



CORPORATE GOVERNANCE COMMITTEE – 25 NOVEMBER 2020

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

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN ANNUAL REVIEW 2019/20 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 2019/20;
 - 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 role of the Corporate Governance Committee includes the promotion and maintenance of high standards within the Authority in relation to the operation of the 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.
3. 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.
4. 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.

5. In recent years, the Ombudsman has also issued an annual review of local government complaints each year. A copy of the 2019-20 report is included as Appendix B.
6. In 2019 it was agreed that an annual update is to be provided to the Corporate Governance Committee outlining how the Council is discharging its obligations under the FOI and EIR legislation.

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

7. A total of 75 Complaints and Enquiries were received by the Ombudsman during the year which marks a small (8%) decrease on last year (82).
8. To add context to the above figure, population data has been obtained which shows that Leicestershire receives 10.6 referrals to the Ombudsman per 100,000 residents. As shown in Appendix C, this ranks Leicestershire as the fourth best of 16 authorities classed as statistical neighbours.
9. The Ombudsman made decisions on 72 complaints during the year and carried out 23 detailed investigations. This equates to 32% of the complaints determined. The numbers investigated in detail by the Ombudsman increased this year by seven.
10. The remaining 49 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.
11. Of the 23 complaints subject to detailed investigation, eighteen (78%) had a finding of some fault and were consequently upheld. This is a significant increase from last year.
12. The average percentage of complaints upheld for all County Councils was 66%. Leicestershire's performance of 78% ranks us 12th out of 16 for statistical neighbours and places the Council in the lower quartile against an average of 71%.
13. 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 discontinue 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.

14. 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.
15. 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 were two such cases in 2019-20 representing 11% of the overall upheld number.
16. During 2019/20, the Council agreed to the Ombudsman's recommendations in all cases where these were made.
17. The detail for each of the 18 upheld complaints appears below. For ease these have been grouped by Council department.

Children and Family Services - Education

- **Case 1** related to Special Education Needs and specifically that the Council delayed issuing an Education Health Care Plan (EHCP) and failed to offer any alternative education for a child over a prolonged period.

The Ombudsman found a number of faults with the Council's actions. This included a failure to consult with schools, significant delay in adhering to EHCP timescales and a failure to take appropriate action when it knew a child was not in School.

The Council agreed to a financial payment of £4,250 in recognition of the missed education provision and a further £600 in time and trouble and distress payments.

The Council also agreed to review how it works with other education providers to ensure alternative provision when a child, for whatever reason, is not attending School and to act to improve adherence to EHCP timescales

- **Case 2** concerned the Council's failure to provide alternative education provision whilst a child was not attending school.

The Council had reflected on the learning from Case 1 and had proactively made an offer to pay £1,800 in recognition of the period of missed education and a further £300 in recognition of time and trouble.

The Council also committed to report back to the Ombudsman on the further work being undertaken to improve partnership working and to ensure timely mechanisms are in place to identify and put in place alternative education provision.

The Ombudsman accepted that this was a satisfactory resolution and ended his investigation.

- **Case 3** concerned a delay in consulting schools when a parent sought a change of placement and that therapy provision as specified within an EHCP was not being carried out.

The Ombudsman was critical of the four months the Council took to reach a decision on whether it would fund a placement. In the interim period the matter had progressed to the Special Educational Needs (SEN) Tribunal where the Council accepted the request for the residential placement.

Although that had resolved the placement, the Ombudsman asked the Council to make an additional payment of £400 in recognition of the time and trouble incurred through this process.

Although therapy provision had been subsequently put in place, the Council also agreed to make backdated payments amounting to £2,855 in recognition of the total missed provision

- **Case 4** was a SEN complaint that the Council left a young person with no post 16 education provision by failing to contact a College as promised.

The Council accepted that there was no record the Officer did contact the College as she had agreed and apologised for this. The Ombudsman considered this fault but with no injustice as the School had already decided not to admit the young person.

The Council offered to make a remedy payment of £100 in recognition of the raised uncertainty which the Ombudsman considered appropriate.

- **Case 5** that the Council failed to provide an education for her daughter for a six-month period and failed to carry out an EHCP assessment.

The Council had already refunded private tuition and transport costs that had been incurred (c. £6,000) but the Ombudsman found that this education was not provided in an appropriate setting and asked the Council to make further payments of £5,300 in recognition of the missed education and time and trouble pursuing the complaint.

- **Case 6** that the Council failed to provide support as outlined in the EHCP and failed to carry out timely amendments to the plan.

Both elements were upheld by the Ombudsman and the Council agreed to make a payment of £1,750 and apologise for the failings identified.

The Council provided a comprehensive overview of improvement work being undertaken and the Ombudsman was satisfied on this basis that wider improvements were already being progressed.

Children and Family Services – Social Care

- **Case 7** was a Child Protection complaint that the Council failed to engage appropriately with a parent and delayed dealing with his concerns.

This complaint had already been independently investigated where the Council accepted that service had fallen short of expected standards in a number of areas and apologised for this.

The Ombudsman agreed with the findings of the independent investigation but also highlighted further evidence of delays in responding to enquiries and complaints, inadequate record keeping and failure to progress certain agreed actions.

In response the Council agreed to issue a further formal apology, make a financial payment of £900, take steps to improve complaint handling and remind all officers of the importance of clear record keeping.

- **Case 8** was a joint investigation of the County Council and Leicestershire Partnership NHS Trust (LPT). This related to Child Protection and the management of a Fabricated Induced Illness (FII) case.

The Ombudsman was critical of an overall failure to follow statutory procedures and the joint working between the two organisations. This manifested in an unreasonable delay in reaching a decision to end Child Protection proceedings.

The Council and the Trust agreed to draw up a comprehensive action plan to improve how they respond to FII cases in the future.

In addition, an apology and £500 payment were made to the complainant together with the Council placing a factual clarification note on each of the children's files.

- **Case 9** related to adaptation work that was carried out on a shower room to support a disabled young person.

The Council had initially argued that the complaint lay with the Housing Authority who arranged the defective works and appeared to be resolving this directly with the complainant.

However, the Ombudsman found fault that the Council had failed to also consider its statutory responsibilities to provide support under S.17 to a Child in Need and carry out a re-assessment.

The Council accepted this finding and agreed to carry out a fresh assessment and take steps to remind all staff of the need to consider statutory duties under both the Children Act 1989 and Chronically Sick and Disabled Act 1970 when another authority has responsibility for work carried out after a Disabled Facilities Grant (DFG).

- **Case 10** that the Council delayed unreasonably in making child protection decisions. The Council had already accepted there was some delay although there were complicating factors caused by lack of engagement of with the family.

The Ombudsman asked the Council to make a small payment of £300 in recognition of this delay but did not criticise other aspects of the case management.

- **Case 11** about the way the Council treated a family member following investigation of an injury.

The Council had already apologised that it had relied on wrong information during enquiries. The Ombudsman considered this an appropriate response and did not investigate further.

Adults and Communities – Social Care

- **Case 12** that a care provider failed to take appropriate action following a fall by a resident which had resulted in a serious injury.

The Council's own safeguarding investigation had already substantiated that there was neglect by the home and an apology had been provided. The Council's Compliance team was already working with the provider to ensure improvements were made.

The Ombudsman asked the Council to make an additional payment to the family of £500 recognising the distress caused.

The Ombudsman also found that the Council had failed to identify and document an affordable placement. A further remedy payment of £250 and staff training was agreed.

- **Case 13** related to the quality and timeliness of home care provision.

The Council had already accepted some communication issues from the provider and had agreed at an early stage to write off the outstanding invoice of £144.51.

- **Case 14** primarily related to the quality of residential care received at a Council commissioned placement.

The Ombudsman found several areas of poor practice by the care provider and as the Commissioner, the Council is responsible for these failings. The Ombudsman was also critical of the quality of the Council's safeguarding investigation.

The Council agreed to write off 10% of the outstanding care bill (£1,580.11) and an additional distress payment of £500 in recognition of the above.

It also agreed to remind officers of the importance of ensuring signposting back to the Complaints team at closure of safeguarding investigations.

The Council also agreed to review the care records of all other placements at this care home to ensure others were not experiencing similar issues and to carry out a re-assessment of the subject to ensure their needs were being fully met

- **Case 15** was a joint adult and children social care complaint about the handling of disabled facilities grants for a family.

The Ombudsman found fault with the processes undertaken which directly led to unnecessary delay and distress. The Council agreed to make a payment of £500 and provide urgent clarity on the status for each of the respective DFG applications.

- **Case 16** related to the arrangement of home care. The Ombudsman found the Council at fault for failing to arrange this in a timely fashion which resulted in the family incurring un-necessary residential care costs.

The Council agreed to make a payment of £1,100 in recognition of the third party top up costs incurred.

Environment and Transport

- **Case 17** related to Highways. The complaint related to re-surfacing work carried out by Highways and an allegation that since that time the road in question suffers from excessive noise and vibration.

The Council had responded formally to this complaint but had not offered a site visit. Whilst the Ombudsman stopped short of asking the Council to undertake this, he was critical that the Council had not given a detailed enough explanation in its response. The Council agreed to apologise and provide this further detail.

- **Case 18** was a complaint regarding an incorrectly issued Penalty Notice. The Council had already accepted that the notice was incorrectly issued and written off the charge.

The Ombudsman did not investigate this further but recorded it as an upheld complaint already rectified by the Council.

SUMMARY

18. The Ombudsman produced no public reports against the Council during 2019/20. At the time of this report none have been issued within the last six years.
19. Financial remedies determined by the Ombudsman amounted to £30,129.62. This is a significant increase from last year (£1,100). The primary factor in this rise was SEN complaints.
20. All of 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.
21. The Chair of the Corporate Governance Committee was consulted and approved one of the above payments as it was more than the delegated £5,000 limit.
22. The Local Government and Social Care Ombudsman continues to promote an interactive map of the Council's performance. This is available through a link within Appendix A and allows for easy access and comparison of the data presented in this report with other authorities.

Part 2: Update on Complaints Handling

23. The Council has a statutory duty to produce an annual report on both children and adult social care complaints. These reports were presented to the respective Overview and Scrutiny Committees on 1 and 7 September 2020.
24. The Council also produces a Corporate Complaints Annual report which considers all other non-statutory complaints. This was presented to the Scrutiny Commission on 2 September 2020.
25. Collectively these reports highlighted the following key themes and performance:
 - There has been a 39% increase in all complaints recorded over the last three years with a total of 759 new complaints recorded in 2019/20.
 - The only type of complaint where there has been a reduction over the last 12 months is children's social care statutory complaints where 16 less complaints were received (-12%)
 - However, overall Children Social Care complaints did not reduce as instead more were considered under our Corporate Complaints procedure following the application of fresh guidance released by the LGO during the year. The relevance of this is that under the statutory procedure Local Authorities incur significant costs of commissioning independent

investigations. Whilst the County Council spent £65,000 in 2019/20 it is now starting to see a reduction in 2020/21.

- Despite the growth in demand, 83% of all stage 1 complaints were responded to within 20 working days. This was an improvement of 9% from 2018/19
 - Only nine complaints exceeded the policy maximum timescale of 65 working days.
 - There have been significant pressures on the SEN assessment service during 2019/20 and this has been reflected both in high levels of corporate complaints and adverse decisions made by the Ombudsman.
 - There was also a significant volume of complaints around SEN Transport caused by a delay to the summer planning and whilst the outcome of a judicial review was awaited.
 - An increase in complaints has also been seen about residential care provision and highlighted some improvements required in how the Council ensure the consistency and quality of safeguarding investigations.
26. In addition to the improvements driven by Ombudsman investigations, there are a number of examples during the year of systemic change driven by complaints intelligence. These include:
- ❖ The creation of a joint complaints handling process with District partners to improve collaborative working on Lightbulb complaints.
 - ❖ The issuing of improved guidance and fact sheets for parents attending Child Protection Conferences.
 - ❖ The introduction of new Practice Standards for all Childrens Social Care workers clearly setting out what should be expected of workers.
 - ❖ Significant training on the need to document and clearly record key conversations around charging for adult social care.
 - ❖ The investment of additional service manager capacity into areas seeing high complaint levels such as SEN and specific locality social care teams.
27. During the year the LGO also issued revised “Effective Complaints Handling Guidance” which the Council has reviewed and as a result implemented several changes to local procedures to ensure full compliance.

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

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

28. The 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) Procedures for ensuring compliance with the legislation

29. 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 2019 – March 2020

Analysis of requests received

30. Between 1 April 2019 and 31 March 2020, 983 requests were received compared to 1,055 in the previous year. This represents a 7% decrease.
31. 891 (88%) of the requests were responded to within 20 working days. This was a 6% improvement on 2018-19.
32. ICO Guidance suggests a target of 90% should be set by Local Authorities in this area.
33. Significant work has been undertaken to improve co-ordination of FOI handling and this saw a record 98% responded to within 20 working days during Q4.

Performance 2020-2021 as of 1 November 2020

Analysis of requests received

34. 512 requests have been recorded.
35. At the start of the pandemic and through the initial national lockdown period there was a distinct drop in FOI requests. This saw just 151 in Q1.
36. Since that point volumes have been steadily increasing including a number linked to COVID-19 data requests.
37. Requests were received across a wide range of subject matters with the top three areas being:
- Schools 47
 - Road Maintenance & Design 39
 - Adult Social Care 37
38. The principal change from 2018/19 is the increase in requests regarding Adult Social Care. The impact of COVID-19 is also a significant factor this year both in that increase and more broadly with 28 specific requests around COVID-19 planning and data.
39. Where identifiable, data is now available on applicants seeking information and the following table sets out the top three requestors during this period

Applicant Type	Number of requests
Member of the public	344
Business	121
Media	47

40. 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 between 1 April – 1 November 2020

41. 431 requests were closed during the above reporting period and this can be further broken down into:
- 402 FOIA requests
 - 29 EIR requests
42. Information was provided in full for 299 requests (69%) with a further 65 instances (15%) where partial information was provided with part of the

request refused as either “Not held” or using a valid exemption. 29 requests were refused in full.

43. The most common exemptions used during this reporting period were:

- S.12 (FOIA) Cost Exceeds 18 hours to provide 31
- S.43 (FOIA) Prejudicial to Commercial Interests 9
- S.21 (FOIA) Information available by other means 8

Compliance with statutory timescales as at 1 November 2020

44. 82% of requests were responded to within 20 working days. This remains under the Information Commissioner Office (ICO) target of 90%.

45. In April the ICO recognised the need for authorities to prioritise pandemic support and indicated that they would not look to penalise Councils for delayed responses to FOI requests.

The graphic below charts the respective performance by Department

Response times in working days

Department	<5	6-10	11-15	16-20	>20
A&C	3 (8%)	0 (0%)	2 (6%)	0 (0%)	30 (83%)
CEX	14 (40%)	3 (9%)	9 (26%)	6 (17%)	3 (9%)
CFS	29 (32%)	21 (23%)	27 (30%)	12 (13%)	2 (2%)
CR	32 (28%)	20 (18%)	19 (17%)	16 (14%)	27 (24%)
E&T	29 (31%)	15 (16%)	25 (27%)	23 (24%)	2 (2%)
PH	1 (5%)	1 (5%)	8 (42%)	5 (26%)	4 (21%)
MULTI	8 (19%)	6 (14%)	8 (19%)	11 (26%)	9 (21%)
ALL	116 (27%)	66 (15%)	98 (23%)	74(17%)	77 (18%)

46. During the year there have been specific pressures on Adults and Communities in responding to FOI requests. Work has been done to assist the Department and a gradual improvement is being seen through Quarter 3. All other departments continue to perform well in complying with statutory timescales.

Internal reviews and Information Commissioner enquiries

47. There have been three internal reviews requested between April to November 2020. This equates to a percentage of 0.6%.

48. One of the Internal reviews was upheld on appeal, one remains open at the time of this report.

49. There have been no ICO enquiries between April to November 2020 and no adverse decision notices issued

Recommendations

50. 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 handling of FOI requests.

Background Papers

Report to the Scrutiny Commission dated 2 September 2020 'Corporate Complaints and Compliments Annual Report 2019/20'
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=137&MId=6177&Ver=4>

Report to Adults and Communities Scrutiny and Overview Committee dated 7 September 2020 'Annual Adult Social Care Complaints and Compliments Report'
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=1040&MId=6170&Ver=4>

Report to Children and Families Scrutiny and Overview Committee dated 1 September 2020 'Children's Social Care Statutory Complaints and Compliments Annual Report 2019/20'
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=1043&MId=6182&Ver=4>

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 22 July 2020 – Leicestershire County Council – for the year ended 31 March 2020

Appendix B: The Local Government and Social Care Ombudsman review of local government complaints 2019-20

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