the Council remains committed to ensuring that it learns appropriate lessons from this process and in response to the Ombudsman’s recommendations set out in paragraph 49 of his report it has already undertaken reviews of:-

- its guidance and procedures for investigating allegations against appropriate adults, ensuring staff know how to report concerns;
- the frequency of feedback to volunteer appropriate adults

Moreover, it has confirmed the adequacy of its volunteer training with other volunteers and has also taken action to comply with the two other recommendations set out in paragraph 49 that were specific to Mr B (ie repeated its apology and retained a copy of his original complaint on file)

6.11 Notwithstanding the outcome of this Ombudsman investigation, the Council should find comfort in the fact that according to the most recent LGO figures (2014-2015) it was subject to the fewest number of complaints to the LGO in comparison with its Berkshire neighbours. Moreover, during that period it was only subject to a single adverse finding by the Local Government Ombudsman. Alongside West Berkshire Council this represented the lowest number in Berkshire. Whilst officers will not allow such data to give rise to complacency, it is nonetheless indicative of both the Council’s robust procedures for dealing with complaints as well as the commitment of officers to ensure that where presented, such complaints are dealt with expeditiously and with a view to achieving complete resolution.

7 **ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

Borough Solicitor

7.1 The Borough Solicitor is the author of this report.

Borough Treasurer

7.2 There are no financial implications directly arising from this report.

Equalities Impact Assessment

7.3 Not required.

Strategic Risk Management Issues

7.4 None.

8 CONSULTATION

Principal Groups Consulted

8.1 Chief Executive and Borough Treasurer

Method of Consultation

8.2 Not applicable.

Representations Received

8.3 Not applicable.

Background Papers

Correspondence with Ombudsman (exempt)

Contact for further information

Sanjay Prashar, Borough Solicitor, 01344 355679

Sanjay.Prashar@bracknell-forest-gov.uk

Doc Ref

SP/f/Reports/Executive – 15th December 2015 – Complaint against Emergency Duty Service