

## AUDIT COMMITTEE

26 SEPTEMBER 2024

### REPORT OF ASSISTANT DIRECTOR, GOVERNANCE

#### A.2 COMPLAINTS PROCEDURE AND ANNUAL LETTER TO THE COUNCIL FROM THE LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

##### PART 1 – KEY INFORMATION

###### PURPOSE OF THE REPORT

To provide the Committee with the most recent annual letter to the Council from the Local Government and Social Care Ombudsman (LGSCO). The letter relates to complaints processed by the LGSCO in the financial year 2023/24. It is intended to establish a practice through which these annual letters are reported to this Committee in the future and, thereby, to extend awareness of such complaints and the opportunity for learning by the Council from complaints.

###### EXECUTIVE SUMMARY

The Annual Letter from the LGSCO is normally issued in mid-July, with this year's letter being issued on 17 July. The letters set out a summary for the previous financial year of the numbers of complaints received by the LGSCO concerning the Council, which services they relate to, the decisions reached in the year on complaints made to it and compliance with recommendations from it on upheld complaints. The 2024 Letter from the LGSCO (in respect of 2023/24) is set out at Appendix A to this report.

The Annual Letters are sent by the LGSCO to the Chief Executive, the Leader of the Council and the Chairman of this Council's Resources and Services Overview and Scrutiny Committee. A brief summary of the statistics from the Annual Letter, and the upheld complaints identified in the Annual Letter for the year concerned, is submitted to the Chief Executive's Officer Management Team, as part of developing learning across the various upheld complaints over those years.

Where an individual report on a particular complaint to the LGSCO has identified maladministration, the Monitoring Officer is under a duty to report to Cabinet (in respect of executive functions) or Council (in respect of non-executive functions). The Annual LGSCO letters have been referenced in reports on individual upheld complaints to Cabinet and Council. Currently, there is no established practice to report Annual Letters to a body of Councillors to consider. Through this report, it is proposed for this Committee to take on this role, as part of terms of reference to '*assess external regulatory reports and monitoring any quality improvement programmes where required. Comments are provided to Cabinet as appropriate*'.

The Committee is also advised that there is an intention to review the Council's corporate complaints procedure, following a similar review of the Council's procedure for complaints made in respect of the Council's role as landlord (the Housing Complaints Procedure). Council Housing complaints generally fall within the scope of the Housing Ombudsman and not the

LGSCO. However, this is not always the case (and this is relevant when looking at summaries of cases referenced in the 'Background' section of this report). The LGSCO has recently adopted a new Complaint Handling Code and this broadly mirrors the Code used by the Housing Ombudsman. The Council's complaints procedure will be reviewed having regard to the LGSCO's Complaint Handling Code and there may be a consequential need to review the Council's Housing Complaints Procedure too. This point was approved by Cabinet on 24 May 2024 (Minute 12 refers).

## **RECOMMENDATION(S)**

**It is recommended that the Committee;**

- (a) receives and notes the report and approves a practice whereby Annual Letters from the LGSCO are submitted to this Committee for consideration in the future as part of its role in assessing external regulatory reports and monitoring any quality improvement programmes where required, with comments to be provided to Cabinet as appropriate; and**
- (b) Determines whether it wishes on this occasion to comment to Cabinet on the process of oversight of complaints and the learning from those complaints.**

## **REASON(S) FOR THE RECOMMENDATION(S)**

Under the Local Government Act 1999 Act, local authorities must legally deliver what is termed 'Best Value' – a council must be able to show that it has arrangements to secure continuous improvement in how it carries out its work. On 8 May 2024, the then Government issued updated statutory guidance entitled "Best value standards and intervention: a statutory guide for best value authorities". This identifies as one of the characteristics of a well-functioning Council that it seeks to learn lessons from complaints it receives. The guidance continues and identified that an indicator of potential failure by a Council where complaints systems are not deployed.

The submission of the Annual Letter from the Local Government and Social Care Ombudsman to this Committee seeks to ensure that there is that wider understanding of the position concerning complaints made to that Ombudsman; as well as offering an opportunity to look at lessons that can be learned from those complaints.

In addition to the Local Government and Social Care Ombudsman's publication of the Annual Letters to Councils, the data on the number of upheld complaints (per 100,000 population) is also now published by the Office for Local Government (OFLOG); through its website. At present, OFLOG's comparators with other authorities in respect of complaints is derived from the data in 2021/22.

The Housing Ombudsman expects the role of the Member with Responsibility for Complaints to champion a positive complaint handling culture and build effective relationships with complaints teams, residents, it's audit and risk committees as well wider teams and the Housing Ombudsman Service. The Council should therefore utilise the Audit Committee in year to provide additional assurance for the consideration of general corporate complaints too.

## **ALTERNATIVE OPTIONS CONSIDERED**

This represents the first time the Annual Letter from the Local Government and Social Care Ombudsman has been submitted to this committee for consideration. As such, the alternative of not submitting the Annual Letter would have followed the previous practice of the Council. This does not mean that there would not have been any oversight of the Complaints position by the Council. As stated elsewhere, the Letter is provided directly to the Leader of the Council, the Chairman of the Resources and Services Overview and Scrutiny Committee and to the Chief Executive. Management Team then considers the content of the Annual Letter and the Council, the Ombudsman and (in time) OFLOG will publish the data online.

However, given the role of this Committee it was a natural extension from the existing practice to provide the Committee with the Annual Letter and facilitate it to consider the complaints position at the Council. For that reason, the previous practice, whereby the Annual Letter had not been reported to the Committee, was discounted.

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

The consideration of complaints and the lessons learned from those complaints can be said to support the 2024-28 Corporate Plan Theme of ‘Pride in our area and services to residents’ as well as the overarching commitment to ‘Listening to and delivering for our residents and businesses’.

### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

The requirements of the Local Government Act 1999 and the related Best Value Statutory Guidance are set out above in the Reasons for Recommendations section.

### **FINANCE AND OTHER RESOURCE IMPLICATIONS**

There are no direct financial implications arising from this report.

### **USE OF RESOURCES AND VALUE FOR MONEY**

The following are submitted in respect of the indicated use of resources and value for money indicators:

<p>A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;</p>	<p>The careful consideration of complaints received, and particularly lessons resulting from external assessment/investigation by the Ombudsman rightly must influence resource allocation to ensure appropriate steps are taken to deliver on agreed recommendations with the Ombudsman.</p>
<p>B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and</p>	<p>It is important that the powers and duties of the Council are delivered in a way that respects the obligations that come with those powers and duties. Learning the lessons from complaints can inform this position and thereby reduce the risk of not complying with those obligations to service users. The proposal also accords with the Audit Committee’s terms of reference.</p>

C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	This ethos is central to the Best Value duty of the Council and considering the information available about complaints submitted to the Ombudsman is thereby an important part of complying with that ethos.
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**MILESTONES AND DELIVERY**

On the basis that the Committee agrees that there is value in receiving the LGSCO Annual Letter, the first appropriate meeting of the Committee following receipt of the Letter will receive it and an update on the position each year.

**ASSOCIATED RISKS AND MITIGATION**

In respect of this report, as this is in public, there will need to be caution applied to avoid identifying the individual details of complainants. The placing into the public domain of personal data about complainants should dissuade others from seeing to address service concerns and the Council is mindful that placing personal details into the public arena could cause distress to those individuals. As such, officers and Member of the Committee will seek to avoid such disclosure.

**OUTCOME OF CONSULTATION AND ENGAGEMENT**

Ward Councillors have not been consulted on matters affecting individual complaints.

**EQUALITIES**

In line with the Public Sector Equality Duty, the Council has, in the preparation of this given due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex, sexual orientation. The proposals in this report do not impact on the protected characteristics.

**SOCIAL VALUE CONSIDERATIONS**

There are no direct social value considerations arising from this report.

**IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030**

There are no direct Net Carbon Zero implications arising from this report.

**OTHER RELEVANT IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

<b>Crime and Disorder</b>	There are no direct Crime and Disorder implications arising from this report.
<b>Health Inequalities</b>	There are no direct Health Inequalities implications arising from this report.
<b>Area or Ward affected</b>	All Wards

**PART 3 – SUPPORTING INFORMATION**

## BACKGROUND

At Appendix A to this report is the Annual Letters from the LGSCO 2024; which covers the financial year 2023/24. From this letter, and by comparison with the same letters received in 2021, 2022 and 2023, the following comparison has been produced:

Decisions of the Ombudsman in the years concerned:

	2020/2021	2021/2022	2022/23	2023/24
<b>Complaints Upheld</b>	0	2	2	4 <sup>1</sup>
<b>Compliance with Ombudsman recommendations</b>	1	2	2	1
<b>Satisfactory Remedy provided by the organisation</b>	0	0	0	0
<b>Not upheld</b>	1	3	1	2
<b>Not investigated by the Ombudsman</b>	7	12	10	8
<b>Referred back to the Council as not progressed through its own procedure</b>	6	11	12	13 <sup>2</sup>

<sup>1</sup> Please note that the classification used is at odds with the Ombudsman's own 'Final decisions' in two of the cases.

<sup>2</sup> In 2024/25 that now includes classifications of 'advice given', 'referred back or local resolution' and 'Incomplete/Invalid'

Some caution needs to be given to the Ombudsman Complaint decision records for 2020/21 as, between March 2020 and June 2020, the Ombudsman temporarily stopped accepting new cases.

In addition to the straight forward reporting of the numbers and outcomes of complaints to the Ombudsman, their Annual Letter to the Council for 2023/24 included the following statement as to the timeliness of responses to its enquiries:

*"During the year, we made enquiries of your Council in five complaints. In four cases the responses were late. Concerningly, in one case we were required to remind the Council of our power to issue a witness summons before we received the information we had requested.*

*I ask that you take action to improve the timeliness of responses to our enquiries. It is important we are provided with the information we have asked for promptly, and that, where you encounter delays, you keep us informed. If there is any support my office can provide to help improve the situation, please do let me know."*

This issue of timeliness of responses is a matter that has been referenced by the Chief Executive to all Members of Management Team with a view to resolving the issues referenced above.

Thankfully, overall numbers of upheld complaints referred to the Ombudsman about this Council's delivery of services remains relatively low. Further details of those upheld

complaints are below. Some pointers just from those complaints are:

- **Be aware of reasonable timeframes for delivering services and find solutions to achieve these.**
- **If opportunities to review service delivery present themselves we should take them.**
- **Where we have a policy we should follow it.**
- **Keep records of decisions taken.**
- **Be thorough, whether that is matching payments to applications or considering all the various threads of a service requests.**
- **Do not stray from an impartial consideration of the matter you are dealing with.**
- **When there is a complaint, make sure we keep to timescales for responding, update the complainant if delays are likely and respond to all points raised.**

From the above upheld complaints by the Ombudsman since 2020/21, a summary of the service areas involved, reporting of the findings and of the cases is set out below.

Service Area	Reported to Cabinet/Council on	Classification of case by the Ombudsman and a summary of the case
Planning & Development	Not applicable on the basis of the Final decision of the Ombudsman as referenced	<p><u>Maladministration but no injustice to the complainant</u>            This complaint concerns a disputed use of land for equestrian purposes between the owner of that land and the neighbour (the complainant). On the land in question there was a retrospective application for retention and relocation of stables and the erection of a tack room. An enforcement case brought by the neighbour had been opened and, subsequently, closed. However, the letter to the complainant was issued in the name of someone who was no longer employed by the Council. In view of this, the case was re-opened.</p> <p>The Ombudsman’s decision includes the following under the title ‘Final decision “I have completed my investigation on the basis there was no fault in the Council’s actions.”</p> <p>This decision is at odds with the classification now of the complaint by the Ombudsman.</p>
Planning & Development	Council on 19 March 2024	<p><u>Maladministration and injustice to the complainant</u>            The complaint concerned the way the Council had handled a planning enforcement and anti-social behaviour report from a member of the public. The member of the public had reported to the Council alleged breaches of planning control (and anti-social behaviour) which they said had meant they could not use and enjoy their own property in the area</p>

		<p>concerned. In this case, the Council had received and acted on an initial report of planning breaches (and anti-social behaviour). This had included meeting with the individual concerned. A further communication from the individual was then not directly responded to by the Council in a timely way. The Council had though, across that time, undertaken extensive works to establish the degree of the planning breach and to inform action on the reports received. Interaction with the landowner in respect of matters at the site concerned had also been undertaken to address issues raised by the member of the public. The non-response to the second communication referenced above was, the Ombudsman had concluded, maladministration. The Ombudsman had been satisfied that the member of the public concerned had suffered avoidable frustration and uncertainty during the period to date. The planning enforcement case was still open.</p>
<p>Planning &amp; Development</p>	<p>Council on 28 November 2023</p>	<p><u>Maladministration and injustice to the complainant</u>  The complaint concerned the way the Council handled a planning application for the change of use of land near the complainant's home. The Ombudsman's conclusion on this point was that there was no fault in the Council's consideration of the change of use application. However, the Ombudsman did find fault in the failure to include a specific condition limiting activities around that new use of the site.</p>
<p>Benefits &amp; Tax</p>	<p>Not applicable on the basis of the Final decision of the Ombudsman as referenced</p>	<p><u>Maladministration and injustice to the complainant (but remedied by the Council during the complaint process)</u>  The complainant says that the Council sent them a Council tax bill in August 2022 that was backdated to 2018. She says that they had applied for Council tax support in 2019 but had not received a reply <u>(it had been refused due to the complainant's savings exceeding the limit)</u>. The Council says that annual bills were issued every year and that no payment had been made since October 2020. The Council says that a hold was placed on enforcement action whilst a repayment plan was agreed. The Ombudsman would expect a Council taxpayer to set money aside in the absence of a Council tax bill. Any dispute about liability for Council tax or a discount is a matter for the Valuation Tribunal. In addition, complaints concerning council tax billing in 2020 and 2021 was out of time as the complainant could reasonably have made one within 12 months. The Council's agreement to suspend recovery and agree a payment plan was deemed a suitable remedy to the complaint.  The Ombudsman's decision includes the following under the title 'Final decision "We will not investigate</p>

		<p>[this] complaint because the matter has been remedied.”</p> <p>This decision is at odds with the classification now of the complaint by the Ombudsman.</p>
Housing	4 November 2022	<p><u>Maladministration and injustice to the complainant:</u></p> <p>The Ombudsman considered that the medical circumstances associated with an application for housing should have been reviewed in response to a representation received. The representations were made in June 2019. While the case was not subject to a full review, with a call for fresh evidence made, the existing position was re-examined and an offer of support to the complainant was made. The Ombudsman was of the view that the Council knew, or could reasonably conclude, that the needs of the household had increased since the last set of medical assessments had taken place. On that basis, a full review and call for fresh assessments should have been made. In 2017, the Council had made an offer of accommodation to the complainant and this was declined following advice received by the complainant from the County Council’s Occupational Therapists. The medical needs indicated that a single storey property was required.</p> <p>The Ombudsman did not find that the review of the case in June 2019 would have affected the complainant’s opportunity to be rehoused by the Council. There were also other elements of the complaint around housing that the Ombudsman did not uphold.</p>
Housing	4 November 2022	<p><u>Maladministration and injustice to the complainant:</u></p> <p>The investigation identified that the Council had adjusted the effective date of the application for housing from September 2018 to April 2019 and had not notified the applicant of the adjustment. There was also a delay of five months in notifying the applicant of a request for additional medical information and an occupational therapist assessment of the applicant’s accommodation at the time. The medical panel then did not consider the evidence of the applicant until June 2021. While the pandemic contributed to some of the delay, in referencing the case to the medical panel, it was not the only factor. The assessment of the medical panel was backdated to April 2019. Prior to submitting the complaint to the Ombudsman, the Council had considered the circumstances. The Council had, as part of its processes, apologised and offered the complainant £200 to recognise the time and trouble they had been</p>



		<p>put to in making the complaint and for any distress it caused. The Ombudsman considered that this Council offer remedied the injustice caused.</p> <p>The Ombudsman did not find that the delays incurred in this case affected the applicant's opportunity to be rehoused by the Council.</p>
Planning & Development	13 July 2021	<p><u>Maladministration but no injustice to the complainant:</u> The complaint set out alleged impropriety in the process leading to approval of the application. The Ombudsman considered these and did not uphold them. The Ombudsman did though identify an issue with notifications to those abutting or adjoining the site that was subject to the planning application concerned. While those neighbours were correctly notified, a further two properties were recognised by the Council's Planning Officer as relevant and notification letters had not been sent to them. The conclusion of the Ombudsman was that these two properties should have been sent notification letters.</p>
Planning & Development	13 July 2021	<p><u>Maladministration and injustice to the complainant:</u> The planning application was for prior approval for a change of use of a barn on land adjacent to the complainant's home and business. In this case, the prior approval application was received and, a few days later, the relevant payment for it was received. However, due to a discrepancy in address detail given on the application form and with the payment, the link was not made between the two within the eight weeks permitted to determine such an application. The failure in the processing of the prior approval application meant that the complainant was not notified of it and was denied the opportunity to make representations on it. This amounted to injustice. The Council had apologised for the error and had offered the sum of £100 in recognition of the error. The Ombudsman considered that the sum payable to the complainant should be £500 in this case.</p>
Planning & Development	15 September 2020	<p><u>Maladministration but no injustice to the complainant:</u> The complaint concerned fault with the Council's decision not to take enforcement action against unauthorised development at a neighbouring property as well as its handling of enforcement matters at that property. There was fault by the Council because the planning enforcement officer acted partially towards the owner of the neighbouring property. However, the identified fault did not cause significant injustice to the complainant</p>
Planning & Development	15 September 2020	<p><u>Maladministration but no injustice to the complainant:</u> The complaint concerned fault with the Council's decision not to take enforcement action against</p>

		unauthorised development at a neighbouring property as well as its handling of enforcement matters at that property. There was fault by the Council because the planning enforcement officer acted partially towards the owner of the neighbouring property. However, the identified fault did not cause significant injustice to the complainant
Planning & Development	15 September 2020	<u>Maladministration but no injustice to the complainant:</u> The complaint concerned fault with the Council's decision not to take enforcement action against unauthorised development at a neighbouring property as well as its handling of enforcement matters at that property. There was fault by the Council because the planning enforcement officer acted partially towards the owner of the neighbouring property. However, the identified fault did not cause significant injustice to the complainant
Planning & Development	15 September 2020	<u>Maladministration and injustice to the complainant:</u> The complaint concerned the stated failure to resolve complaints to the service about a neighbouring development, causing a loss of enjoyment and stress. The Ombudsman found the Council failed to follow its planning enforcement policy and this amounted to injustice. An apology has been given to the complainant together with a modest payment for distress/uncertainty and also for the time and trouble in pursuing the complaint. Modest payments (as determined by the Ombudsman) are in the range £100-£300.

In addition to the matters referenced in Annual Letters from the LGSCO, and as set out above, there is an intention to review the Council's corporate complaints procedure, following a similar review of the Council's procedure for complaints made in respect of the Council's role as landlord (the Housing Complaints Procedure). The LGSCO has recently adopted a new Complaint Handling Code and this broadly mirrors the Code used by the Housing Ombudsman. The Council's complaints procedure will be reviewed having regard to the LGSCO's Complaint Handling Code and there may be a consequential need to review the Council's Housing Complaints Procedure too.

#### **PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.**

None.

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

None. However, the Annual Letters from the LGSCO to this Council can be viewed on the Council's website here:

<https://www.tendringdc.gov.uk/content/transparency-making-public-information-available-to-everyone>

#### **APPENDICES**

**Appendix A – Local Government and Social Care Ombudsman Letter 2024.**

**REPORT CONTACT OFFICER(S)**

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