

DECISION-MAKER		STANDARDS AND GOVERNANCE COMMITTEE	
SUBJECT		ANNUAL REPORT ON LOCAL GOVERNMENT OMBUDSMAN COMPLAINTS 2010-11	
REPORT OF:		DIRECTOR OF CORPORATE SERVICES	
DATE OF DECISION		8 SEPTEMBER 2011	
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STATEMENT OF CONFIDENTIALITY

N/A

SUMMARY

This report summarises performance and issues arising out of the Annual Letter for 2010-11 (year ending 31st March 2011) from the Commission for Local Administration in England (Ombudsman). Separate reports will also be provided to Standards & Governance Committee in relation to the Council's performance under its Corporate Complaint's Procedure and the Statutory Children's and Adult's social care complaints procedures (both of which also now report compliments and service comments where appropriate) as both of these ultimately impact upon and form links with the Council's relationship with the Ombudsman.

RECOMMENDATION:

- (i) That the report be noted.

REASONS FOR REPORT RECOMMENDATIONS

1. To update Members on issues and performance arising out of complaints made by the public to the Ombudsman during 2010-11. Identifying these issues assists the Council in understanding where services delivered by the Council in the past year have fallen below public expectation in order to improve service delivery to its citizens.

CONSULTATION

2. This report is presented to Standards & Governance Committee for consultation purposes. The Annual letter has been shared with both the Chief Executive, the Director of Corporate Services (in his capacity as Monitoring Officer for the Council) and the Head of Legal & Democratic Services. The Monitoring Officer and the Corporate Legal Team administer all Local Government Ombudsman complaints within the Authority on behalf of the Chief Executive, who is the person ultimately responsible for these matters to the Ombudsman. The author of this report acts as a single point of contact for the Ombudsman in relation to areas of concern (including all complaint investigations), advice and training.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3. N/A

DETAIL

4. Attached to this report is the Local Government Ombudsman's Annual Letter for the year ending 31st March 2011 (Appendix 1).
5. In 2008/09 the Ombudsman introduced significant changes in the way the Ombudsman investigates complaints against Council's. The first year's statistics under these arrangements were reported to Standards & Governance Committee on 24th September 2009. Changes included the coming into force of key elements of the Local Government & Public Involvement in Health Act 2007, which changed a number of areas of jurisdiction for the Ombudsman as well as changed the way they are able to receive and deal with complaints.
6. Further changes to the way in which complaints were recorded and changes to the decision descriptions have been made in 2011 which have, again, made it difficult to accurately judge performance in some areas. This is essentially because some complaints that would have previously been allocated to one category now fall within another and decisions that previously might have simply been recorded as 'No Maladministration' may now be recorded against a number of other 'decision' types. In particular the Ombudsman is making greater use of the 'Ombudsman's discretion' category to recognise complaints where minor faults have occurred but do not merit settlement as no injustice has been suffered by the complainant. While this makes a direct comparison with the detail of last year's annual letter somewhat distorted, the author has, however, taken some time to look at the detail in relation to complaints held in the Council's own recording system this year and it has, therefore, been possible to provide some strong assurance about specific trends despite the change in reporting methods. It is the author's view, therefore, that a consistent level against which to benchmark performance is being achieved.
7. Initial assessment suggests the Council's remains a strong performer in this area, with no major or underlying trends causing concern when looking at similar trends with statistical neighbours.
8. The introduction in 2009 of the 'LGO Advice Team', has proven to be working well in filtering out minor and repetitive complaints that do not merit investigation or can be dealt with locally by the councils concerned once they know about them. The advice team also provides general advice and assistance to members of the public before their case is allocated for investigation and this has helped individuals to focus on what they want to achieve from a complaint rather than the 'process' of making a complaint in and of itself.
9. In 2010 the Ombudsman's jurisdiction to cover complaints about schools in trial areas was introduced in 14 pilot areas across the country (not Southampton). The anticipation was that all schools would be covered by 2011, however, the Education Bill currently before Parliament and due to receive Royal Assent later this year will rescind this jurisdiction. Schools complaints will once again be dealt with by schools alone, with the power to complain to the Secretary of State as a 'last resort' measure if a breach of a statutory duty or unreasonable exercise of a function can be demonstrated.
10. Complaints about individuals who self-fund private social care needs also now fall within the jurisdiction of the Ombudsman but this area is still developing. Only 75 complaints of this nature have been received nationally. Complaint statistics for Southampton show only one complaint dealt with by the Ombudsman in this area.

11. Key points are to be noted from the Ombudsman's letter and statistics include:
- a. The Ombudsman received a total of 68 complaints this year against Southampton City Council, a somewhat higher number than in 2010 (53) and 2009 (59). There are, historically, annual fluctuations from year to year, and the Council is usually fairly consistent in the number of complaints received overall. The main fluctuation this year seems to be as a result of an increase in the number of premature complaints received, though this is somewhat offset by a corresponding decrease in the number of matters forwarded for full investigation (see further below). The overall number of complaints does remain low and consistent with statistical neighbour's trends (See Appendix 3).
 - 16 complaints related to Housing matters (15 last year)
 - 14 complaints related to Children's Services (9 last year),
 - 12 complaints related to benefits and tax (9) last year,
 - 8 complaints received concerned Planning / Building Control (6 last year),
 - The remainder of complaints cover a range of services.
 - b. This remains broadly consistent with previous years. Children's Services, Housing and Planning & Building control tend to be the highest area in which complaints are received nationally and regionally. As front line services that significantly affect a large number of individuals this is not unusual and, taken in the context of the slight increase in complaint numbers this year the corresponding increase within each service area is not considered a cause for undue concern.
 - c. Historic trends show that complaint levels tend to increase when there are significant local or national pressures on the economy. Higher unemployment, lower disposable income, recession and the effects of the economic downturn generally have an impact on Council services, with a greater number of individuals seeking assistance from their local Councils or requiring services from Council's who are under increasing pressure to prioritise resources to core function areas and the most needy. This overall impact needs to be considered when looking at this year's complaint trends. Southampton still receives a relatively low number of complaints compared to the majority of its statistical neighbours (though slightly more than its nearest neighbour, Portsmouth).

- d. The most significant change from last year is the significant rise once more in premature complaints. The Council historically had a high number of premature complaints and worked hard to reduce the number received by improving access to the complaints policy on its website and advertising the complaints procedures widely in customer facing areas. As a result, the number of premature complaints dropped from 20 in 2009 to just 8 in 2010. The increase this year to 32 (of the 41 premature and advice only complaints identified in Appendix 3) is therefore cause for some concern and this constitutes a higher than average percentage rate while compared to statistical neighbours. Having examined the detail of the complaints referred back to the Council last year, it would appear that some may be as a direct result of the Ombudsman changing the way that they themselves deal with complaints.

While it has always been the case that the Ombudsman would expect a council to have investigated a matter before they would take on a case, they were not strict in requiring individuals to complete ALL stages of a council's complaints policy before accepting jurisdiction. It would appear that since early 2010, the Ombudsman has introduced a policy of rigorously enforcing the requirement for complaints to be considered through ALL stages of a council's complaints procedure before themselves conducting an investigation. An examination of the complaint details shows that perhaps 50% of the complaints would have previously been part dealt with by a Council upon referral and generally accepted by the Ombudsman for investigation. However, the fact remains that this increase bears monitoring, particularly in relation to information provided to complainants by staff at early stages of complaints processes, to determine whether or not further guidance and training is required for front line staff in both advertising the complaints procedure and dealing with complaints effectively and thereby improving customer confidence in the Council's ability to police its own actions and perhaps negate the need for premature reference to the Ombudsman.

- e. A further nine cases were dealt with by way of 'advice' from the LGO advice team, slightly up on the seven cases reported last year when the service was first introduced but broadly consistent with the overall increase this year. The introduction of the advice team continues to contribute to the number of complaints that would otherwise have been deemed 'outside jurisdiction' or for which alternative remedies are available being withdrawn or not proceeded with, which has enabled the Ombudsman and Council to focus on issues of greater concern.
- f. Twenty-three complaints were referred to the Ombudsman's investigation teams (compared to 33 last year) and have either be determined or carried over to this year due to the complexity of the issues involved. Thirty complaints were determined during 2010/11. Five were discontinued at the Ombudsman's discretion (resulting in no finding). Thirteen complaints were found to be without fault (no maladministration or injustice) compared to eight last year. Two further complaints were deemed to be outside the Ombudsman's jurisdiction.

- g. Ten complaints that were settled locally (compared to seven last year). The Monitoring Officer settles complaints locally for a variety of reasons, not all of which are associated with the Council's "liability" in respect of a complaint – on occasions, clearly, the Council will get things wrong, and it is right when that happens to settle the complaint locally without having to put the complainant through further distress and anguish and, indeed, the Council to further cost. On occasion, it is appropriate to settle a complaint because of the complexity of the matter, the costs of a comprehensive investigation and/or the fact that sometimes the full facts will be unclear, and an appropriate and suitable (and cost effective) way forward has to be found. Local settlements cost the Council a total of £4,906 in 2007/08, £1,425 in 2008/9, £4,525 in 2009/10 (£3,500 of which related to a single complaint) and £3,650 in 2010/11.
- h. Of the £3,650 paid out in settlements during 2010/11, £3,050 of that sum related to two individual Children's Services complaints. £1400 was paid to a student and their parents as a result of failing to secure a school placement for them when transferring their statement of Special Educational Needs from the Isle of Wight. The sums incurred comprised compensation for the delay and lost opportunities experienced by the student as well as travelling expenses incurred in returning to the students previous school on the Isle of Wight to sit exams the student would otherwise have not been able to take. The second of the two children's services cases involved payment of £1650 (split £1500 to the child and £150 to the parent for pursuing the complaint), which again related to the delay incurred in approving an appropriate school placement for a child with special educational needs following an extended period of home tutoring and disputes with previous schools and the Local Authority.
- i. Of the remaining 8 Local Settlements agreed, two payments of £250 each were approved in recognition of delays in handling the complaint (a housing matter) and reimbursement of fees incorrectly charged for respite care and failure to adequately record discussions and decisions about fee arrangements / communicate fees to service recipients (adult social care) and a further payment of £100 was agreed for delays in dealing with a planning matter and the early stages of the subsequent complaint. The remaining 5 Local Settlements were resolved by way of offering apologies for minor procedural errors or delays in delivering services and / or staff training and minor changes to Council procedures to ensure mistakes did not recur in the future.
- j. It should be noted that the Council once again improved its average response time for dealing with Ombudsman investigations this year from 21.4 to 20.2. This is well within the target period of 28 days set by the Ombudsman and within the top quartile of response times nationally.

- k. The Corporate Legal Team continues to provide ad-hoc advice and training on dealing with complaints and responding to Ombudsman enquiries where required (mainly through internal resources). Formal training on responding to Ombudsman complaints and investigating complaints generally was last held in 2007/8. Given the increase in premature complaints experienced this year the Monitoring Officer will recommend a review of the need to deliver training in partnership with the Ombudsman in 2011/12 once the current changes to the management structure of the Council has settled down and resources permitting. Heads of Service play an important role in resolving complaints at Stage 2 of the Council's complaints procedure and undertaking training prior to the management restructure being completed would be premature. Additional consideration will be given to providing written guidance / training materials to assist staff dealing with complaints at Stage 1 of the complaints procedure.
12. In previous years, Standards & Governance Committee requested a breakdown of how this performance measured against the Council's statistical neighbours. While the Ombudsman does not publish direct comparison's (as the nature of authorities and the services they deliver varies considerably within a geographic area), it has been possible to look at the statistics for the individual unitary authorities within our statistical neighbours (Audit Commission Comparator Authorities list) and provide a summary of performance against them. These authorities comprise Bristol, Brighton & Hove, Plymouth and Portsmouth.
13. The table at Appendix 2 sets out a breakdown of **decisions made** by the Ombudsman during 2010/11 and communicated to local authorities.
14. The total number of new **complaints received** (rather than determined) by each Authority in 2009/10 broken down by subject area is in the table at Appendix 3.
15. It should be noted that in the majority of the comparator authorities, the top two areas in which complaints were received (excluding 'Other' which covers a number of misc complaint areas) were Children's Services and Housing. This demonstrates that, as stated in paragraph 10a, Southampton's performance in these areas remains broadly comparable with other Authorities and complaints tend to arise in these areas consistently regardless of the type of authority or geographical area.
16. Of the five authorities, none received a maladministration report during the previous year. Most authorities improved on their response time or attained similar response time to last year. Southampton remains the fastest responder.

17. Notable cases reported against the other authorities include:

- An instance where a complainant who had been placed in leased accommodation received a Notice to Quit and, upon contacting the Council, was given incorrect information about the status of the Notice, was spoken to inappropriately by the Council advisor and suffered unnecessary delays in dealing with her complaints about the matter,
- Incorrectly allocating accommodation to persons lower down the housing list than an elderly complainant,
- Tenants being made wrongly liable for repairs and subsequent demolition for an unauthorised structure put in place by previous tenants. In addition the Council should have had procedures in place to remove the unauthorised structure or require its making good before a tenant leaves a property.
- Improper refusal to consider a matter under the Children's complaints procedure / use of the wrong complaints procedure for statutory children's services complaints
- Incorrectly admitting a child to a school when the complainant's child should have been placed higher on the waiting list. Failure to recognise sibling link requirements (i.e. in this case the sibling would have left the school by the time the child was due to start so should not have had a higher position on waiting list).
- Failure to properly consider an exception to policy in relation to single issue parking permits (complainant was able to demonstrate clear medical need to use two different cars adapted for his disability).
- Failure to consistently provide an assisted waste collection or recycling service to a disabled applicant.
- Failure to provide appropriate services following re-assessment of social care needs,
- Loss of personal belongings of a complainant whilst in social care residential setting.
- Serving a Notice of Seeking Possession for ASb without prior warning or proper investigation,
- Failing to recognise ASB as racially motivated and therefore to provide appropriate victim support mechanisms,
- Failure to provide full time education to a pupil with special needs for nearly 2 years,
- Failure to properly consider impact on traders position when changing policy to require food sellers at certain location to operate from kiosks instead of mobile units.

18. Full details of all of these cases (and the annual letters relating to these authorities) can be reviewed on the Ombudsman's website at www.lgo.org.uk along with a digest of cases, fact sheets on service specific areas, special interest reports and a summary of statistics by area and authority type should the Committee require any further information in this regard.
19. In conclusion, in relation to the Local Government Ombudsman's Annual Letter, the number of complaints overall continues to remain low and that is pleasing. Southampton performs well in comparison to its Audit Commission comparator group in the south and had the lowest number of complaints determined last year, the second lowest number of new complaints received and the fastest response time in relation to those authorities. The sums paid by the Council in resolving complaints is broadly comparable with last years mainly because of the two relatively high payouts in relation to Children's Services matters. Of the remaining Local Settlements, there has been a significant decrease in the number of cases in which compensation for minor breaches has been payable demonstrating that appropriate resolution to complaints is now being offered in the main at earlier stages of the complaints procedures. Continued investigation and monitoring will be undertaken to assess and understand the increasing trend of premature complaints with appropriate action to be taken to address any issues identified as contributing to the increase.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

20. N/A

Revenue

21. There are no additional revenue implications arising from this report. The small level of compensation paid was met from within existing divisional budgets.

Property

22. N/A

Other

23. N/A

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

24. The Ombudsman's jurisdiction is laid out in the Local Government Act 1974 as amended. Local authority complaints mechanisms are operated under Section 111 Local Government Act 1972 and complaints in relation to Children's and Adult Services in accordance with corresponding primary legislation and regulations.

Other Legal Implications:

25. N/A

POLICY FRAMEWORK IMPLICATIONS

26. The matters set out in this report are consistent with the Council's Constitution and Policy Framework.

SUPPORTING DOCUMENTATION

Appendices

1	LGO Annual Letter 2010-11 and statistics
2	Breakdown of decisions made by the Ombudsman during 2010/11 and communicated to local authorities
3	Total number of new complaints received (rather than determined) by each Authority in 2009/10 broken down by subject area

Documents In Members' Rooms

1.	None
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Background Documents

Title of Background Paper(s)

Relevant Paragraph of the
Access to Information
Procedure Rules / Schedule
12A allowing document to be
Exempt/Confidential (if
applicable)

1.	None	
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Background documents available for inspection at: None