

CABINET

20 SEPTEMBER 2024

REPORT OF THE MONITORING OFFICER

A.8 HOUSING OMBUDSMAN FINDINGS AND OTHER INCIDENTAL AND RELATED MATTERS

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The Constitution (Article 12.03(a)) requires the Monitoring Officer to report to Cabinet (or to Council for non-executive functions) if any decision or omission has given rise to maladministration. This report concerns actions that the Housing Ombudsman has determined were maladministration/service failings. This report sets out two findings by the Housing Ombudsman since the last meeting of Cabinet. The separate complaints are set out below.

This report is also required under section 5A of the Local Government and Housing Act 1989 in view of the aforementioned decision in this matter by the Housing Ombudsman.

EXECUTIVE SUMMARY

The Housing Ombudsman has recently determined two complaints received by it and has found that there was maladministration in these two cases. Summaries of the two cases are set out elsewhere in this report. Through this report, the Monitoring Officer is bringing the matters to the attention of the Cabinet as the matters concern executive functions of the Council. Cabinet is particularly requested to note the findings/orders/recommendations from the Housing Ombudsman, the compliance with those matters by the Council and the wider learning points set out.

In addition, within the 'Background' section of this report there are other incidental and related matters concerning the Council's compliance with the Ombudsman's Code, complaints performance and service improvement and advance notice of an intention to report to the Audit Committee (on 26 September 2024) in relation to the Local Government and Social Care Ombudsman's Annual Letter for 2023/24 in respect of complaints submitted to that Ombudsman Service.

RECOMMENDATION(S)

It is recommended that Cabinet receives and notes this report and, in particular:

- (a) the findings/orders/recommendations from the Housing Ombudsman in the two cases covered by this report, the compliance with those matters by the Council and the wider learning points set out; and**

(b) the incidental and related matters concerning the Council's compliance with the Ombudsman's Code, complaints performance and service improvement and advance notice of an intention to report to the Audit Committee (on 26 September 2024) in relation to the Local Government and Social Care Ombudsman's Annual Letter for 2023/24 in respect of complaints submitted to that Ombudsman Service.

REASON(S) FOR THE RECOMMENDATION(S)

The Constitution requires that maladministration findings are reported to Cabinet for executive functions. In receiving the report, the particulars of the cases are relevant, as is the Council's compliance with the decisions of this Ombudsman and wider learning points.

ALTERNATIVE OPTIONS CONSIDERED

To not submit a report on the two cases concerned would have been contrary to the provisions of the Constitution (and section 5A of Local Government and Housing Act 1989). As such, not reporting these matters was discounted.

PART 2 – SUPPORTING INFORMATION

BACKGROUND

The two cases considered by the Housing Ombudsman are set out below under subheadings of 'Complaint 1' and 'Complaint 2'.

Complaint 1 - 202302247

This complaint concerned a tenant who had raised allegations of Anti-Social Behaviour by their neighbour. There were counter-allegations from the neighbour against the complainant. The allegations covered a lengthy period of time and, at times, the alleged incidents and counter allegations overlapped with processes to respond to them. The Housing Ombudsman did not find maladministration in the Council's handling of the alleged anti-social behaviour reporting. Notwithstanding this, the Housing Ombudsman did highlight the absence of consideration by the Council of the use of CCTV to evidence the allegations and/or the counter allegations, Likewise there was no evidence of consideration of an Acceptable Behaviour Contract. In addition, the Housing Ombudsman raised questions about a possible risk assessment and liaison with Health Partners as part of partnership working given vulnerabilities in this case.

The Housing Ombudsman found maladministration in the handling by the Council of complaints about its response to the anti-social behaviour reporting. The full application, in this matter, of the Housing Ombudsman's Complaints Code and the Council's own procedures for housing complaints was questioned in so far as timescales and the content of responses provided were concerned. In particular, the Housing Ombudsman states that the Stage 2 complaint response did not "address all points raised in the complaint and provide clear reasons for any decisions, referencing the relevant policy, law and good practice where appropriate".

It also did not provide the resident with a decision on the complaint, the reasons for the decisions made, the details of any remedy offered to put things right or details of any outstanding actions.

In recognition of the stated maladministration and the distress that the complainant will have experienced, the Housing Ombudsman recommended a payment of £300 to the complainant. The decision to authorise the payment was made on 14 August 2024 and the tenant has received the necessary payment.

Wider learning points from this case relate to evidencing consideration of options available (in this case measures related to anti-social behaviour and vulnerabilities of tenants) and that complaint responses (separate from service requests) must fully address the requirements of the relevant Ombudsman's Code and the Council's own procedures.

Complaint 2 - 202116817

In this case, the tenant raised serious concerns around asbestos tiles removal at the property in 2019 and the use of an adhesive product in the tenanted flat by the Council's contractor when refurbishing the kitchen. In exchanges with the tenant, further concerns about insulation at the property and the alleged presence of rats was raised. The tenant was also seeking to be relocated to a new property.

In respect of the removal of asbestos tiles, the Housing Ombudsman's report states that there is no evidence to suggest that the Council had failed to manage appropriately the asbestos within the property.

With regards to the insulation, the Council confirmed that this was in line with the building standards at the time of construction. Fitting insulation retrospectively would be costly and challenging. The property was double glazed and had a reasonable amount of loft insulation. However, in respect of the insulation element of the complaint, the Housing Ombudsman found there was no evidence to demonstrate any temperature testing (or space heating calculations) had been carried out in order for it to be confident that the situation in the property did not give rise to a hazard (using the Housing Health and Safety Rating System (HHSRS) hazard risk-based tool).

Concerning the stated rat infestation, this was reported to the Council on 16 May 2023 (albeit that the report suggested the rats had left). The evidence showed that pest control attended on a number of occasions between May 2023 and December 2023. The final inspection report from 7 December 2023 identified that there was 'no new activity'. May 2023 – December 2023 was, the Housing Ombudsman states, a considerable amount of time to live with a rat infestation and the distress this caused. There is a recognition in the report that there have been visits to the property when staff and contractors have been denied access by the tenant.

The Housing Ombudsman ordered in this case that the Council:

- a. Carry out an appropriate inspection of the property to determine if the internal temperature is considered to be in line with HHSRS guidance.

- b. Carry out a review of this case and its record keeping practices to establish what went wrong and ensure that its systems and processes are used effectively to ensure all contact from a resident is recorded and retained along with any dates of repairs visits.
- c. Provide a written summary of the outcome to the resident and this Housing Ombudsman.

In addition the Housing Ombudsman recommended that the Council:

- a. pay the resident the £500 compensation it had previously offered, in recognition of rubbish left and poor cleaning of the kitchen following flooring works there;
- b. arranges an in person visit to the resident to discuss whether it is required to remove any damaged tiles containing asbestos. During this visit it should provide the resident with a detailed plan of how it intends to mitigate any risk if works are required.

The orders and recommended actions above have been undertaken by the Council, with the exception of the payment to the tenant. The decision to authorise the payment was made on 19 August 2024 and the tenant was contacted to make the necessary payment. The tenant has advised the Council that they are refusing the payment. They have also indicated that they are appealing the decision concerned. No communication in respect of any appeal has been received from the Housing Ombudsman.

Wider learning points from this case relate to evidencing how the Council has addressed separate elements of a complaint (even where the complainant focuses themselves on one of those elements).

Other incidental related matters

As this report is being submitted to Cabinet, it is opportune to also state that the Council made its annual submission on 27 June 2024 in respect of compliance with the Ombudsman's Code, complaints performance and service improvement. This was considered by the Cabinet at its meeting on 24 May 2024 (Minute 12 refers). The Housing Ombudsman has confirmed that it is satisfied that the Council has provided and published all necessary documents as part of its annual submission. The Housing Ombudsman will now carry out an assessment to determine if the Council has demonstrated compliance and that its approach is fair and reasonable.

Finally, a separate report is being submitted to the Audit Committee (on 26 September 2024) in respect of the Local Government and Social Care Ombudsman's Annual Letter for 2023/24 in respect of complaints submitted to that Ombudsman Service. Along with similar letters from the previous four years, the 2023/24 letter is already available on the Council's website as part of its commitment to Openness. The link to the Annual Letter is here:

<https://legacy.tendringdc.gov.uk/sites/default/files/documents/council/finance/transparency/Tendring%20District%20Council%202024%20letter.pdf>

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