



## **CORPORATE GOVERNANCE COMMITTEE – 1 NOVEMBER 2019**

### **JOINT REPORT OF THE CHIEF EXECUTIVE AND THE DIRECTOR OF CORPORATE RESOURCES**

#### **LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN ANNUAL REVIEW 2018/19 AND UPDATE ON COMPLAINTS AND FREEDOM OF INFORMATION REQUESTS**

##### **Purpose of Report**

1. The purpose of this report is threefold:
  - To inform Members of the Local Government and Social Care Ombudsman (LGO) annual review letter for the Authority for 2018/19;
  - Provide Members with an update on improvements to the Local Authority's Complaints procedures and effective complaints handling;
  - Provide Members with an update on handling of Freedom of Information Act (FOI) and Environmental Information Regulations (EIR).

##### **Background**

2. The Customer Services Strategy includes a principle that states: "*We will encourage comments and complaints to support a culture of continuous improvement*" and also refers to the need to "*put the customer at the heart of services, designing and planning all services around their needs*"
3. The role of the Corporate Governance Committee includes the promotion and maintenance of high standards within the Authority in relation to the operation of the County Council's Code of Governance. It also has within its terms of reference the making of payments or providing other benefits in cases of maladministration under Section 92 of the Local Government Act 2000.
4. At its meeting on 29 November 2009 this Committee, in line with its role and responsibilities, and those of the then existing Standards Committee, agreed that reports on complaints handling should be submitted on an annual basis for members consideration following receipt of the Ombudsman's annual review letter. This report also discharges the Monitoring Officer's statutory duty under s.5(2) of the Local Government and Housing Act 1989 to report where maladministration has been identified.

5. The LGO produces an annual review letter for each Authority. This typically contains complaint statistics as well as more general updates from the Ombudsman as to any emerging themes. This letter is included as Appendix A.
6. In recent years, the Ombudsman has also issued an annual review of local government complaints each year. A copy of the 2018-19 report is included as Appendix B.
7. High level complaints data for each local authority has also been published by the Ombudsman and in keeping with previous years, copies of this data annexe can be found in member group rooms.
8. Historically there has not been any reporting to members on FOI performance. As this area is now managed centrally alongside complaints, it was considered appropriate that an annual update be provided to the Corporate Governance Committee outlining how the County Council is discharging its obligations under this legislation.

**Part 1: Ombudsman's Annual Review letter for Leicestershire County Council**

9. A total of 82 complaints and enquiries were received by the Ombudsman during the year which marks a 19% increase on last year (69).
10. To add context to the above figure, population data has been obtained which shows that Leicestershire receives 11.7 referrals to the Ombudsman per 100,000 residents. As shown in Appendix C, this ranks the County Council as seventh out of 16 authorities classed as statistical neighbours.
11. The Ombudsman made decisions on 79 complaints during the year and carried out 16 detailed investigations. This equates to 20% of the complaints determined. The numbers investigated in detail by the Ombudsman increased this year by eight.
12. The remaining 63 cases were dealt with at the assessment stage, which is a lighter touch review of the Council's actions. This includes complaints that were considered premature for the Ombudsman and those which lay outside of their jurisdiction.
13. Of the 16 complaints subject to detailed investigation, eight (50%) had a finding of some fault and were consequently upheld. This is an identical percentage to last year.
14. The average percentage of complaints upheld for all local authorities was 58%. Leicestershire also compares well with statistical neighbours, ranked joint first in lowest uphold rates and against an average of 63% for our statistical neighbours.

15. Where a finding of fault with injustice is made, the Ombudsman may suggest a course of action to the Council which, if implemented, would lead the Ombudsman to dis-continue their investigation. The Council is not obligated to carry out this recommendation but failure to do so may lead to a Public Report being issued.
16. Such settlements may involve an element of compensation for a complainant where there has been a failure to provide a service, together with a payment to recognise the complainant's time and trouble in having to pursue the complaint.
17. On some occasions, the Council may have already taken remedial action which the Ombudsman considers appropriate to resolve the issue. In such cases, the Ombudsman will still record the case as Maladministration but with an additional tag to reflect that the situation had been adequately remedied before LGO involvement. There was one such instance in 2018-19.
18. During 2018/19, the County Council agreed to the Ombudsman's recommendations in all cases where these were made. One response was considered to be submitted late by the Ombudsman.
19. The detail for each of the upheld complaints appears below:

- **Case 1** was an adult social care complaint regarding lack of care and support to a vulnerable adult.

The Ombudsman found that the County Council acted correctly to safeguard the individual and that it took proper account of his capacity to make decisions, including who to share information with.

However, the County Council delayed confirming the costs of temporary accommodation and may not have taken account of all relevant information during the financial assessment.

In response the County Council agreed to issue an apology, undertake a fresh financial assessment and update local procedures.

- **Case 2** was another adult social care complaint regarding the County Council's decision not to continue to fund an expensive care provision.

Whilst the Ombudsman did not criticise the decision, it found that the County Council took too long in responding to and dealing with the concerns and that it did not properly explain why it decided not to make an exception for the individual.

The County Council agreed to apologise for the delay and lack of clear explanation and to remind staff of the importance of clearly explaining the rationale of decisions.

- **Case 3** related to adult social care and the provision of home care.

The Ombudsman found a number of failings with the quality of care and support plans; standard and consistency of home care provision; advice and information around the different options for commissioning care and consideration of safeguarding matters.

The County Council agreed to a financial payment of £550 in recognition of the faults as well as considering actions required to prevent such issues occurring in the future.

- **Case 4** related to an adult social care Shared Lives placement and the lack of clarity on what costs needed to be paid.

The Ombudsman found fault because, even though the license agreement tells clients they may have to pay towards the cost of 'looking after me', it does not explain how this will be calculated or what impact this may have on how much money they may be left with.

The County Council accepted the findings and agreed to review the Shared Lives licence agreement and produce an Easy Read version. Reminders were also issued to staff of the importance in checking understanding.

- **Case 5** related to school admissions and incorrect information given regarding the need to inform of a change of address. This resulted in the individual missing out on a school place.

The Ombudsman found fault in that the advice given was inconsistent with the County Council's policy. The County Council agreed to exercise its discretion to give the child a place at the school and to reimburse the cost of an alternative school uniform purchased (£50)

- **Case 6** related to children's social care and the way it considered referrals made by a family member citing concerns for the welfare of a child in a school.

Whilst much of the complaint was outside of the Ombudsman's jurisdiction or not upheld, the Ombudsman did find fault that the County Council's safeguarding officers had failed to record details of monitoring visits carried out to the School

The County Council agreed to issue an apology, remind officers of the importance of contemporaneous record-keeping and review how it dealt with Ofsted notifications.

- **Case 7** related to several services that were providing services to a blind service-user. This included, Concessionary Travel and Adult Social Care.

The complaint centred around the County Council sending material in standard post format and not taking account of her circumstances when corresponding with her.

The County Council had already accepted fault within their own complaints handling and had proposed a number of actions. This included a dedicated review worker for blind / partially sighted service users and reviewing how we record and highlight special characteristics within our line of business systems.

The Ombudsman found the County Council had taken the appropriate actions in response and no further remedies were necessary.

- **Case 8** related to Child Protection and a complaint that the County Council had not acted appropriately in response to a family member's referrals and failed to work in partnership with her.

The Ombudsman found fault with the quality of action plans created within Child Protection procedures, a failure to properly consider evidence that the family member presented and lack of appropriate monitoring of safety plans created.

The County Council accepted the failings and agreed to review procedures, strengthen management oversight of such cases, apologise to the complainant and make a payment of £500 in recognition of the faults.

20. The Ombudsman produced no public reports against the County Council during 2018/19. None have been issued within the last 5 years.
21. Financial remedies determined by the Ombudsman amounted to £1,100. This is an increase of £1,000 on last year but remains at a comparatively low level considering the number of complaints considered by the Ombudsman.
22. The County Council's willingness to agree settlement proposals such as those outlined above also help to maintain and enhance the Authority's reputation with the Ombudsman.
23. All the above financial settlements were approved by the Director of Law and Governance, in accordance with powers delegated by this Committee at its meeting on 26 November 2012.
24. The Local Government and Social Care Ombudsman has released a new interactive map of Council's performance. This is available through a link within Appendix A
25. The intention of this tool is to place a focus on the Council's compliance with investigations and to easily access information around other Council's performance

## **Part 2: Update on Complaints Handling**

26. There have been a number of positive developments with the County Council's complaints handling arrangements over the last 12 months. These include:
- Following last year's successful pilot, quarterly complaints masterclass training is now provided, aimed at all managers who are required to investigate complaints.
  - Further development of our case management system including expanding its use to incorporate tracking of MP enquiries and Ofsted notifications within the Children and Family Services department.
  - A review of our independent investigator pool following some concerns with the quality of reports. This has led to a more managed service which has delivered clear benefits in terms of timeliness and quality whilst not significantly increasing costs.
27. Reports are also produced for the Scrutiny Commission which monitors and scrutinises the Authority's performance in complaint handling through a Corporate Complaints and Compliments Annual Report. This report sets out an analysis of all complaints recorded by type, department and the response times for dealing with these.
28. The 2018/19 annual report was presented to the Commission for consideration at its meeting on 12 June 2019 and this highlighted the following main themes:
- The number of corporate complaints (at 324) had increased by 20% compared to the previous year; the biggest factor in this rise was SEN (Special Educational Needs) related complaints.
  - Of the complaints resolved within the year, 71% received a response within 10 working days and 91% received a response within 20 working days. This represents an improvement on 2017-18 and continues to meet our targets of 60% and 90% respectively. Set against the challenging financial climate this continues to demonstrate commitment to complaints handling.
29. The Ombudsman's annual review letter is received after the corporate complaints annual report is presented to the Scrutiny Commission. Therefore, Ombudsman data presented in the corporate complaints annual report is taken from the County Council's records and may not match the official figures published by the Ombudsman and referred to in this report.

### **Part 3: Update on Freedom of Information Act (FOIA) handling**

#### **Summary of the legislation and principal functions of the Corporate FOI service**

30. FOIA gives anyone the right to ask a public authority for information; for the information to be released to them, and / or to be told why the information cannot be provided. The Act places a duty on Local Authorities to respond within 20 working days (in most circumstances). Detail of the other most relevant legislation is provided within Appendix D of this report.

#### **Procedures for ensuring compliance with the legislation**

31. The principal functions of the FOI team are to:
- Acknowledge receipt of the request and ensure the progress of the request is tracked to completion;
  - Undertake any redactions necessary and distribute responses to requests. This includes publication through our disclosure log, unless there are clear reasons not to do so;
  - Consider the application of any exemptions or exceptions and give a clear explanation for any information withheld and the reasons why the balance of public interest is against disclosure;
  - Provide advice and assistance to members of the public and others wishing to use the legislation;
  - Provide support and advice to staff responding to requests;
  - Manage the FOI / EIR appeals or complaints procedures including liaison with the Information Commissioner.

#### **Annual Performance April 2018 – March 2019**

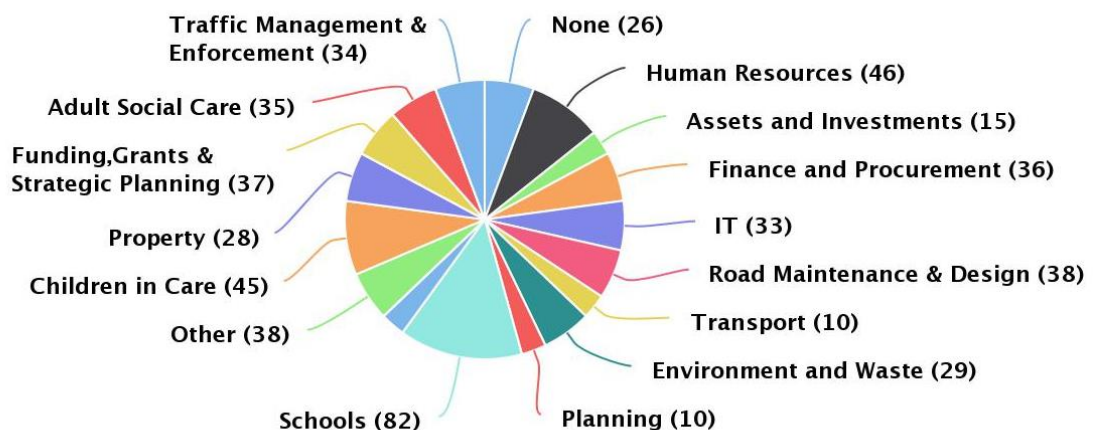
##### Analysis of requests received April 2018 – March 2019

32. Between 1 April 2018 and 31 March 2019, 1,055 requests were received compared to 1,011 in the previous year. This represents a 4% increase.
33. 864 (82%) of the requests were responded to within 20 working days (Information Commissioner's Office (ICO) Guidance suggests a target of 90% should be set by Local Authorities in this area).
34. Compliance with statutory timescales in 2018-19 was impacted by resourcing difficulties experienced within Children and Family Services (CFS) during the first two quarters. Significant support work has been carried out with the department to help make improvements and more recent data shows CFS performance is now broadly in line with the performance of all other departments.

## Quarter 1 and Quarter 2 performance 2019-2020

### Analysis of requests received April 2019 – September 2019

35. During this reporting period, 526 requests were received. This compares to 522 during the equivalent reporting period in 2018-19.
36. There is also little variance in volumes received during Q1 and Q2 (260 v 269).
37. The vast majority of new requests (486) were received by e-mail. The FOI mailbox is heavily promoted on corporate e-mail signatures and, as all valid FOIA requests need to be made in writing, it is unsurprising this is the predominant channel.
38. There does remain an opportunity to promote our online form further. Whilst efficiency gains are limited, better promotion of the web-form would ensure that applicants are offered the chance to look at our disclosure log first and may ultimately reduce new requests.
39. Requests were received across a wide range of subject matters as depicted below with the top three areas being:
- Schools 82
  - Human Resources<sup>1</sup> 46
  - Children in Care 45
40. The principal change from the previous six months is the increased requests regarding Children in Care which replaced Roads in the top three segments.



<sup>1</sup> Typically, expenses, structure charts, staffing levels



41. Where identifiable, data is now available on applicants seeking information and the following table sets out the top three requestors during this period

<b>Applicant Type</b>	<b>Number of requests</b>
Member of the public	307
Business	83
Media	61

42. All requests by the media are automatically flagged and approval is sought by our Media team prior to any publication.

### **Responses provided**

#### Analysis of requests responded to April 2019 – September 2019

43. 525 requests were closed during the above reporting period and this can be further broken down into:
- 470 FOIA requests  
55 EIR requests
44. Information was provided in full for 338 requests (64%) with a further 102 instances (19%) where partial information was provided with part of the request refused as either “not held” or using a valid exemption. 42 requests were refused in full.
45. The most common exemptions used during this reporting period were:
- S.21 (FOIA) Information available through other means 56
  - S.12 (FOIA) Cost Exceeds 18 hours to provide 54
  - S.43 (FOIA) Prejudicial to Commercial Interests 19
46. Since 1 April 2019 the FOI team have also been recording and monitoring costs of handling FOIA requests. The total estimated time spent was 1,946 hours which represents an average of 3.41 hours per request. It is difficult to accurately cost the overall handling as requests generally require input from staff at different grades (including senior sign off)
47. Four requests were recorded as having over 18 hours effort. This raises questions that the S.12 cost exceeds exemption should have been considered and these cases will be the subject of detailed analysis to explore any wider learning.

### **Compliance with statutory timescales**

48. 81% of requests were responded to within 20 working days. This remains under the Information Commissioner Office target of 90%. The graphic below charts the respective performance by department.

**Response times in working days**

<b>Department</b>	<b>&lt;5</b>	<b>6-10</b>	<b>11-15</b>	<b>16-20</b>	<b>&gt;20</b>
Adults and &Communities	15 (34%)	12 (27%)	4 (9%)	4 (9%)	9 (20%)
Chief Executive's	7 (17%)	7 (17%)	8 (20%)	8 (20%)	11 (27%)
Children and Family Services	24 (15%)	17 (11%)	36 (23%)	47 (30%)	31(20%)
Corporate Resources	32 (25%)	18 (14%)	20 (16%)	39 (30%)	20 (16%)
Environment and Transport	18 (18%)	17 (17%)	25 (25%)	29 (28%)	13 (13%)
Public Health	1 (8%)	4 (33%)	3 (25%)	4 (33%)	N/A
MULTI	3 (7%)	5 (11%)	7 (15%)	14 (30%)	17 (37%)
<b>ALL</b>	<b>101 (19%)</b>	<b>80 (15%)</b>	<b>103 (19%)</b>	<b>145 (27%)</b>	<b>101(9%)</b>

49. In 2018-19, the majority of FOIs were responded to within the 16-20 day period with only 29% being responded to within the first 10 days. Between April to September 2019 this has risen to 34% and this is helping reduce case-loads and increasing overall compliance rates.

**Internal reviews and Information Commissioner enquiries**

50. There have been six internal reviews carried out between April to September 2019. Working on the basis that internal reviews can only be requested where information has been partially or fully refused, this equates to a percentage of 4%.
51. Three of the internal reviews were upheld on appeal (50%) with further information than disclosed.
52. In addition, the ICO has made initial enquiries of the County Council on three requests that have been concluded. At the time of writing, one of these has been investigated and the final decision is awaited, the remaining two cases are awaiting decisions on whether the ICO will formally investigate.
53. No final decisions have been made by the Commissioner during this period.

**Performance improvement**

54. There is still room for collective improvement in raising the compliance rate during Q3 and Q4.

55. It should be noted that public authorities may exceed the 20 working day deadline if information falls within the scope of a qualified exemption and more time is required to consider the public interest test. Such extensions should generally not exceed an additional 20 working days.
56. Where this extension is requested by departments, this will not be recorded as a late request if outside of the 20 working days. No such valid extension requests were received during these first two quarters suggesting fresh guidance should be provided to departmental teams around this area.
57. Dynamic reporting has been developed and is now available to departments to help support proactive monitoring of their performance.
58. During 2019-20 the FOI team will be running training sessions on the most common exemptions used. Specifically, this will be around S.43 (Commercial Interests) and S.12 (Cost Exceeds reasonable limits) These workshops will help ensure a consistency of approach.

### **Recommendations**

59. The Committee is recommended to:
  - (a) note the contents of this report;
  - (b) provide comment and feedback on the Ombudsman's annual review letter and the complaints and FOI handling arrangements and improvements as outlined.

### **Equality and Human Rights Implications**

An Equality and Human Rights Impact Assessment was completed in 2014. There have been no significant changes to the complaints handling process since this time. Neither have any been identified regarding handing of FOI requests.

### **Background Papers**

Report to the Scrutiny Commission dated 12 June 2019 'Corporate Complaints and Compliments Annual Report 2018/19'

### **Circulation under the Local Issues Alert Procedures**

None.

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**List of Appendices**

Appendix A: The Local Government and Social Care Ombudsman's Annual Review Letter dated 24 July 2019 – Leicestershire County Council – for the year ended 31 March 2019

Appendix B: The Local Government and Social Care Ombudsman review of local government complaints 2018-19

Appendix C: Benchmarking data for statistically comparable neighbours as defined by CIPFA

Appendix D: Summary of legislation for FOI and EIR