



## **CORPORATE GOVERNANCE COMMITTEE – 5 NOVEMBER 2021**

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

#### **LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN ANNUAL REVIEW 2020/21 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 2020/21;
  - 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 LGO'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 LGO as to any emerging themes. This letter is included as Appendix A.

5. In recent years, the LGO has also issued an annual review of local government complaints each year. A copy of the 2020-21 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: LGO's Annual Review Letter for Leicestershire County Council**

7. A total of 52 Complaints and Enquiries were received by the LGO during the year which marks a significant decrease (31%) on last year (75).
8. It is important to stress caution with directly comparing the above figures this year as the LGO paused casework between April to June 2020 to allow local authorities to prioritise responding to the Covid-19 pandemic.
9. To add context to the number of complaints received by the LGO, population data has been obtained which shows that Leicestershire receives 7.3 referrals to the LGO per 100,000 residents. As shown in Appendix C, this ranks Leicestershire as the fifth best of 16 authorities classed as statistical neighbours.
10. The LGO made decisions on 58 complaints during the year and carried out 19 detailed investigations. This equates to 33% of the complaints determined. The numbers investigated in detail by the LGO decreased this year by four.
11. The remaining 39 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 LGO and those which lay outside of their jurisdiction.
12. Of the 19 complaints subject to detailed investigation, 13 (68%) had a finding of some fault and were consequently upheld. This is a slight decrease from last year (71%).
13. The average percentage of complaints upheld for all English county councils was 71%. Leicestershire's performance of 68% ranks the Council 8th out of 16 for statistical neighbours and places the Council in the middle quartile against an average of 69%. This is an improved position from last year (12<sup>th</sup>).
14. Where a finding of fault with injustice is made, the LGO may suggest a course of action to the Council which, if implemented, would lead the LGO 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.

15. 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.
16. On some occasions, the Council may have already taken remedial action which the LGO considers appropriate to resolve the issue. In such cases, the LGO 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 case in 2020-21 representing 8% of the overall upheld number. This mirrors the average for all English county councils.

17. Two of the LGO decisions were issued as Public Reports. Both cases have been reported to the Corporate Governance Committee separately. A summary of the subject matter is provided in Paragraph 19, cases 4 and 5.
18. During 2020/21, the Council did not agree to one recommendation made within a Public Report. This recommendation asked the Council to undertake audits of all nursery providers charging policies. A summary of the subject matter is set out in paragraph 19, case 4.

The Council argued this was a disproportionate use of resource. The LGO accepted the Council's response and did not seek to challenge this further through a non-compliance report. All other recommendations were accepted by the Council.

19. The detail for each of the 13 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 (SEN) and specifically that the Council delayed issuing an Education Health Care Plan (EHCP) and failed to ensure all the support as specified had been provided. Concerns were also raised around the commissioning of Transport and how Public Law Outline enquiries were managed.

The Council had already accepted a number of faults and issued apologies. The LGO requested that the Council go further and issue a compensatory payment of £447.50 in recognition of distress and one-week therapy provision that had not already been compensated.

The Council agreed to these recommendations.

- **Case 2** concerned the Council's delay in carrying out an annual review of an EHCP.

The Council had already accepted this fault and explained what it was doing to improve performance in this area.

The LGO asked that the Council make an additional compensatory payment of £100 in recognition of time and trouble complaining.

- **Case 3** was another complaint that the Council had failed to ensure provision as specified within an EHCP that was in place. There were also delays in responding to a Tribunal Order.

The Council accepted the faults and issued an apology. Payments of £1400 were also made in recognition of time and trouble and missed therapy provision. It also put in place revised procedures for managing tribunal orders.

- **Case 4** concerned a complaint regarding an issue relating to the Free Early Education Entitlement Scheme, which resulted in a Public Report being issued by the LGO. The Committee received a report on this matter at its meeting on 4 June 2021.

The LGO concluded that the Council has failed in its duty to ensure transparency of charges applied by a Nursery Provider and that a "top up" fee had been charged by the Provider.

In addition to re-imbursing the individual to a value of £1,500, the LGO asked the Council to carry out an audit and investigate whether any other families were similarly affected and if so to take appropriate action.

The Council worked with the Provider to review their invoicing arrangements and identified a further 79 families affected. Appropriate compensation was offered to all those adversely affected.

- **Case 5** resulted in the LGO finding that the Council had failed in its duty to ensure suitable full-time education provision for a student following a house move. The LGO decided this case met the criteria to be issued as a Public Report and the Committee received a report on this matter at its meeting on 4 June 2021.

The Council had already accepted several faults in how it had managed the Admissions Application. There were delays in referral to the Inclusion Service, use of the Fair Access Process and a failure to follow the escalation route when a school refused to admit the student when instructed to do so.

The Council had offered a significant compensatory offer, but the LGO increased this further to a total of £7,500. It also asked for a

comprehensive review of the Council's procedures to be undertaken and for reminders to be issued to all schools and colleges of their duties.

The Council accepted all the recommendations and has undertaken significant improvement work in this area.

### **Children and Family Services – Social Care**

- **Case 6** was a Child Protection complaint that the Council failed to properly follow safeguarding procedures to ensure the safety and welfare of a child.

The LGO criticised the Council for using the statutory complaints procedure when, in most cases, Child Protection matters should instead be considered under the Corporate Procedure. It also found that the quality of both the Stage 2 investigation and Stage 3 panel hearing was poor. The Council is responsible for ensuring independent investigators are appropriately trained.

The Council agreed to making a compensatory payment of £1,450 to the family. It also agreed to review information that the Council provides to families about Section 47 processes.

The Council also reviewed its policy and guidance around supervision and issued reminders to all staff of the importance of unannounced visits. Finally, the Council took steps to improve the quality of Independent Investigations and implemented fresh guidance to Complaints Officers to ensure the correct procedure was determined at the outset.

- **Case 7** was a complaint that the Council failed to provide sufficient financial support to help with accommodation needs for a family caring for looked after children.

The LGO found fault with how the Council had carried out assessments of need and how it had assessed affordability of loan re-payments that it had offered.

The Council accepted the findings and committed to a fresh financial assessment. It also agreed to a financial redress of £10,500 in respect of storage and other incurred costs. The Council agreed to cover rental costs whilst a final offer is made regarding accommodation improvements.

At the time of this report, the situation remains unresolved though the Council remains engaged trying to reach a satisfactory resolution with the family.

## Adults and Communities – Social Care

- **Case 8** related to a failure to explain the requirement for a re-assessment of social care needs.

The Council was at fault for failing to arrange a review of a service user. It had elected to do a fresh assessment but had missed opportunities to explain the reasoning behind this to the individual. There were also issues identified with actions not being progressed

The LGO recommended an apology for the faults identified and asked the Council to complete their re-assessment promptly and offer support with a housing application. The Council accepted these findings.

- **Case 9** was a complaint that a Care Provider contracted by the Council to deliver home care failed to deliver consistent and timely care causing anxiety and frustration.

The LGO asked the Council to audit the care logs and make a compensatory offer of 50% of all calls delivered late. A further distress payment of £250 was also requested.

The Council was further asked to undertake a wider review of the Care Provider's performance. The Council accepted the conclusions and recommendations which have all been carried out.

- **Case 10** was a complaint about the way a safeguarding visit was conducted.

The LGO found fault that the Council had relied on a generic Co-vid 19 risk assessment which did not dynamically assess the different environments that workers may find.

The LGO requested that the Council review its risk assessment framework and ensure staff are reminded to complete these before visiting and record them appropriately. The LGO asked the Council to apologise to the individual for any distress caused.

The Council accepted the findings and carried out the remedies.

- **Case 11** was that the Council ignored requests for an assessment of support needs and failed to provide independent advocacy when requested.

The LGO found the Council had offered advocacy, but it had not been taken up. The individual had been on a waiting list for a worker to pick up

the assessment, but the LGO determined this was too long a wait and there were missed opportunities to explain the delay which caused some distress.

The LGO asked the Council to make a compensatory payment of £100 in recognition of this delay which the Council agreed to.

### **Environment and Transport**

- **Case 12** related to SEN Transport.

The LGO found fault that the Council did not offer sufficient notice when changing transport provision and delayed carrying out a risk assessment

The Council apologised and agreed to remind all staff of the importance of communicating changes to transport arrangements within a reasonable timeframe.

- **Case 13** was a complaint about SEN Transport and specifically the amount the Council had offered through a Personal Transport Budget.

The LGO determined that any fault had already been remedied by the increased offer the Council had already made.

### **SUMMARY**

20. The LGO produced two public reports against the Council during 2020/21. These were the first issued for 6 years.
21. Financial remedies determined by the LGO amounted to £24,347.50. This is a decrease from last year (£30,129.62).
22. 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.
23. The Chair of the Corporate Governance Committee was consulted and approved three of the payments as they were more than the delegated £5,000 limit.
24. The LGO 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**

25. The Council has a statutory duty to produce an annual report on both children and adult social care complaints.

26. The Council also produces a Corporate Complaints Annual report which considers all other non-statutory complaints.
27. Collectively these reports highlighted the following key themes and performance:

### **Corporate Complaints**

- There has been a 21% increase in corporate complaints recorded over the last twelve months with a total of 527 recorded in 2020/21.
- There have been significant increases in complaints about SEN Transport (69) and Waste Management (69) which have contributed to the overall increase.
- Changes to service delivery necessitated by national guidance around Covid-19 have been a factor in the rise, for example complaints regarding the need to book appointments for using Recycling and Household Waste Sites.
- Response timescales for corporate complaints dropped during the year primarily due to pandemic pressures but 77% were still responded to within 20 working days and just 15 (3%) exceeded the policy maximum of 65 working days.

### **Adult Social Care Complaints**

- There were 196 adult social care complaints recorded in 2020-21, this was almost identical to the previous year (194).
- Response times for social care complaints saw some pressures during the year but remained healthy with 137 (70%) responded to within 20 working days and just 5 (3%) exceeding the statutory maximum timescale.
- Fault was found in 79 (39%) of complaints. This represents a slight reduction on the previous year 82 (44%).
- The most common area of complaint remains around assessment and care planning.

### **Children's Social Care Complaints**

- Children's Social Care Statutory Complaints decreased to 63 recorded in 2020/21 (118 in 2019/20). There was, however, an additional 88 recorded under the Council's Corporate Procedure, usually about Child Protection matters that were considered outside of the scope of the statutory regulations.



- The relevance of this distinction is that under the Statutory Procedure, local authorities incur significant costs of commissioning independent investigations. The County Council spent £65,000 in 2019/20 and this reduced to £37,000 in 2020/21.
- Of the 63 complaints considered at Stage 1, seven requested escalation to Stage 2 (Independent Investigation) equating to 11%. Of these, three requested further escalation to Stage 3 of the process (Panel Review) and two went on to approach the LGO.
- Response times for Stage 1 complaints showed some challenges with adhering to the stricter statutory timescale of 20 working days with 62% achieving this. Only three complaints (7%) exceeded 40 working days and this was where officers were trying to arrange meetings with parents.

### **Improving Complaint Handling**

28. During the year there has been a pause on running internal complaints handling training due to the pandemic. It is expected this will resume in 2022.
29. The Complaints Manager continues to work closely with departments to discuss responses to complaints and act as a critical friend.
30. The introduction of a “review stage” in both our corporate and adult social care procedures has continued to help reduce cases escalating to the LGO.
31. There have not been any policy amendments made this year to complaints procedures.
32. To help address the volume increase this year, primarily of corporate complaints, some additional support from the wider Business Services team has been provided. Whilst this has been beneficial it is not a sustainable long term solution should the current rates of increase continue.

All Complaints roles have also been re-evaluated during the year to assist with staff retention in this key area.

### **Part 3: Update on Freedom of Information Act (FOIA) and Environmental Information Regulations (EIR) handling**

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

33. 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).
34. 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 2020 – March 2021**

##### **Analysis of requests received**

35. Between 1 April 2020 and 31 March 2021, 883 requests were received compared to 983 in the previous year. This represents a 9% decrease.
36. At the start of the pandemic and through the initial national lockdown period there was a distinct drop in FOI requests; just 151 in Quarter1.
37. Requests were received across a wide range of subject matters with the top three areas being:
- Schools 105
  - Children in Care 73
  - Highways Maintenance / Design 72

38. 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	479
Business	199
Media	76

39. All requests by the Media are automatically flagged and approval is sought by the Council's Media Team prior to any publication.

### **Analysis of requests responded to between 1 April – 1 November 2020**

40. During the reporting year, 839 requests were responded to. The figures are different to the volume received as some requests were received before the start of the reporting year. This can be further segmented into:

777 FOIA requests

62 EIR requests

41. Information was provided in full for 583 requests (70%) with a further 126 instances (15%) where partial information was provided with part of the request refused as either "not held" or using a valid exemption.
42. 69 requests were refused in full. The majority (51) because the cost of responding would exceed the reasonable limits set out in legislation.

### **Compliance with statutory timescales as at 1 November 2020**

43. 718 (86%) of the requests were responded to within 20 working days. This was a 2% reduction on 2019-20.
44. Information Commissioner Office (ICO) guidance suggests a target of 90% should be set by Local Authorities in this area. It is important to note, however, that during the pandemic the ICO issued guidance that it would not expect the same levels of compliance given the wider pressures on Councils.

The table 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>
A&C	6 (8%)	4 (5%)	6 (8%)	13 (18%)	44 (60%)
CEX	24 (37%)	8 (12%)	12 (18%)	13 (20%)	8 (12%)
CFS	43 (24%)	46 (25%)	48 (27%)	39 (22%)	5 (3%)
CR	60 (28%)	37 (17%)	47 (22%)	37 (17%)	37 (17%)
E&T	54 (28%)	32 (16%)	53 (27%)	51 (26%)	6 (3%)
PH	2 (6%)	4 (12%)	12 (36%)	6 (18%)	9 (27%)
MULTI	12 (16%)	11 (15%)	14 (19%)	24 (33%)	12 (16%)

ALL	201 (24%)	142 (17%)	192 (23%)	183(22%)	121 (14%)
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45. The above data suggests there is still room for improvement with FOI handling within the Adults and Communities Department. It should be noted that during the first two quarters the wider pandemic pressures significantly affected performance in this area.

### **Internal reviews and Information Commissioner enquiries**

46. There have been nine internal reviews requested during 2020-21. This equates to 1% of the overall requests responded to.
47. Five of the internal reviews were upheld and resulted in additional information being disclosed. The remaining four cases were referred to the ICO.
48. There have been two ICO enquiries made during the year.
- **Case 1** was withdrawn by the requestor at an early stage.
  - **Case 2** the ICO found fault and issued a decision notice. It found the Council had supplied all the information appropriately but that it had exceeded the statutory timescales for doing so. It did not request any specific action be taken by the Council.

### **Recommendations**

49. The Committee is recommended to:
- (a) note the contents of this report.
  - (b) provide comment and feedback on the LGO'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 July 2021 'Corporate Complaints and Compliments Annual Report 20120/21'

<http://politics.leics.gov.uk/documents/s162275/Complaints%20and%20Compliments%202020-21.pdf>

Report to Adults and Communities Scrutiny and Overview Committee dated 6 September 2021 'Annual Adult Social Care Complaints and Compliments Report'

<http://politics.leics.gov.uk/documents/s163301/Annual%20ASC%20Complaints.pdf>

### **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 21 July 2020 – Leicestershire County Council – for the year ended 31 March 2021.
- Appendix B: The Local Government and Social Care Ombudsman Review of Local Government Complaints 2020-21.
- Appendix C: Benchmarking data for statistically comparable neighbours as defined by CIPFA.

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