

<b>DECISION-MAKER</b>		GOVERNANCE COMMITTEE	
<b>SUBJECT</b>		ANNUAL REPORT ON LOCAL GOVERNMENT OMBUDSMAN COMPLAINTS 2011-12	
<b>REPORT OF:</b>		DIRECTOR OF CORPORATE SERVICES	
<b>DATE OF DECISION</b>		25 <sup>TH</sup> SEPTEMBER 2012	
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## STATEMENT OF CONFIDENTIALITY

N/A

## SUMMARY

This report summarises performance and issues arising out of the Annual Letter for 2011-12 (year ending 31<sup>st</sup> March 2012) from the Commission for Local Administration in England (Ombudsman). Separate reports will also be provided to Governance Committee in relation to the Council's performance under its Corporate Complaints 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 2011-12. 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 Governance Committee for consultation purposes. The Annual letter has been shared with the Chief Executive, the Director of Corporate Services (in his capacity as Monitoring Officer for the Council) and the Head of Legal, HR & 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 Review for the year ending 31<sup>st</sup> March 2012 (Appendix 1).
5. In 2008/09 the Ombudsman introduced significant changes in the way the Ombudsman investigates complaints against Councils. The first year's statistics under these arrangements were reported to Standards & Governance Committee on 24<sup>th</sup> September 2009. They have been reported annually since that time.
6. Further changes to the way in which complaints were recorded and changes to the decision descriptions have been made in 2011 and 2012 which have, again, made it difficult to accurately judge performance in some areas, where categorisation and complaints' descriptions (including outcome described) have again been altered. 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. 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. The previous category of "outside jurisdiction" is broadly comparable with the new "no power to investigate"; "no reason to use exceptional power to investigate" and "investigation not justified" are broadly equivalent to "Ombudsman's discretion". Two new categories of "not enough evidence of fault" and "no or minor injustice" replace the old "no maladministration"; and "injustice remedied during enquiries" replaces the previous category of "local settlement" "Report" is now the category under which findings of maladministration are listed.
8. 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.
9. 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.
10. Key points are to be noted from the Ombudsman's letter and statistics include:

- a. The Ombudsman received a total of 73 complaints in all categories (including premature complaints) this year against Southampton City Council, a somewhat higher number than in 2011 (68) and 2010 (53). There are, historically, annual fluctuations from year to year, and the Council is usually fairly consistent in the number of complaints received overall. Premature complaints remain higher than we would like but the complaints procedure is well advertised and accessible and it is our considered view that this is more a reflection of customers seeking to “cut out the middle man” in the hope of a speedier resolution by the LGO than any failing of the complaints system and is a very slight improvement on last year’s figure. The overall number of complaints does remain low and both substantive and premature complaints figures remain consistent with statistical neighbour’s trends (See Appendix 3).
- 18 complaints related to Housing matters (16 last year)
  - 4 complaints related to Children’s Services (14 last year),
  - 6 complaints related to benefits and tax (12) last year,
  - 4 complaints received concerned Planning / Building Control (8 last year),
  - The remainder of complaints cover a range of services.
- b. The most significant increase in 2011/12 is in Environmental Services & Public Protection and Regulation. Twenty complaints (six of which were forwarded for new investigation) compared to only four (two investigations) last year. The reason for this trend has not yet been clarified, but it is believed that a large number of these issues relate to enquiries about waste collection services concerns following the industrial action last year (which the Ombudsman declined to investigate) together with a small increase in Bereavement Services’ matters (family disputes over graves and cremations) and nuisance matters.
- 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 the last two years’ complaint trends. Southampton still receives a relatively low number of complaints compared to the majority of its statistical neighbours.
- d. Thirteen cases were dealt with by way of ‘advice’ from the LGO advice team, slightly up on the nine cases reported last year and seven the previous year, when the service was first introduced but this remains 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.

- e. Twenty five complaints were referred to the Ombudsman's investigation teams (compared to 23 last year) and have either been determined or carried over to this year due to the complexity of the issues involved. Thirty six complaints were determined during 2010/11. Eleven were not investigated (resulting in no finding). Seventeen complaints were found to be without fault or with only minor fault or injustice that did not merit any finding against the Council compared to 13 last year.
- f. Eight complaints were remedied during investigation (the new term for "local settlement") - compared to 10 last year. The Monitoring Officer settles complaints during investigation 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 matter 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), £3,650 in 2010/11 and £3650 in 2011/12 (£2,400 of which related to a single complaint).
- g. Of the £3650 paid out to resolve matters during investigation of a complaint during 2011/12, £2,400 related to a single adult social care matter. In that case, the LGO found that the Council had unreasonable delayed assessing an individual for a personal care budget for over seven months. The settlement figure agreed with the LGO reflected the sum they would have been entitled to in personal care payments (for cleaning assistance) had a decision to award a personal care budget been made in a timely manner, together with a further £200 to reflect her time and trouble in pursuing her complaint with the Council. The process for awarding personal care budgets was relatively new at the time the complaint arose and errors in the way applications were dealt with had subsequently been resolved via training and support to staff and changes to procedures and the LGO was therefore satisfied with the additional measures the Council had put in place to prevent a recurrence of this issue. Of the remaining seven matters 'settled locally' only three further cases merited financial compensation. £250 compensation was paid in relation to a planning matter where it was agreed with the LGO that the Council's decision letter had failed to properly explain why a planning permission was granted in light of the previous history of refused applications at the site in question. The Ombudsman found no flaws in the Council's decision making process for the matter in question but could have prevented the complainants need to complain if they had properly understood the basis on which the decision had been taken. Two awards of £250 each were agreed in relation to delays in dealing with two residents complaints about odour nuisance from a restaurant site. The LGO accepted the difficulties the Council had faced in witnessing a formal statutory nuisance at the site but felt that the Council had no kept residents properly informed as to progress in pursuing the matter.

The Council also undertook to work with the restaurant to reduce ambient smells and to undertake a programme of regular monitoring of the site for statutory nuisance. A statutory nuisance has subsequently been witnessed as a result of the significant resources the EHO put into this matter and further enforcement action is anticipated following service of statutory notices.

- h. Of the remaining four cases where local agreement was reached to resolve a complaint, three were resolved by way of apologies for minor delays or errors and / or minor changes to Council policies and procedures to make them clearer and easier for the public to understand. In relation to one further matter, the Council agreed to undertake a review of disabled parking arrangements around the Council's Gateway office facilities to determine if further provision was necessary and / or legally possible in that area. That review has been concluded and further disabled parking provision is now being made, subject to statutory advertisement and representation processes.
  - i. It should be noted that the Council is once again well within the target period of 28 days set by the Ombudsman to respond to complaints, the fastest responders within our comparator group and within the top quartile of response times nationally. The Council took an average of 23.8 days to respond. This is slightly higher than in 2010/11 (20.2 days) and reflects the increased work pressures placed on the Corporate Legal Team following Directorate restructures, together with the slight increase in the number and complexity of complaints received.
  - j. 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 Corporate Complaints Team and the Ombudsman in 2012 once the current changes to the management structure of the Council have settled down, the pending review of the Council's Corporate Complaints processes have been completed and resources permitting.
11. 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.
12. The table at Appendix 2 sets out a breakdown of **decisions made** by the Ombudsman during 2011/12 and communicated to local authorities.
13. The total number of new **complaints received** (rather than determined) by each Authority in 2010/11 broken down by subject area is in the table at Appendix 3.

14. 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 miscellaneous complaint areas) were Children's Services and Housing. Southampton's performance in key areas remains broadly comparable with other authorities and complaints tend to arise in these service areas consistently regardless of the type of authority or geographical area.
15. The LGO no longer publicises details of compensation paid out by Authorities in full or commentary on cases in annual letters unless there are areas of significant concern within an Authority. Compensation figures / cases were not reported against Southampton as the LGO remains satisfied overall with the Council's performance (but are provided for Committee from our own records of these matters).
16. Notable cases reported against the other authorities include:
- No cases / compensation figures are reported for Plymouth or Portsmouth.
  - Brighton: Housing repairs, delay in repairing flat following serious flood. Tenant had physical and mental health problems and was delayed returning to his flat for over a year longer than he should have been. The tenant was also pursued incorrectly for Council Tax while his property was unoccupied. Major changes to repairs procedures, working arrangements with contractors and decision making arrangements were agreed along with compensation of £3,200 to the individual.
  - Brighton: Adult Care Services failed to adequately involve the family of an elderly woman in planning her discharge from hospital to a nursing home. Care Plan also inadequate. Revised procedures and information for the public on hospital discharges agreed and £200 compensation paid to complainant or a charity of her choice. Second case relating to placement in a nursing home raised concerns about the safeguarding vulnerable adults procedure in place and the process for dealing with complaints about care quality in the home. The provider used by the Council did not satisfactorily address concerns expressed by the family on an ongoing basis resulting in the family moving the individual to another home. £600 compensation paid to the elderly person and £400 to her family.
  - Brighton: Children's Services failed to consider whether SEN statements for two siblings met legal requirements to quantify provision for speech and language therapy resulting in insufficient and irregular provision. The Council agreed to review the statements in consultation with the family and relevant professionals and set aside £500 for further speech therapy for each child in the future.
  - Brighton: Failure to deal with review and transition planning for profoundly deaf teenage boy. Procedures followed by the Council resulted in denying the family the chance to appeal against the decision to an independent tribunal resulting in time and trouble and uncertainty for the family for over a year. Compensation paid for distress and in relation to making provision for the boy's future educational needs (sums undisclosed).

- Bristol: Adult Care Services: Elderly care home placement for a resident with dementia in a home with a zero rating resulted in inadequate care for a number of months that detrimentally affected health and well being of individual. Council's reviewing and safeguarding procedures inadequate together with poor communication between Council and provider. Council agreed to pay £6,500 compensation to the resident and her son together with refunding extra care costs paid by family towards resident's alternative care.
17. 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](http://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.
18. From next year, the LGO has indicated that they intend to publish ALL decision letters (not just where a Report has been issued against a Council) in relation to all complaints recorded against local authorities on their web site in an open publication scheme. Individuals' names will likely be redacted or anonymised to comply with Data Protection requirements but the media and public will have full access to all decisions made against any named authority once this occurs.
19. In conclusion, in relation to the Local Government Ombudsman's Annual Review, the number of complaints overall continues to remain on a par with statistical neighbours experiences and, overall, low and that is pleasing. Southampton performs well in comparison to its Audit Commission comparator group in the south. The sums paid by the Council in resolving complaints is broadly comparable with last years mainly because of a single relatively high payout in relation to an Adult Social Care 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 2011-12 and statistics
2	Breakdown of decisions made by the Ombudsman during 2011/12 and communicated to local authorities
3	Total number of new complaints received (rather than determined) by each Authority in 2010/11 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: N/A

E-mail:

FORWARD PLAN No N/A

KEY DECISION No

WARDS/COMMUNITIES AFFECTED: All