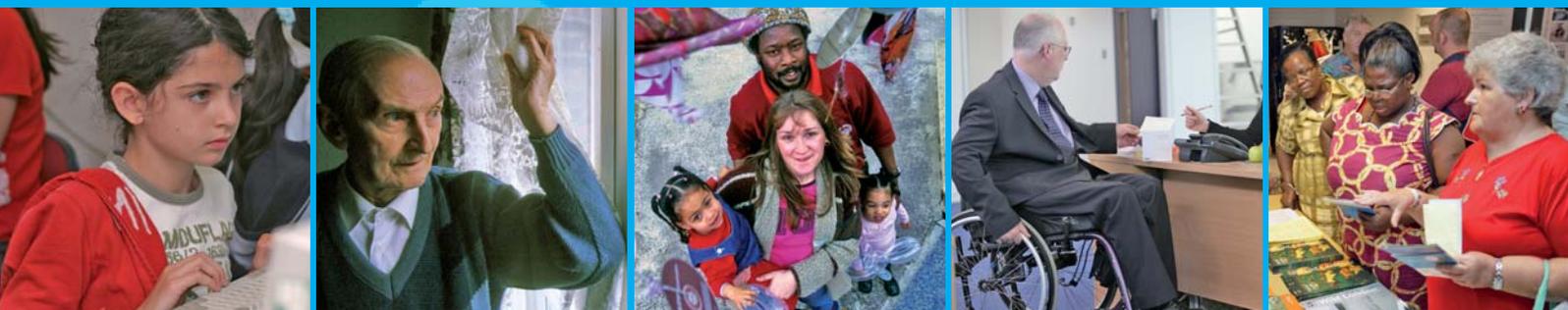




The Commission for  
Local Administration in England

# Special Report

## Local partnerships and citizen redress



Advice and guidance from the  
Local Government Ombudsmen

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# Foreword

Increasingly, services at the local level are delivered through a partnership of providers. But where does responsibility lie when something goes wrong?

This report highlights the problems that are involved in handling complaints, where there is a partnership of service providers.

This is an issue that needs to be addressed urgently. There has been a rapid growth in the number of services that are delivered through partnerships. And with the forthcoming Local Government Bill, this number is likely to increase still further.

The evidence that we draw on in this report includes complaints that have been made to us concerning local services, and also the views of over 100 councils that we have visited in the course of our work.

The report includes a number of case studies, mostly concerning complaints that have arisen just in the last few years – this itself illustrates the growing importance of this issue. The case studies are intended to show the problems of accountability that can occur among partner organisations.

As Local Government Ombudsmen, this issue is of particular concern to us. People turn to us when they are dissatisfied with local services. In this report we suggest how governance and processes can be improved, to help local authorities improve their services, and to make things easier for service users.

Our focus in this report is on the needs of complainants. When there is a problem, people need to understand how to complain, and who to complain to. Complainants want one point of reference, they want their complaint resolved, and they want it resolved quickly.

This report is a statement of the Local Government Ombudsmen's position on these issues. We hope that it will be used as guidance on good practice by local authorities and that they will review their governance and complaint handling arrangements in the light of what we say. But our aim is not to be over-prescriptive – it is up to local authorities to decide exactly how they might act on our recommendations.

Our report takes its place alongside others on partnerships and governance, especially those from the Audit Commission, CIPFA/SOLACE, and the Independent Commission on Good Governance in Public Services.<sup>1</sup> We hope that our report will contribute to the ongoing debate on this subject. As well as local authorities, the voluntary sector, Government, and other regulators and other partners, this report is aimed partly at complainants themselves, who we hope will ultimately benefit from it.

Between us, we can make it easier for service users to gain redress when things go wrong.

**Tony Redmond**

**Jerry White**

**Anne Seex**

Local Government Ombudsmen

July 2007



# Summary and recommendations

## Summary

The single most dramatic shift in the delivery of local public services has been the gathering momentum towards 'partnership working', meaning all manner of 'joined up' or collaborative working between local authorities and other public sector bodies, the private sector and the third sector. Individuals can encounter difficulties when seeking redress for grievances concerning services delivered through a partnership. But these problems can be overcome by adopting good governance arrangements, including effective complaints protocols. The rights of citizens and service users to access complaints systems and to obtain redress should not be diminished as a result of shared responsibility for the delivery of services.

In our own investigations, we have frequently come across:

- a lack of information about how to register a complaint at the outset;
- confusion among staff and public about responsibilities and process; and
- a lack of any formalised process for handling complaints from the public (as distinct from disputes between the partners).

Complaint handling and redress need to be central in the governance of partnerships. Local authorities need to establish rigorous, transparent and accessible complaint-handling arrangements in the partnership settings in which they are involved.

We are working with the Parliamentary and Health Service Ombudsman to improve our own working arrangements when handling complaints that bridge our separate jurisdictions. A Regulatory Reform Order, due to come into force on 1 August 2007, will also lift current limitations on our ability to carry out joint investigations and issue joint reports.

Finally, the Government is proposing to amend our primary legislation to remove any doubts about the limits of our jurisdiction, and our ability to investigate complaints where the local authority makes arrangements for the exercise of its functions by someone else.

## Recommendations

### Drawing up a complaints protocol

*We recommend the following points of good practice in drawing up a complaints protocol within a local partnership.* Our recommendations should not lead to an overly bureaucratic approach being taken – their implementation should be reasonable and proportionate, taking into account the wide variations in scale, structure and objectives that exist between partnerships.

Our key recommendations are that:

- when the partnership is first created, there should be clarity regarding accountability for different parts of the work that will be carried out;

- there should be a clear statement as to who is responsible for handling complaints and providing redress;
- there needs to be effective communication with those who use the service, so that they understand what they need to do in the event of something going wrong; and
- there should be a strong commitment to learning from complaints, so that services may be improved.

### **Setting up the complaints process**

- (a) Consider the views of service users and potential users, where practicable, and of other relevant stakeholders such as advice agencies, when drawing up or reviewing the protocol.
- (b) Ensure that the complaints process is clear and accessible to all groups in the community, and is consistent with the principles set out in the Local Government Ombudsmen’s guidance on running a complaint system and on remedies.<sup>2</sup>
- (c) Communicate effectively through leaflets and other publications and media, so as to increase public awareness of the complaints procedure. Where people also have the right to access a statutory complaints procedure, this should be made clear at the outset.

### **Supporting the complainant**

- (d) Consider providing the option of conciliation or mediation to bring about early resolution where practicable.
- (e) Provide access to local sources of independent advocacy and advice.
- (f) Ensure that complainants are kept informed of the progress of their complaint, the stage at which it is being considered, and the applicable timescales.

### **Defining responsibilities**

- (g) Define the partnership’s responsibility for handling complaints or, if appropriate, which body the complainant needs to contact when the responsibility lies elsewhere (eg with the local authority). Leadership by senior managers, or others responsible for decision making, is vital. They should be supported by systems that ensure that lessons can be learned from complaints, with the aim of improving services.
- (h) If the initial consideration of the complaint lies with the partner(s) immediately involved with the provision of the service, consider what review mechanism is appropriate.
- (j) Where a complaint is about the actions of a partnership (or other) body exercising a discrete function of a local authority, consider the need for the authority (if not already involved) to investigate the matter through its own staff.

### **Monitoring and review**

- (k) Where a local authority exercises a function through any other body, ensure that the arrangements provide for effective monitoring and review of complaints handled by that body, including a requirement to provide the authority with such access to evidence as it may request. Any review should identify learning points arising from complaint outcomes.

### **Redress**

- (l) Where a local authority exercises a function through another body, ensure that the arrangements provide for effective redress by that body (if the authority does not retain this responsibility). These arrangements should also cover responsibility for redress where the authority agrees to an Ombudsman recommendation. Redress may include an apology, financial compensation, staff guidance, procedural changes or service improvements.

### **Training**

- (m) Train any staff dealing with complaints, so that they understand the agreed procedures and have the right skills to resolve problems quickly, and so that investigations of complaints are rigorous and evidence-based, with clear, well-explained decisions.

## **Complaints protocols and governance arrangements**

Complaints protocols need to be integrated within the overall governance arrangements of the local partnership; failure to do so could result in a protocol becoming ineffective in practice. Equally, local authorities need robust internal arrangements. We recommend the following principles of good governance, which apply within local partnerships and within local authorities.

### **(a) Principles of good governance within local partnerships**

- A clear statement of the partnership's principles and objectives.
- Clarity regarding each partner's role and responsibility within the partnership.
- Definition of the roles of partnership board members.
- Adequate specification of line management responsibilities for staff who support the partnership.
- A statement of funding sources for joint projects and clear accountability for proper financial administration.
- A protocol for dispute resolution within the partnership.

### **(b) Principles of good governance within local authorities**

- Coherent standards and principles governing the way in which the council, its members and officers operate within a partnership setting.
- A clear, consistent and comprehensive governance code relating to partnership working, closely linked to or forming part of the council's constitution.

- A specification of the key factors and considerations to be addressed in the design of any partnership governance arrangements in which the council takes part.
- Arrangements to ensure that an agreement, contract or protocol is in place for every partnership to which the council belongs.
- Arrangements for regular review and scrutiny of partnership governance and activity.

# Part 1

## Partnerships and citizen redress



# A Introduction

## What do we mean by 'partnership working'?

Local authorities have always been involved in the provision of public services within their areas. But the nature of those services has changed dramatically over time. In more recent years, change has been most evident in the way that services are delivered. A traditional model of service delivery in which local authorities either deliver the services they are responsible for directly, or else through contractors acting on their behalf, has given way to new models. There is now a 'mixed economy' in the way that local public services are delivered.

The single most dramatic shift in service delivery has undoubtedly been the gathering momentum towards partnership working.

*In using the expression 'partnership working', we include all manner of 'joined up' or collaborative working between local authorities and other public sector bodies, the private sector and the third sector.*

This report focuses on the difficulties that can be encountered by individuals seeking redress for grievances about services delivered in a partnership setting. Its main purpose is to set out our advice and guidance on how these problems may be overcome by adopting good governance arrangements (including effective complaints protocols). This will lead to more effective redress for citizens' justified complaints, and opportunities to improve service provision and accountability.

These issues are of particular importance to us as Local Government Ombudsmen. Members of the public turn to us when they consider that they have suffered as a result of maladministration by local authorities and other bodies within our jurisdiction. We provide a free, independent and impartial service, investigating complaints and seeking redress for service users where this is justified. We also issue advice and guidance to authorities on good administrative practice.

## Why this report is timely

Over the last few years, we have visited about 100 local authorities, and met with many leading councillors, chief executives, senior and middle managers, as well as complaints and customer services staff. Almost without exception, council representatives have raised the issue of partnership working. During these visits, we have heard about a number of different approaches that councils take when they receive complaints from service users about services delivered through partnership arrangements. Arising from these visits, there have also been a substantial number of requests for us to clarify what we consider to be good administrative practice in this area.

During this period, we have also noticed many themes emerging from the complaints we have received from members of the public about the actions or decisions of partnerships. The largest category of these complaints relates to health and social care

partnerships (where joint service provision has a longer history than in most other service areas) and also housing management (mainly due to the activities of arms length management organisations (ALMOs)). But we also receive complaints involving a wide variety of other partnerships.

At one level, many of the complaints we see illustrate confusion, both among the staff handling complaints and among the complainants seeking redress. At another level, there can be philosophical differences between local authorities about the extent of the authority's accountability when it has arranged for services to be delivered through its partners, and has relinquished any day-to-day control over operational matters. The first set of issues raises practical operational considerations, while the second set raises more fundamental concerns about governance that may be harder to resolve.

Given the many requests we receive from within local government for our advice and guidance in this area, combined with our experience in investigating complaints, we believe that this is the right time to issue this report.

There is another reason why this report is timely. The Government plans to integrate still further the provision of health and social care services and, in particular, to develop a comprehensive single complaints system across these services by 2009. All of us need to reflect now on our experience of complaint handling in a partnership setting, and ensure that any learning from that experience contributes to the design of a new statutory scheme in due course.

The Local Government White Paper (October 2006)<sup>3</sup> demonstrates the increasing Government commitment to:

- put in place a new framework for strategic leadership in local areas, bringing together local partners to focus on the needs of citizens and communities;
- identify and deliver on local priorities through key local partnerships; and
- promote increased community ownership and management of local facilities and assets.

In particular, the White Paper supports the rolling out of local area agreements (LAAs) across the country (this has now been completed). These herald a major change in the extent to which local public services are delivered through networks and partnerships, rather than directly by local authorities (or other public authorities). LAAs are widely seen as fundamental to the development of community engagement and participation. The huge extension of joint commissioning of services, signalled by LAAs, will increasingly blur the traditional boundaries between service providers. These major changes are more and more widely seen to be the key to the future of local government.

In this context, governance of local partnerships will come under increasing scrutiny and strain – not least from those individuals who seek redress for what they regard as poor treatment and performance. It is therefore critical to the success of these initiatives that we identify good practice in complaint handling in a partnership context, at an early stage.

## Key issues considered in this report

As Local Government Ombudsmen, we are not directly engaged in what are, in some instances, pioneering attempts at providing more integrated and customer-focused services, which bring about improved community and citizen engagement. There is much work already going on that we will never see, precisely because it does not lead to complaints from customers. We are aware that, in developing new approaches to service delivery, there are likely to be worthwhile experiments which may lead to improved learning, but which ultimately are not pursued. The last thing that such experimentation and innovation in public services needs is an overly bureaucratic solution. We are all too aware that, as one commentator has put it:

**Partnerships are too easily overloaded and hamstrung by rigid requirements, guidance, monitoring systems and over-control.<sup>4</sup>**

But the lessons we have learned from complaint investigations, and the feedback we have had from our visits to councils, make it clear to us that there are three important issues that need to be addressed:

**(a) How clear is the responsibility for delivering services?**

- Is this responsibility identified in the governance arrangements, formal delegation or management agreement, or in some other way, so that all involved have a common understanding?
- Is there an effective protocol for resolving 'boundary disputes'?
- Does the partnership adequately inform service users or potential users about who is responsible for what?

**(b) How clear is the process for handling complaints and providing redress?**

- Is there a protocol for handling complaints or grievances from members of the public about services delivered through partnerships?
- Does this protocol comply with modern standards?
- Is the complaints procedure adequately publicised, so that the public is aware of the procedure and understand how to complain?
- What arrangements are there for learning from complaint investigation outcomes?
- Are the procedures and responsibilities for providing redress clear and effective?

**(c) Does the complainant who is dissatisfied with the decision of the service provider have full access to an independent ombudsman?**

There are some who argue that, once a local authority has 'hived off' the operational delivery of its services to one or more partners, it ceases to have any more than a strategic responsibility for that service. If this were true, then the complainant's right of access to our own services would arguably be removed or at least qualified.

We do not accept this argument, while the authority's statutory function is being delivered in this way. But we understand why this argument is made, and it is an important question for us to address. We also understand that there are service delivery partnerships, in which local authorities participate, that exercise functions falling outside the authority's statutory remit. Similar problems of accountability and responsibility for complaint handling may occur in these circumstances. But these cases are outside the Local Government Ombudsman's jurisdiction, and therefore beyond the scope of this report.

## Our approach to these issues

There are two key elements in our approach to these questions:

- (a) **We aim to identify elements of good practice of general application, without being over-prescriptive about how they should be applied in individual cases**

We recognise that achieving clarity of responsibility and process in relation to the handling of complaints and redress in partnership settings will require some agreed procedures or protocols, where none may exist at present. Our approach, however, is that these should be reasonable, proportionate, and tailored to the particular circumstances of each partnership: we are not advocating a 'one-size-fits-all' solution. Protocols need not be elaborate, but should include certain essential elements of good practice – for example, complaint processes in partnerships might well involve innovative community-based attempts at mediating or resolving service users' concerns. These broad principles of good practice are summarised under recommendations, at the beginning of this report, and are set out in more detail in Part 3 (see pages 38 to 43).

- (b) **We adopt the key principle that the rights of citizens and service users to access complaints systems, and to obtain redress, should not be diminished as a result of shared responsibility for the delivery of services**

In its report *Governing partnerships*<sup>1</sup>, the Audit Commission underlines the centrality of effective complaint management in the governance of partnerships. We agree with this. So when service users and others complain about services being delivered in this way, they should not find that their access to complaints systems and redress (including ultimately access to the Ombudsman) is diminished.



# Part 2

## How local partnerships work now – questions of accountability

There are a number of major partnership activities in which local authorities currently participate. Some of these have been underway for some years, while others are still emerging. The case studies included below, which are drawn from complaints we have received, show some of the problems that can arise from these ways of working.



# A Local strategic partnerships and local area agreements

## The role of local strategic partnerships

Local strategic partnerships (LSPs) have been described as the ‘partnership of partnerships’, as they provide a strategic and co-ordinating umbrella over partnership working within a local area. There are over 360 LSPs in England. Their establishment is voluntary, at least in principle. But, following the Local Government Act 2000, Government guidance<sup>5</sup> encouraged local authorities to establish LSPs as the local vehicle for the development and implementation of their community strategies.

If a local authority wishes to access neighbourhood renewal funding (NRF) it *must* have an LSP in its area that meets satisfactory standards of performance management. Around a quarter of LSPs receive this funding. In NRF areas, the LSPs have the additional function of developing and delivering against a neighbourhood renewal strategy.

## The legal status of LSPs

Government guidance<sup>5</sup> describes LSPs as ‘non-statutory and non-executive’. They are not, for the most part, corporate bodies, although a handful are organised as companies limited by guarantee. It follows that the cohesion of LSPs, and their governance arrangements, have to be reflected in partnership agreements or other protocols.

As unincorporated bodies, each partner in an LSP is ‘equal’ to any other, and each partner remains responsible and accountable for decisions regarding their own resources and services. The Local Government and Public Involvement in Health Bill includes a duty to co-operate which puts on a statutory basis the need for listed public sector partners to work with local authorities. But the Government does not intend to convert LSPs into new statutory entities.

Local authorities have no statutory powers to delegate the discharge of their functions to LSPs.

## The changing environment for LSPs

In the Government’s 2005 consultation paper on LSPs<sup>6</sup>, Ministers said:

The future role of LSPs is central to the Government’s vision for the future of local decision making, in particular to developing a strong leadership role for local authorities.

The Local Government White Paper (2006)<sup>3</sup> signals the Government’s continued support for an expanded role for LSPs. This will include:

- increasing the opportunities for neighbourhood engagement;

- transforming existing community strategies into *sustainable* community strategies; and
- developing and implementing local area agreements (LAAs).

## Local area agreements

LAAs are a key vehicle for improving co-ordination between central Government, local authorities and LSPs. The focus of LAAs is on agreeing priority outcomes, which are shared by all partners delivering services in the local area. The intention is that central Government will also take action to simplify funding streams and reduce the number of centrally imposed outcomes and targets.

The 2005 consultation paper described the relationship between LAAs and LSPs in this way:

Local area agreements put LSPs at the centre of the negotiation, delivery and monitoring of the priority outcomes of a local area.

LAAs have been piloted since mid-2004, and all areas in England are now covered by one. The general response from local government to LAAs has been positive. The Local Government Association (LGA) foresees a potential ‘governing’ role for LAAs – moving beyond joined up public service delivery – and says<sup>7</sup> that to fulfil this role:

The governance arrangements for developing, deciding and delivering LAAs must be robust, enduring and supported by local people.

The LGA argues that the more LAAs shape local outcomes, the more accountability issues will come to the fore and the more local partners will need to review their own partnership arrangements.

In its response to the 2005 consultation paper<sup>8</sup>, the LGA had this to say:

The LSP consultation paper introduces the principle that ‘ultimate accountability’ for LSP decisions and actions lies with the relevant local authority [...]. To many in local government it is not clear what such ‘ultimate accountability’ means [...]. The LGA believes that evolution of LSPs should ultimately lead to locally elected representatives taking on accountability for the actions and choices of the Local Strategic Partnership [...]. But it is not how things stand, as of 2006. Neither the legislative framework, nor (in many areas) the reality on the ground, currently reflect this principle.

Since this response, the Government has published the Local Government White Paper, and the Local Government and Public Involvement in Health Bill is currently passing through Parliament. The Bill proposes a number of measures that enhance the ability of local authorities and individual councillors to call local partners to account. There is, for example, the new duty to co-operate between local authorities and listed public sector partners.

In addition, proposals known as ‘community calls for action’ enable individual councillors to take up community concerns with the council executive, or ultimately with the council’s overview and scrutiny committee. That committee may make

recommendations to the council's executive, or its local partners, who in turn must take account of those recommendations. These proposals will add to the ways in which local people can pursue issues and concerns by engaging their elected representatives and the local authority; they do not prevent individuals pursuing a complaint in parallel.

## LSPs and service delivery

The expectation of LSPs is that they will exercise a strategic leadership role, co-ordinating service delivery locally and securing improved outcomes for local people, including increasing the opportunities for joint provision of services. More and more, they will be called upon to commission services or co-ordinate service delivery across institutional and sector boundaries.

While LSPs have a strategic function, they have the option of setting up *service delivery partnerships* charged with the delivery of specific tasks within the overall activities of the LSP. These partnerships could involve a number of LSP partners committing resources to a single delivery vehicle, which would provide joint service delivery in a particular area such as regeneration. Local examples are already operating.

However, it is not envisaged by the Government that LSPs themselves will be 'direct delivery bodies'.

## Role of local authorities in LSPs

The Government's long-term objective is to develop the 'community leadership' role of local authorities, that is leadership exercised "in partnership rather than by command". The 2005 consultation paper on LSPs<sup>6</sup> described the responsibility and accountability of local authorities in the following ways:

The local authority's involvement is vital to the effective operation of an LSP; the local authority is also responsible for producing the Sustainable Community Strategy and is accountable for the LSP's actions. The local authority is also the accountable body for the LAA. The local authority's democratic mandate and accountability provides a clear basis on which to determine priorities across the local area. Therefore we see a clear role for the local authority in initiating and maintaining momentum in the LSP: ensuring appropriate representation across the different sectors including involving local residents and scrutinising the LSP. (Paragraph 74)

The LSP is accountable to [...] the local authority executive, as ultimate responsibility for the LSP's actions rests here. (From paragraph 108)

Local authorities are democratically elected. As such they have the mandate to improve social, economic and environmental outcomes across the local area. LSPs are therefore ultimately accountable to the local authority. LSPs are voluntary unincorporated partnerships, which do not discharge any statutory functions [...]. Local authorities with their democratic mandate and community leadership role are ultimately the body responsible for the LSP, Sustainable Community Strategy and the delivery of the LAAs (including NRF) as a whole. (From paragraph 109)

These comments, taken together, represent a significant statement of Government thinking. Each statement underlines the accountability of the local authority for the LSP's actions.

According to the Final Report on the Evaluation of LSPs<sup>9</sup> commissioned by the Government, the local authority was generally found to be a "strong leader" and recognised within LSPs as "the most powerful partner". The report gives many reasons for this. These include the fact that local authorities are usually the prime movers in setting up LSPs, they dominate the chairing of LSP boards, and they often provide the majority of the LSP's resourcing, including the employment of the LSP's direct support staff.

This powerful role seems unlikely to change at least in the medium term. This is reinforced by the centrality of the local authority's role within the LSP, as so clearly recognised in current Government thinking.

## Complaints and redress

In general, the early activities of LSPs naturally focused on dialogue and relationship building between the various partners. We would not expect those activities to have given occasion for individual concerns or complaints among local people. LSPs are not service delivery bodies themselves, so this might again suggest that complaints from local people are unlikely to happen. But there are areas where their activities may touch closely on the lives of local people and community bodies, and give rise to individual complaints.

One area where there is the potential for complaint is the LSP's involvement in the development of the local community strategy and the neighbourhood renewal strategy (in NRF areas). Local authorities have typically entrusted the consultation activity on the draft community strategy (or any proposed revisions to it) to the LSP. What happens if the organisation of that consultation programme misfires and, as a consequence, individuals are denied the opportunity of learning more about the strategy and airing their views on it? Who is accountable for the failure – the LSP, which is actually carrying out the consultation, or the local authority, which is under a direct statutory duty to consult on the draft strategy?

During our visits to local authorities we have heard different answers to these questions. It was an issue that arose in a complaint to us – see **case study 1**.

### Case study 1

Mr A complained that the LSP had not circulated the draft community strategy to householders in his area before a scheduled public consultation meeting. He also criticised other arrangements for the meeting itself (such as inadequate notice). The LSP's only employee was responsible for these arrangements, and the LSP's contractor had been given the task of circulating the draft strategy.

The council accepted that it had an ultimate responsibility to approve the strategy and to consult on the draft. But it used the terms of Government guidance on LSPs to argue that it was entitled to achieve these objectives through the LSP, which was answerable for its own actions. It argued that it was just one of a number of LSP partners, and did not have the degree of authority over the LSP necessary for it to have been at fault. Mr A's complaint, it said, should therefore be directed to the LSP and not to the council.

In the end Mr A received letters of explanation and apology from both the LSP manager and the council (writing 'on behalf of' the LSP). Ultimately, the Ombudsman did not pursue the investigation of Mr A's complaint on the facts of the case, but Mr A was still left bewildered by the council's denial of its responsibility for these matters.

We understand how a local authority may feel that it should not be held accountable for the actions of a partnership body, which it does not control on a day-to-day basis. But where the authority retains the statutory function (in this case to consult on and approve the Community Strategy for its area), and entrusts some aspects of the exercise of that function to an LSP, any actions of the LSP are essentially conducted 'on behalf of' the authority. This is so even though there would appear to be no power for the authority to delegate its functions to the LSP.

This has at least two consequences.

First, the local authority is "accountable for the LSP's actions", as indicated in the 2005 consultation paper on the future of LSPs. If that accountability means anything, it will extend to the authority satisfying itself that a proper investigation of the complaint has been carried out and that, if the complaint is justified in whole or in part, the complainant has received appropriate redress and lessons have been learned.

Secondly, since the local authority is accountable for LSP actions, a complainant who remains dissatisfied by the local decision on his or her complaint (whether made by the LSP or the authority) will have access to the Ombudsman.

The next example of a complaint we received (**case study 2**) involved an LSP in an NRF area. Under the NRF scheme, Government makes funds available to a local authority (which is called the 'recipient authority' or 'accountable body'), which is responsible for allocating the funds for the purpose of neighbourhood renewal projects. The projects themselves must be approved by the LSP.

### Case study 2

Ms B complained on behalf of the voluntary organisation for which she worked. She was concerned that she had been misled by the LSP's support staff (employed by the council) about the availability of grant aid to her organisation.

An underspend of the council's allocation of NRF became apparent towards the end of a financial year. The complainant's organisation had been identified as a possible recipient, and there had been discussions between the LSP's staff and the complainant. A councillor, who chaired an LSP sub-group, had also become involved in the LSP's internal discussions over the allocation.

Ms B had complained to the LSP, and received a reply from the line manager of the LSP support staff (who was also a council officer), but no further consideration of her complaint was offered to her either by the council or the LSP, even though she remained dissatisfied.

With the co-operation of the local authority in this case, we were able to secure an appropriate remedy for the complainant.

But during our consideration of the complaint, the local authority, while content to provide a remedy to this complainant given the facts of the case, had several wider concerns. Among the key points made by the authority were the following:

- there were limits to the accountability of the local authority for the LSP's actions as accountable body for NRF or more generally, in particular since the LSP had its own collective decision-making processes agreed by the partners;
- the advice and guidance from the Government and regulators discouraged the authority from taking an overly strong role within the LSP; and
- any recommendations of the Ombudsman to change the LSP's processes (eg as to the need for a complaints protocol) required the consent of the partnership decision-making body.

Later in this report we discuss the accountability of local authorities for the actions of local partnerships, and our expectations that authorities ensure that there are appropriate complaints protocols and governance arrangements in the local partnerships in which they take part.

# B Health and social care trusts

## Introduction

For several years, local authorities and National Health Service (NHS) bodies have sought to co-ordinate, and latterly to integrate, the provision of health and social care services. This approach received statutory backing in Section 31 of the Health Act 1999, which came into effect in April 2000. Section 31 partnerships between NHS bodies and local social services authorities are now widespread. But there are also many examples of collaborative working that fall outside this statutory framework.

## The role of Health Act partnerships

The aim of these partnerships is to secure improvements in the delivery of health care through the NHS and the health-related functions of local government. Department of Health guidance<sup>10</sup> describes their purpose as providing NHS bodies and local authorities with:

*The flexibility to be able to respond effectively to improve services, either by joining up existing services, or developing new, co-ordinated services, and to work with other organisations to fulfil this.*

The decision on which services are located within any one trust is made locally, subject to limits set by regulations. Currently over 400 trusts or partnerships deliver a varied range of services, dealing with:

Mental health	Substance misuse
Learning disabilities	Physical disabilities
Emotional/behavioural difficulties	Needs of specific age groups
Discharge from hospital	Speech and language therapy
HIV/AIDS	Medical equipment

## The legal background

The Secretary of State sets the terms under which an NHS body may carry out a health-related function on behalf of a local authority, and a local authority may carry out a health function on behalf of an NHS body. The legal liabilities of the NHS body or the local authority for the exercise of their respective functions remain unaffected, whatever the specific delegation arrangements may be.

The arrangements allow money to be pooled between the two sectors and for resources and management to be integrated. The intention is that the service user should get a truly joined-up service.

Regulations<sup>11</sup> require the partners to sign up to a written agreement which meets certain minimum requirements, including agreement on issues such as the functions to be delegated and the monitoring arrangements by the NHS bodies and local

authorities involved. The regulations also give the partner agencies the option of forming a joint management committee, which may empower one of its members, or a sub-committee, to consider “complaints about partnership arrangements” made by or on behalf of service users.

This power, however, does not take away from service users their rights to access either the statutory NHS complaints procedure or the statutory social services complaints procedure (or both). The responsibility of the social services authority to operate the statutory procedure *cannot* be delegated to the partnership.

## Care trusts

Section 45 of the Health and Social Care Act 2001 extended the scope of Section 31 by introducing a new framework for ‘care trusts’. It enabled the Secretary of State to designate an existing or proposed Section 31 partnership as a care trust and, if requested, to direct that a local authority’s functions in an area be exercised by a care trust even though it does not exercise any health function in that area. This represents a more flexible arrangement than is possible under Section 31.

Although one care trust has taken over the full range of adult social services from the local authority<sup>12</sup>, most of the still limited number of care trusts work in areas such as mental health, older people’s services or services for people with learning disabilities.

## Complaints and redress

Department of Health guidance on Section 31 partnerships is quite comprehensive on the issue of complaint handling. It explicitly acknowledges the potential for confusion:

*Under current arrangements there are established procedures which users can use if they wish to complain about the service they have received. The introduction of partnership arrangements covered by this guidance has the potential to confuse these arrangements. So partnerships need to address this issue.*

A number of complaints we have received demonstrate this scope for confusion (see case studies 3-6).

### Case study 3

Mr C, who received services from his local mental health trust (to which a number of local authorities have delegated functions), complained about his doctor and his social worker. He contacted the trust about his doctor and sent a detailed complaint about social services to his local authority. He told us:

**“They [the local authority] refuse to allow me the right to an independent review and they are refusing to investigate my complaint. In fact they are just ignoring me.”**

Our investigation found that poor communication with the trust had led the council to think (wrongly) that the trust was investigating the full details of the social services complaint, when Mr C’s detailed complaints about his social worker had not in fact been passed to the trust.

After some delay, the council told the complainant that the trust would consider all his concerns, and the council’s own complaints unit would review matters if he remained dissatisfied. It is unclear whether Mr C was told that he could access the statutory complaints procedure without any further involvement of the trust, even though that was his entitlement.

Mr C’s substantive complaints were not ultimately upheld. But the Ombudsman agreed to accept Mr C’s complaint for investigation even though he had not completed the statutory complaints procedures, because of the council’s failure to deal with his complaint properly.

### Case study 4

Mr D had a complaint about services he was receiving jointly from the NHS and social services, through the local mental health care partnership. Our investigation found that the authority had not told Mr D how to access the statutory complaints procedure. Instead, it told him (wrongly) that a council officer was dealing with his complaint. In reality, it had been passed to the partnership body for a response. There was also unreasonable and excessive delay in investigating the complaint when the statutory procedure was initiated. Overall, Mr D was kept waiting nearly two years before obtaining the council’s final decision on his complaint.

It is clearly unacceptable that vulnerable individuals should have such difficulties in seeking redress, because of poor communication or systems within partnership arrangements.

Government guidance also provides advice on good practice for Section 31 partnerships. It proposes that, ideally, complaints should be dealt with within the partnership, but it recognises too that circumstances may make it necessary to refer a complaint to one or more of the partners’ parent bodies, and that a service user may wish to complain through one of the statutory complaints procedures from the outset. It stresses the need for clear procedures, clear information for service users regarding their rights, and keeping complainants informed about how their complaint is being handled.

The guidance also encourages Section 31 partnerships to adopt a complaints protocol, and sets out several points of good practice in agreeing such a protocol, including:

- providing good, accessible public information about the process;
- establishing an independent local mediation/conciliation process;
- identifying local access to independent advocacy, advice and support;
- identifying timescales for the various parts of the process;
- establishing an independent multi-agency review panel; and
- providing staff training.

The need for good, accessible public information regarding the complaints process is illustrated in **case study 5**.

#### Case study 5

Ms E complained about decisions being made about the care for her daughter, who had a learning disability. The social worker involved in the case held a post jointly funded by the local authority and the local primary care trust (PCT), and was making decisions on behalf of both. This confused Ms E, who did not understand how best to pursue her concerns with the appropriate body.

As a result of our investigation, we found that the local authority's actions amounted to maladministration, since it had not established, in conjunction with its NHS partner, guidance for potential complainants. This guidance should have set out the separate responsibilities of the partners, and how people dissatisfied with the service might pursue their complaints. The authority agreed to pay Ms E £500 for the avoidable confusion and frustration caused to her.

This case is particularly interesting, not just in showing the need to agree and publicise a complaints process; it illustrates how we may well find fault with a local authority, when it fails to establish satisfactory arrangements for complaint handling through negotiation and agreement with its partners. It does not matter that establishing satisfactory arrangements may be outside the authority's single control.

In its recent report, the Audit Commission stated that:

**The ability to manage complaints effectively is the acid test of public accountability in partnership working.**

If that is accepted, as we do, then it is the local authority's responsibility when entering into a Section 31 (or other) partnership to ensure that this approach is reflected in the agreed governance arrangements from the outset.

This applies not only to issues such as the complaint-handling process, and the publicity for it, but also to putting things right for the complainant, once it is accepted that things have gone wrong.

## Looking to the future – a comprehensive single complaints system

In January 2006, the Government published its White Paper *Our health, our care, our say*.<sup>13</sup> One clear strand within this extended statement of Government policy is “better joining up of services at the local level”. This will include much more joint commissioning of services between primary care trusts and local authorities. Local area agreements will become a key mechanism for joint planning and delivery. And, by 2009, there will be a comprehensive complaints system across the whole of health and social care.

The Department of Health has initiated a project to deliver the White Paper commitment to introduce a single comprehensive complaints system. We – together with the Parliamentary and Health Service Ombudsman – are actively contributing to this project.

One complaint we received was from someone whose expectation was that, if the service was being handled jointly, so should her complaint about the service – see **case study 6**.

### Case study 6

Ms F complained that the care plan for her mother (who suffered from Alzheimer’s disease) was not being fully implemented, and neither social services nor the NHS would take full responsibility. The services were being delivered through a joint partnership headed by a joint director appointed by both the local authority and the local primary care trust.

On receiving Ms F’s complaint, the local authority proposed that she address her concerns about the NHS adult mental health team to the joint director, and any other concerns about its own older persons’ community mental health team through the statutory social services complaints procedure.

Ms F wanted a single co-ordinator for her mother’s care plan, responsible for overseeing its implementation and with the authority to resolve any problems.

Hopefully, the proposed new single complaints system will prevent the sort of frustration experienced by this complainant and the other complainants represented in the previous case studies.

Meanwhile, from 1 September 2006, the revised Social Services Statutory Complaints Regulations (and associated guidance<sup>14</sup>) have sought to provide the public with a more joined-up complaints process. The new scheme includes the following key points:

- an individual with a complaint that involves both health and social care elements may make their whole complaint to any one of the bodies involved;
- so, if the local authority receives such a complaint it should, with the complainant’s agreement, pass details of the NHS complaint to the relevant NHS body;

- regulations now place duties on local authorities and NHS bodies to co-operate with each other and to agree which of them will take the lead in handling the complaint, so as to provide a co-ordinated response; and
- the aspiration is that both bodies should complete their consideration to the same timescale, with both responses being sent to the complainant together.

We shall be monitoring the way that these revised arrangements are operating, through the complaints that we receive.

The LGOs and the PHSO recognise that we too need to work closely together where complaints cross the boundary between health and social care. We are therefore currently piloting new ways of working on these cases, and we will act on the lessons to be learned from this pilot across the whole spectrum of our future work.

We will be significantly aided in this task when the Regulatory Reform Order<sup>15</sup> comes into force on 1 August 2007. This will enable us to carry out joint investigations and produce joint reports, which our current legislation does not fully permit.

# C Arms length management organisations (ALMOs)

## Introduction

Government policy requires local housing authorities to bring their housing stock up to what is known as 'the decent homes standard' by 2010. A number of options for securing extra funding to achieve this objective have been set out by the Government. One of these is for the authority to separate its strategic housing role from its housing management functions, by delegating the latter to an 'arms length management organisation' or ALMO. The aim is for this separation to help authorities to carry out their strategic and enabling functions, leaving the ALMO to deliver higher quality services than councils have generally provided in the past.

The additional Government funding is only available, however, where the ALMO receives a 'good' or 'excellent' rating from the Housing Inspectorate.

## Functions retained by the local housing authority

Where a housing authority has created an ALMO, the authority will remain directly responsible for functions such as general housing strategy, policy on anti-social behaviour, housing benefit administration, environmental health housing-related functions, and right to buy administration. (But from May 2007, local authorities have new powers to enter into arrangements with their ALMOs to enable them to exercise the authority's powers relating to anti-social behaviour orders.)

Housing authorities also remain directly responsible for housing functions not delegated to the ALMO and for the discharge of their obligations under the law on human rights, equalities, data protection and freedom of information.

Government guidance<sup>16</sup> refers to the responsibility of authorities for:

**Determining minimum standards of service required of the ALMO and monitoring its performance.**

Authorities continue to keep the ownership of their housing stock, and their landlord obligations, and so their tenants continue to enjoy their statutory rights to security of tenure, right to buy and so on.

## What are ALMOs?

ALMOs are usually not-for-profit companies limited by guarantee, and managed by a board of directors drawn from nominees of the authority, tenants and independent people with relevant experience (with no one of these groups being in the majority).

## The management agreement

The key to the relationship between the housing authority and its ALMO(s) is the management agreement between them, which is entered into under powers conferred by the Housing Act 1985 (Section 27). This Act empowers the authority to delegate its housing management functions in respect of all or part of its housing stock. The Act also stipulates that the acts or omissions of the management organisation in carrying out the delegated functions are to be treated as being committed or not committed in relation to the authority.

Simply put, an ALMO acts as the agent of the authority and on its behalf, and consequently authorities unarguably remain ultimately responsible for what their ALMO does or does not do. The ALMO may have other activities that do not derive from the authority's delegation of its own functions, but we are not concerned with those matters here. For example, a number of ALMOs manage stock on behalf of other landlords such as housing associations.

The management agreement will set out the functions delegated to the ALMO and the standards of service required, including complaint handling. From what we have seen in the course of our investigations, some management agreements make more specific reference to handling complaints than others. We consider it good practice, for example, to include provision for the handling of complaints to the Ombudsman.

## Guidance

There is extensive guidance on ALMOs published by a number of sources. There is wide-ranging guidance from the Government and additional guidance on governance and other issues from the Community Housing Task Force and the Audit Commission.<sup>17</sup> Issues around the handling of complaints and redress merit more attention in this guidance, though we do recognise that they form a key theme within the Housing Inspectorate's assessments of ALMO performance.

## Complaints and redress

There are several cases where an authority has set up an ALMO and we get few, if any, justified complaints about the ALMO's actions on behalf of the authority. Inspections by the Housing Inspectorate have also identified examples of good practice.

Unfortunately, not all our experience has been good. A number of examples of poor communication and co-ordination between the authority and the ALMO have emerged. The following example comes from the Housing Inspectorate:

**One ALMO served notice on all its tenants in rent arrears even though much of the problem arose because of continuing problems with the council's benefits service.**

Similarly, some of the problems identified by the complaints we receive occur where the authority and the ALMO have separate but parallel or overlapping functions and responsibilities. **Case study 7** illustrates this.

### Case study 7

Ms G was the tenant of a flat located immediately above a plant room, operated by an ALMO, to provide heating and hot water to the local housing estate. Ms G complained about prolonged nuisance caused by noise and heat emitted from the plant room.

The authority's environmental health officers believed that there was evidence of a statutory nuisance, and considered legal proceedings (something that would not have been possible when the authority was the direct service provider).

The ALMO and the environmental health department took different views on these issues and our investigation found that there were no agreed protocols to deal with the situation. Delay in dealing with these differing views, and in the authority's considering whether to pursue an enforcement action against its own ALMO, complicated matters and hampered the investigation of the tenant's concerns.

It is in the conduct of the ALMO's wider housing management functions that such problems are most likely to arise. Where a tenant complains about noise or other nuisance the ALMO bears the operational responsibility for dealing with these issues, but the authority also has a regulatory function in identifying and putting a stop to statutory nuisances where they occur, and taking any appropriate enforcement action. In **case study 7** it was apparent that the authority's complaints staff were uncertain about how to deal with the conflict that arose in that case. They tended to act as a postbox for the ALMO when communicating with the Ombudsman. There was a need for the authority to provide the Ombudsman with a more positive and corporate response than we initially received.

The need for a strong corporate lead from the authority's officers is illustrated by another rather different case (see **case study 8**).

### Case study 8

Mr H complained to the Ombudsman over his appeal against an offer of housing, and because he had been offered another property (which he was prepared to accept), only to find that it had already been offered to someone else. The case was complicated by the involvement of two separate ALMOs in the local authority area, as well as the authority's homelessness unit. We found fault in the way that Mr H had been treated, partly due to the administrative confusion that had arisen, because of the way the two ALMOs related to each other, and each individually related to the central housing function.

In the course of investigating complaints, we have come across many other cases where there have been delays in authorities and ALMOs agreeing a response to proposed settlements, where authorities have been slow in acting on proposals because they could not get prompt responses from their own ALMOs, where the authority and the ALMO argued about who was responsible, and where the ALMO delayed in referring the complaint to the relevant unit within the authority, which had the power to take legal action.

The evidence of these cases suggests that, in some areas at least, the processes for agreeing responses to justified complaints are weak. Unnecessary delay for complainants can be caused by delays within either the authority or the ALMO. Protocols for resolving divergent views between the two parties also seem to be absent or not fully effective. Sometimes there appears to be reluctance among the authority's staff to take firm action towards its ALMO, perhaps because of the underlying objective that ALMOs should operate as genuinely 'arms length' organisations.

The split between the authority as the strategic body and the ALMO as the operational body can never be a completely clean one. There will be times when the authority needs to act firmly in its role of monitoring the actions of the ALMO. This is especially important in the area of complaint handling. There are certain services that the Housing Inspectorate expects ALMOs to deliver to the highest standard, irrespective of local conditions. These include "handling complaints efficiently and sensitively, and offering redress (where appropriate)". Authorities with ALMOs need to take the same approach.

Part of this approach will be to ensure there are appropriate arrangements within the management agreement, or through the agreement of separate protocols. We are aware of a number of protocols being agreed between authorities and ALMOs – in one council, for example, these are in place for issues such as noise nuisance, the handover of adaptations for people with disabilities, and asbestos management.

The local authority remains responsible for what its ALMO does or does not do, and it cannot properly deny or limit its accountability for those actions or omissions because of the 'arms length' nature of the relationship.

# D Other local partnerships

## Introduction

There are other partnerships already operating or emerging in local areas across the country. Each brings with it its own opportunities and its own issues. But they all point to the future shape of local public services, and illustrate the new contexts in which citizens' complaints will need to be addressed. We do not specifically address the issues raised by services that are contracted out, but the principles set out in this report apply equally in those cases.

## Children's trusts

### The duty to promote co-operation

Following the report of the Victoria Climbié inquiry, the Government has taken a number of steps to promote better co-operative working and communication across service and institutional boundaries in the provision of services for children. These include placing a duty on local authorities to promote co-operation across the relevant statutory agencies involved with children's cases, to help improve the wellbeing of children in the local area.<sup>18</sup>

There is also a statutory power to pool budgets in support of this new duty to co-operate – thus enabling the development of joint commissioning and more integrated decision making and service delivery.

### The children's trust: a vehicle for co-operation

The main vehicles for delivering these co-operative arrangements are 'children's trusts'. These are informal partnership bodies, and they are non-statutory (like local strategic partnerships). They are expected to develop organically from existing multi-agency work.

### Complaints and redress

We have no experience to date of complaints concerning children's trusts. Time will tell what direct impact their activities and decisions may have on the lives of individual children and young people, particularly as trusts come to be involved in transforming the way in which services are delivered on the ground. But the experience of health and social care partnerships in the areas of governance, complaint handling and operating pooled budget arrangements will no doubt be helpful in informing the practice of children's trusts.

## Education partnerships

In one case we came across a situation where the entire education support service to schools was contracted out to an external company.

The local authority involved in this case received a complaint about the company's services, but the company failed or refused to provide the authority with the

information it needed to complete an effective investigation. The complainant came to us. The company then challenged some aspects of our jurisdiction, although the authority had no difficulty in accepting our entitlement to access the information we were seeking as part of our investigation. We overcame these difficulties through discussion but it was clear that, in order to protect its commercial interests, the company had been prepared to be less co-operative with our enquiries than the local authority would have been.

This case illustrates the potential for such arrangements to compromise the quality of complaint handling that service users experience.

Where joint working arrangements are weak, this can lead to a poor service for some of the most vulnerable members of society. This can be seen from **case study 9**.

#### **Case study 9**

Our complainant told us that her son did not receive the occupational therapy that he should have done, according to his statement of special educational needs (SEN) issued by the local authority. The authority commissioned this therapy provision from primary care trust (PCT) X with whom it had agreed a 'joint operational policy', although there was no formal service level agreement. But PCT X passed the request on to PCT Y under reciprocal arrangements it had with the latter. PCT Y, however, did not accept the referral and it took some six months for the two PCTs to sort the matter out – during this period the complainant's son did not receive the required therapy.

The council agreed, as part of the remedy for its failings, to establish a service level agreement with the relevant PCT for the provision of services agreed in statements, including the provision of occupational therapy.

This case suggests the need both for active monitoring and firm intervention by the local authority when it is the lead authority in a joint working environment, and also for joint arrangements to specify individual organisational responsibilities.

## **Highways partnerships**

**Case study 10** shows how confusion may arise when two councils are working together to deliver local highway services.

### Case study 10

We received a complaint concerning joint working between a district and county council. Our complainant wanted to construct a driveway from the highway to her back garden. She called the district council to ask for permission, as a search showed this council to be the owner of the land. She returned a formal application to the district council's offices and received a letter giving the county council's consent (as highways authority), and stating that no planning permission was required. The letter was on district council letterhead but was in fact written by an officer of the county council who was based at the district council. After constructing the driveway, our complainant was threatened with enforcement action by the district council as its construction required planning permission. When she complained about this, each council blamed the other and she had to pursue her complaint through both councils' complaints procedures before coming to us.

This case shows that even when partnerships have just two members, and local authority members at that, clarity about issues of accountability when things go wrong can still be lacking.

## Housing associations

Local authorities are empowered to contract out their responsibilities for allocating housing and dealing with homelessness.<sup>19</sup>

### Case study 11

In this case, an authority had contracted out some of its responsibilities to a local housing association. Our complainant approached the housing association for assistance with his housing, as he had nowhere to live. He complained of substantial delay in offering him housing, and errors in assessing his situation.

We concluded that the association, acting on the authority's behalf, had made a number of decisions about the complainant without putting these in writing to him or telling him about his rights of review of those decisions; it also made a number of errors when awarding points in respect of his housing application. We also criticised the authority for not having clear arrangements for handling complaints of this kind. We recommended that the authority revise its arrangements with the housing association by agreeing a clear complaints protocol with the association, and by ensuring that complainants have accurate information about whom to complain to.

*Report reference: 05/B/8409\**

This case illustrates the importance of considering the arrangements for handling complaints from the public before collaborating with a housing association in this way; it also demonstrates the need for the authority to keep such arrangements under continuous monitoring and review.

\* A copy of the full report on this case is available on request. Tel 020 7217 4683, or use the order form on our website at [www.lgo.org.uk/pubsorder.htm](http://www.lgo.org.uk/pubsorder.htm)

## Leisure trusts

Since the 1990s, local authorities have increasingly sought to ‘hive off’ all or part of their leisure services. There are a number of different ways in which authorities have sought to address these issues, for example, through management agreements with an external partner or by transferring facilities to a non-profit body constituted either as an industrial and provident society or as a registered charity. The services and facilities provided through these ‘leisure trusts’ may be either mandatory for the authority (eg libraries) or discretionary (eg swimming pools).

The Government has promoted the role of the third sector in delivering public services. It considers this sector to be better able to provide services which are more flexible and innovative, and more closely aligned to the needs of hard-to-reach groups.

The wider growth of charities’ involvement in delivering a range of public services has caused the Charity Commission to publish a significant restatement of its policy on this issue. The Commission’s latest guidance (*Charities and public service delivery 2007*)<sup>20</sup> affirms that:

Responsibility for resolving complaints about the service should be clearly set out within the funding agreement.

## Complaints and redress

We have begun to receive a small number of complaints concerning leisure trusts that are registered charities. It is not clear how numerous complaints to us may become in future. But already the issue has emerged of the local authority’s accountability for the actions or failures of its leisure trust – see **case study 12**.

### Case study 12

Mr K was concerned about his local leisure trust’s proposals for a local park, and complained to the local authority’s chief executive. He received a response from a senior council officer who relied on detailed information provided by the trust. Mr K was dissatisfied with the reply and came to us.

The local authority took the view that the trust’s activities fell outside our jurisdiction. This was essentially because (a) the trust had a level of autonomy in its management of the parks which was not analogous to a principal/agent relationship, and (b) the council’s officers and members were not involved in the day-to-day activities of the trust.

If these arguments are right, which we do not accept, it would seriously undermine the principle that shared responsibility between partners should not mean diminished accountability to the public.

If charities enter into agreements with local authorities to deliver services on their behalf, they need to have regard to the responsibilities of those authorities. To discharge their continuing responsibilities, authorities will still need to monitor the

trust's complaint handling and intervene on occasion to ensure that, where a complaint is justified, the complainant receives satisfactory redress and service improvements are put in place as appropriate.

## Regeneration partnerships

Regeneration in local areas necessarily involves collaboration across sectors and agencies. How this happens may take any of a number of forms. Local regeneration initiatives have been launched by setting up a **strategic service delivery partnership**, at one end of the scale, and by going down the route of a **private finance initiative (PFI)** project, at the other.

The range of initiatives continues to expand. **The local enterprise and growth initiative (LEGI)** was proposed in the Government's 2005 Budget. The purpose of this initiative is to stimulate economic activity and productivity in the long term through enterprise development in a limited number of deprived areas. The Government has stressed the fact that LEGI's success depends "upon the strength of the partnerships between the organisations with an interest in its success", locally and regionally. Such partnerships are likely to involve the private business sector, the third sector, the local community and think tanks/research organisations.

Economic development and enterprise initiatives form part of the 'fourth block' of **local area agreements**, which is designed to include agreed priority outcomes for local authorities, working with their partners, to achieve regeneration objectives locally.

Many local regeneration projects involve authorities also working in partnership with bodies such as Job Centre Plus, regional development agencies, Government Offices and the Learning and Skills Council.

## Complaints and redress

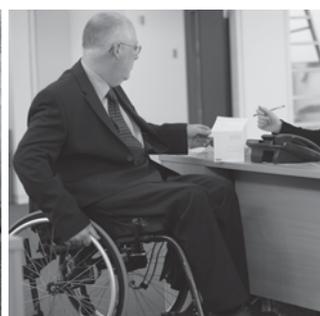
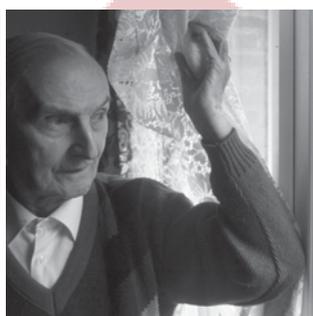
Generally, the activities of local regeneration and economic development initiatives have not yet given rise to a significant number of complaints to us.

Some time ago, we received a small number of complaints about partnerships formed to deliver **single regeneration budget (SRB)** projects. These concerned how the funding was used locally.

In one more recent case, the complainant was the landlady of a public house in an area where a regeneration partnership was stimulating new development. The partnership comprised the local authority, a housing association, a regeneration company, the local Government Office and a private foundation. Our complainant was aggrieved because the regeneration scheme had been delayed after residents had already been moved, leading to a loss of trade in her licensed premises. As the lead organisation of the regeneration scheme, the local authority quite properly accepted responsibility for dealing with the complaint.

# Part 3

## Increasing accountability in local partnerships



# A Local partnerships: recommendations for good governance

## Introduction

What are the key elements of a complaints protocol that should be agreed when a local authority discharges its responsibilities in a collaborative or partnership setting?

The common feature of local partnerships is their diversity. Some are corporate bodies, others are loose collaborations. Some are forums for discussion; others may co-ordinate services or be entrusted with delivering services by the local authority. Some involve public agencies alone, others cross sectors (including the private and third sectors). Some have a substantial remit while others meet a very local need. Some benefit from Government funding streams, others do not.

This wide range of partnership models makes it impossible to prescribe a single set of arrangements for ensuring that their activities properly reflect the interests of their main stakeholders, including service users and others affected by partnership activities and decisions.

Our approach is based on a simple proposition: partnership working should not result in diminished accountability to the public. This is a keystone of the recent Audit Commission report<sup>1</sup>, which also emphasises the centrality of complaint handling and redress within the governance of partnerships. We would expect to see this general approach being applied to all collaborative working in which local authorities become involved.

Our recommendations focus on the following areas:

- achieving arrangements for complaint handling and redress that are rigorous, transparent and accessible; and
- establishing good governance within partnerships to ensure that complaints protocols are integral to them.

In setting out our recommendations, we build on established guidance on good governance, and acknowledge the links with good governance provisions in local authorities' own constitutions. For example, we recognise the contribution that the overview and scrutiny functions of local government can make to the promotion of good practice in complaint handling and governance. This can apply not just to the council's own operations, but also to the activities of local partners and, in particular, health bodies.

We realise that some of what we say may be controversial. One of our main purposes is to stimulate debate on the issues facing local government in managing its role in partnerships. This is a debate that is continuously developing as politicians discuss the opportunities for greater devolution, and the potential for delivering more local services through community-based initiatives.

## Complaints protocols within local partnerships

The complaints we receive confirm that local people meet barriers when pursuing their concerns and grievances in a partnership setting. They show also that staff in some councils and in some partnership bodies may be just as confused about responsibilities and process as some complainants.

What complainants have told us is that they lack information about how to register their complaint at the outset. This may arise from poor publicity and public communication; it may be that the name of the partnership delivering a service, even if known to the service user, does not mean much to them; or it may be that there is more than one provider and the individual finds it difficult to know where to go first. We ourselves sometimes find it difficult to understand the often complex relationships within partnership structures, when we try to identify who is accountable for actions taken in the name of the partnership; it is not surprising therefore if this confusion is magnified for members of the public.

Even when a complainant does manage to enter the system without particular difficulty, the 'system' may be more a matter of appearance than reality. As we have found, even among the flagship of local partnerships, local strategic partnerships (LSPs), there may be a protocol to resolve disputes between partners, but no established process for handling complaints from the public.

Where complaints protocols do exist within partnerships, they need to comply with the general guidance on procedural fairness and standards of redress that we have published for local authorities. The basic principles underlying that guidance should be met even within smaller informal partnerships working in innovative, non-bureaucratic ways. How those principles are applied in any particular setting may differ. There may for example be greater emphasis on mediating disputes and grievances at the neighbourhood level in local, community-based initiatives. Whatever the approach, early resolution of complaints, and redress for complainants where it is justified, will always be important principles.

If the partnership is more formalised, with extensive management or partnership agreements, contracts or delegations, the institutional boundaries may themselves cause confusion and delay for complainants. This may result, for example, in a complainant having to wait far longer than is reasonable to exercise his or her right to complain under the statutory social services complaints procedures, or a lack of effective review of initial decisions made on complaints. There can be several reasons for such failures, including lack of knowledge or investigative skills among staff, poor cross-boundary communication, and a lack of leadership or commitment on the part of senior decision makers.

We are aware that authorities already seek to address some of these problems, for example by developing joint working protocols, putting in place 'conventions' for front-line workers, and agreeing statements of responsibilities within contracts.

We recommend the following points of good practice when agreeing a complaints protocol:

### Setting up the complaints process

- (a) Consider the views of service users and potential users, where practicable, and of other relevant stakeholders such as advice agencies, when drawing up or reviewing the protocol.
- (b) Ensure that the complaints process is clear and accessible to all groups in the community and is consistent with the principles set out in the Local Government Ombudsmen's guidance on running a complaint system and on remedies.<sup>2</sup>
- (c) Communicate effectively through leaflets and other publications and media so as to increase public awareness of the complaints procedure. Where people also have the right to access a statutory complaints procedure this should be made clear at the outset.

### Supporting the complainant

- (d) Consider providing the option of conciliation or mediation to bring about early resolution where practicable.
- (e) Provide access to local sources of independent advocacy and advice.
- (f) Ensure that complainants are kept informed of the progress of their complaint, the stage at which it is being considered and the applicable timescales.

### Defining responsibilities

- (g) Define the partnership's responsibility for handling complaints or, if appropriate, which body the complainant needs to contact when the responsibility lies elsewhere (eg with the local authority). Leadership by senior managers, or others responsible for decision making, is vital. They should be supported by systems that ensure that lessons can be learned from complaints, with the aim of improving services.
- (h) If the initial consideration of the complaint lies with the partner(s) immediately involved with the provision of the service, consider what review mechanism is appropriate.
- (j) Where a complaint is about the actions of a partnership (or other) body exercising a discrete function of a local authority, consider the need for the authority (if not already involved) to investigate the matter through its own staff.

### Monitoring and review

- (k) Where a local authority exercises a function through any other body, ensure that the arrangements provide for effective monitoring and review of complaints handled by that body, including a requirement to provide the authority with such access to evidence as it may request. Any review should identify learning points arising from complaint outcomes.

## Redress

- (l) Where a local authority exercises a function through another body, ensure that the arrangements provide for effective redress by that body (if the authority does not retain this responsibility). These arrangements should also cover responsibility for redress where the authority agrees to an Ombudsman recommendation. Redress may include an apology, financial compensation, staff guidance, procedural changes or service improvements.

## Training

- (m) Train any staff dealing with complaints, so that they understand the agreed procedures and have the right skills to resolve problems quickly, and so that investigations of complaints are rigorous and evidence-based with clear, well-explained decisions.

This may seem a long checklist to some involved in partnership working. But these recommendations need to be applied proportionately. What might be an excessively bureaucratic approach in one instance, might be an essential protection for the service user in another. But what is quite evident, from the complaints we have seen, is that the absence of a clear protocol leads to poor practice and confusion, and service users and complainants are the ones who suffer most as a result. It is important too to monitor diversity issues, and use the information obtained to improve accessibility and responsiveness to complainants' different needs.

## Good governance in partnership working

The precise way in which a complaints protocol is located in the overall governance arrangements within a partnership may vary. But if complaint handling is to be effective, it is essential that there is adequate provision for integrating the complaints protocol within those arrangements. Complaints inevitably bring into sharp focus the willingness of an organisation to deal with and learn from things that go wrong. This is why it is important that the approach to governance issues recognises the centrality of complaint handling. But the most effective arrangements are kept clear, simple and concise, and need not be overly bureaucratic.

Ours is not an exhaustive account of good practice in achieving sound governance in local partnerships. But these are some important principles that directly underpin effective arrangements for ensuring that complainants' concerns about partnership activities are properly addressed.

The need for robust internal arrangements within local authorities is as important as the governance arrangements within the partnerships in which local authorities take part. The following principles of good governance cover both.

### (a) Good governance within local partnerships

- (i) **A clear statement of the partnership's principles and objectives**  
Most partnerships will have such a statement. But do partners undertake to abide by the principles and objectives and accept responsibility for fault or

failure (eg where a complaint is justified)? Effective partnerships are built on trust and co-operation, but this should not be at the expense of a clear sense of purpose and responsibility.

**(ii) Clarity regarding each partner's role and responsibility within the partnership**

This is necessary for mutual understanding between partners. The arrangements setting out the roles of partners need to be consistent with statutory roles, where applicable. And it needs to be understood that the partnership arrangements cannot override, subordinate or replace any statutory responsibilities that the partners have. (In particular, there will need to be clarity about where responsibility lies for issues such as human rights, equalities, data protection and freedom of information, as well as for complaint handling and redress.) Where the statutory functions of local authorities or other statutory bodies are delegated or entrusted to others, the joint working arrangements need to be clearly articulated.

**(iii) Definition of the roles of partnership board members**

Where there is a partnership board (however this is described), each board member will have a local 'constituency', but may also be called upon to share collective responsibility for board decisions. When investigating complaints, it is important that the individuals making or contributing to the board's decisions have well-defined roles.

**(iv) Line management responsibilities for staff who support the partnership**

The partnership arrangements should ensure that the roles, responsibilities and accountability of any staff working for (or seconded to) the partnership are adequately specified. Particular care is needed where there is multiple accountability (eg where local authority staff are seconded to the partnership). Where a staff member may have been involved in the alleged fault that is the subject of a complaint, their status should be made clear, including the relative accountabilities of the employing body and the seconding body for the actions of these staff.

**(v) Statement of funding sources for joint projects and clear accountability for proper financial administration**

There will need to be agreed arrangements within partnerships for those involved in work such as commissioning and financing joint projects. These arrangements should identify the respective roles of participants, so that it is clear to a complainant (or to the Ombudsman when a complaint is received) who is the appropriate point of reference if things go wrong.

**(vi) A protocol for dispute resolution within the partnership**

The partnership arrangements should include a mechanism for resolving disputes when there are differences of view between partners. In particular, complainants should not suffer unreasonable delay or other disadvantage in seeking redress, because of an inability of different partners to agree about whether there has been any fault, or the responsibility for any agreed fault, or the redress for a justified complaint, or the responsibility for implementing any proposed remedy.

## **(b) Good governance within local authorities**

- (i) Coherent standards and principles governing the way in which the council, its members and officers, operate within a partnership setting.
- (ii) A clear, consistent and comprehensive governance code relating to partnership working, closely linked to or forming part of the council's constitution.
- (iii) A specification of the key factors and considerations to be addressed in the design of any partnership governance arrangements in which the council takes part.
- (vi) Arrangements to ensure that an agreement, contract or protocol is in place for every partnership to which the council belongs.
- (v) Arrangements for regular review and scrutiny of partnership governance and activity.

# B What this means for us – complaints against partnerships and the role of the Ombudsmen

## Introduction

What responsibilities do local authorities have when complaints about partnership working are made to the Local Government Ombudsmen? And how will we meet the challenges presented by complaints about services delivered through partnerships?

Citizens in this country have long held the right to access an Ombudsman when they are dissatisfied with the outcome of the handling of their complaint by a central Government department or agency, a local authority, or a National Health Service body (and some other public authorities). For central Government and the NHS, access is to the Parliamentary and Health Service Ombudsman (PHSO) while for local government and some other local bodies it is to the Local Government Ombudsmen (LGOs).

## Joint working between Ombudsmen

The growth of partnership working will potentially increase the number of complaints that overlap the jurisdictions of the LGOs and the PHSO. An individual with a complaint that crosses, say, social services and NHS boundaries (in England) will need to be investigated by both the Health Service Ombudsman and a Local Government Ombudsman. We already have considerable experience of working together on such complaints.

We have pointed in this report to problems that can arise where there are joint working arrangements between health and social care. In March 2005, Ann Abraham, the PHSO, published *Making things better?*<sup>21</sup>, a report on reform of the NHS complaints procedure in England. The report drew attention to the fact that the entirely separate social services and NHS complaints procedures can lead to a lack of clarity among service users about which organisation is responsible for the services they receive. The report also notes the fact that, in the PHSO's experience, cross-boundary complaints "have often been handled very poorly". It contains specific examples including cases where it was only at the conclusion of one complaints procedure that it became clear that the fault lay with the other organisation.

Since that report, the Government has announced its commitment to creating a comprehensive single complaints system for health and social care by 2009. And both the PHSO and the LGO are working with other stakeholders to contribute to the Department of Health's (DH) current project, developing proposals for a new system.

At the same time, the PHSO and the LGO have been working with the Cabinet Office (together with Communities and Local Government and the DH) in the promotion of a Regulatory Reform Order, which will amend the relevant legislation to give us new powers to work collaboratively on complaints we receive. When it comes into force (on 1 August 2007), the Order will facilitate the development of joint investigation, joint reporting and joint guidance. Our intention is that, although we will remain separate organisations, we will work in a way that will provide the complainant in these cases with one contact, a single point of reference and effectively a joint decision.

## Jurisdictional issues

The LGO's authority to investigate complaints stems from the Local Government Act 1974 (the 1974 Act), which in turn was closely modelled on the Parliamentary Commissioner Act 1967. The statutory framework was therefore created in a very different context from that in which we work today.

Though the 1974 Act is limited in addressing the specific issues arising from partnership working, it does empower the LGOs to investigate complaints concerning action taken by 'or on behalf of' local authorities in discharging their administrative functions. In many of the case studies included in this report, it is indisputable that the body that is immediately responsible for taking the action or decision complained about is acting 'on behalf of' the authority. Examples include ALMOs (which act as the authority's agents under statute) and Section 31 Health Act 1999 partnerships with the NHS (which involve statutory delegations).

On occasion, we receive counter-arguments in what may appear to be more ambiguous situations. So, a few authorities argue that we lack jurisdiction where there is no agency relationship in law, or where the authority retains no (or very limited) operational control over the delivery of the service, or where the partner can be regarded as an 'independent contractor' for whose negligent actions the authority will not generally be liable in English law. (This last argument has been used, for example, in a case where a local housing authority was seeking to escape ultimate responsibility for its contractor's actions in damaging a tenant's domestic appliance while carrying out unrelated repair and maintenance works within the tenant's flat.)

In our discussions with Communities and Local Government we have reached a common understanding that access to our service should not be dependent on the mode of delivery of services for which the local authority retains ultimate responsibility. This understanding is supported by the following statement in the Local Government White Paper (October 2006):

**We propose to modernise and clarify the role and working practices of the (Local Government) Ombudsman, to ensure that they can operate effectively and continue to be accessible to all, by:**

- Clarifying that where authorities exercise their functions through joint arrangements and local partnerships, actions taken via such arrangements may be the subject to an investigation by the Ombudsman.

The Local Government and Public Involvement in Health Bill includes a Government amendment to the 1974 Act which provides that where a local authority exercises a function entirely or partly through an arrangement with another person, the actions of that other person are to be treated as actions on behalf of the authority, and in the exercise of that authority's function. If this statutory clarification of our remit is approved, we believe that it will be consistent with the legitimate expectation of complainants, and potential complainants, who have concerns about the services they have received from, or been denied by, a local partnership.

Through improved joint working between ourselves and the PHSO, and through a modernisation of our legislation, we plan to ensure that when complainants come to us with concerns about a local partnership, we shall be able to provide the complainant with a joined-up service that is beyond any reasonable challenge to our authority to do so.

# Conclusion

How citizens' complaints are handled in relation to partnership working, and how they receive redress for justified grievances, are key issues for local government generally, and not just for us. Having now published our recommendations, we shall be applying these to our consideration of future complaints from the public. But we also propose to work together with other interested parties to widen the debate around these issues.

What are the practical obstacles to full implementation of our recommendations, and how can they be overcome? How can examples of good practice be identified and shared? These are some of the issues on which we would welcome a continuing dialogue with all interested parties, including those who represent and advise complainants.

Any comments may be emailed to us at [partnerships@lgo.org.uk](mailto:partnerships@lgo.org.uk) or marked 'Partnerships' and sent to:

The Local Government Ombudsman  
10th Floor  
Millbank Tower  
Millbank  
London SW1P 4QP

## Final note

We do not suggest that adopting our recommendations will solve all the problems of handling complaints and redress within local partnerships. But we do believe that doing so should help to achieve two important goals.

First, it should help to provide speedier, more effective and fairer responses to citizens' concerns about the impact of partnership working on the quality of their lives. We believe that making progress on these issues is key to gaining and retaining public trust and confidence in partnership approaches to service delivery.

Secondly, it should help to prevent any dilution of citizens' rights arising from local authorities seeking to deliver services through collaborative working relationships with their local partners. The Government's plans to expand these methods of service delivery within local communities and neighbourhoods makes this goal not just important but urgent. Good administration demands that service users and complainants can hold their local authority to account for the exercise of its statutory functions (including, ultimately, by complaining to an ombudsman) regardless of whether the service they receive is delivered directly or in partnership.

Together, we can make it easier for service users to gain redress when things go wrong.

## List of references

- 1 See *Governing partnerships: bridging the accountability gap*, Audit Commission (October 2005) ([www.audit-commission.gov.uk](http://www.audit-commission.gov.uk)) and *The good governance standard for public services* (2004) issued by the Office for Public Management and CIPFA on behalf of the Independent Commission on Good Governance in Public Services chaired by Sir Alan Langlands ([www.opm.co.uk](http://www.opm.co.uk)); and *Delivering good governance in local government: the framework 2007* published by CIPFA/SOLACE.
- 2 See *Guidance on good practice 1: Running a complaint system* (revised June 2002) and *Guidance on good practice 6: Remedies* (revised February 2005) – both documents are available on our website [www.lgo.org.uk/guidance.htm](http://www.lgo.org.uk/guidance.htm).
- 3 See *Strong and prosperous communities – the Local Government White Paper* (published 25 October 2006) – available from [www.communities.gov.uk](http://www.communities.gov.uk).
- 4 Sue Goss, Director of National, Regional and Local Services (Office of Public Management) in her Foreword to *Local authority? How to develop leadership for better public services*, by Danny Chesterman with Matthew Horne, published by Demos 2002 ([www.demos.co.uk](http://www.demos.co.uk)).
- 5 *Local strategic partnerships*, published March 2001 by the former Department of the Environment, Transport and the Regions – available from [www.communities.gov.uk](http://www.communities.gov.uk).
- 6 *Local strategic partnerships: Shaping their future – a consultation paper*, published December 2005 by the former Office of the Deputy Prime Minister – available from [www.communities.gov.uk](http://www.communities.gov.uk).
- 7 *Leading localities – local area agreements* Local Government Association (July 2005) – available from [www.lga.gov.uk](http://www.lga.gov.uk).
- 8 *LGA response to ODPM consultation local strategic partnerships* published 3 March 2006 – available from [www.lga.gov.uk](http://www.lga.gov.uk).
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- 10 *Guidance on the Health Act Section 31 partnership arrangements* (see paragraph 1) published 1 January 2000 – available from [www.dh.gov.uk](http://www.dh.gov.uk).
- 11 *NHS bodies and local authorities partnership arrangements regulations 2000* (SI 2000 No.617).
- 12 Northumberland Care Trust ([www.northumberlandcaretrust.nhs.uk](http://www.northumberlandcaretrust.nhs.uk)).
- 13 *Our health, our care, our say: a new direction for community services*, published 30 January 2006 by the Department of Health – available from [www.dh.gov.uk](http://www.dh.gov.uk).
- 14 See (a) *Learning from complaints*, guidance published August 2006 by the Department of Health (available from [www.dh.gov.uk](http://www.dh.gov.uk)) and (b) *Getting the best from complaints*, guidance published August 2006 by the Department for Education and Skills (available from [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)).

- 15 See *Reform of public sector ombudsmen services in England* – a consultation paper issued by the Cabinet Office in August 2005 (available from [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)). Subject to final approval of the Order, the likely date for its commencement is 1 August 2007.
- 16 *Guidance on arms length management of local authority housing* 2004 edition (as amended by the *Supplement to the guidance on arms length management* issued in June 2006 by Communities and Local Government) – both documents available from [www.communities.gov.uk](http://www.communities.gov.uk).
- 17 See for example, *ALMO Inspections: The delivery of excellent housing management services* and *Learning from the first housing ALMOs* guidance issued in 2003 by the Audit Commission and the *ALMO governance resource pack* issued in 2004 by the Community Housing Task Force.
- 18 Section 10 Children Act 2004.
- 19 Section 27 Housing Act 1985; Section 70 Deregulation and Contracting Out Act 1994 and Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996.
- 20 This is available from [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk).
- 21 *Making things better? A report on reform of the NHS complaints procedure in England* – a special report published on 10 March 2005 by the Health Service Ombudsman (available from [www.ombudsman.org.uk](http://www.ombudsman.org.uk)).



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