



CORPORATE GOVERNANCE COMMITTEE – 21 NOVEMBER 2022

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

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN ANNUAL REVIEW 2021/22 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 (LGSCO) annual review letter for the Authority for 2021/22;
 - 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 LGSCO'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 LGSCO produces an annual review letter for each Authority. This typically contains complaint statistics as well as more general updates

from the LGSCO as to any emerging themes. This letter is included as Appendix A.

5. In recent years, the LGSCO has also issued an annual review of local government complaints each year. A copy of the 2021-22 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 89 Complaints and Enquiries were received by the LGSCO during the year which marks a significant increase (71%) on last year (52).
8. It is important to note this increase was fully expected as the LGSCO paused casework between April to June 2020 to allow local authorities to prioritise responding to the Covid-19 pandemic.
9. To add further context to the number of complaints received by the LGSCO, population data has been obtained which shows that Leicestershire receives 12.5 referrals to the LGSCO per 100,000 residents. As shown in Appendix C, this ranks Leicestershire as the thirteenth of 16 authorities classed as statistical neighbours.
10. This is significantly different to last year where the Council received 7.4 referrals per 100,000.
11. The LGO made decisions on 77 complaints during the year and carried out 26 detailed investigations. This equates to 34% of the complaints determined. The numbers investigated in detail by the LGSCO increased this year by seven.
12. The remaining 51 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 LGSCO and those which lay outside of their jurisdiction.
13. Of the 26 complaints subject to detailed investigation, 21 (81%) had a finding of some fault and were consequently upheld. This is again a significant increase from last year (68%).
14. The average percentage of complaints upheld for all English county councils was 71%. Leicestershire's performance of 81% ranks the Council 15th out of 16 for statistical neighbours and places the Council in the lower quartile against an average of 69%. In 2020-21, the Council was 8th and mid quartile.

15. Where a finding of fault with injustice is made, the LGSCO may suggest a course of action to the Council which, if implemented, would lead the LGSCO 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.
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 LGSCO considers appropriate to resolve the issue. In such cases, the LGSCO will still record the case as maladministration but with an additional tag to reflect that the situation had been adequately remedied before LGSCO involvement.
18. There were 2 such cases in 2021-22 representing 10% of the overall upheld number. This is slightly better than the average for all English county councils (8%).
19. None of the LGSCO decisions were issued as Public Reports during the 2021-22 reporting year.
19. The detail for each of the 21 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 had failed to ensure that the provision specified in an EHCP had been delivered

The Ombudsman found unacceptable delay in carrying out an annual review and a failure to convene a multi-agency meeting as promised. There was also a failure to ensure specified occupational therapy provision was in place albeit this was mitigated by issues with engaging with any attempts to provide this.

The Council had already made a suitable remedy offer in relation to the lack of OT provision, but the Ombudsman considered an additional compensatory payment of £200 should be made together with an apology for the faults identified.

The Council agreed to these recommendations.

- **Case 2** concerned the Council's decision to cease to maintain an EHCP and delays in arranging a social care placement.

The Council accepted that the decision and delay left the service user without support for a period of time and agreed to make a payment of £400 as well as some more bespoke support required.

- **Case 3** was another SEN complaint that the Council had failed to assess needs properly and delayed in carrying out reviews of an EHCP. Concerns were also raised about the high number of tutors working with the service user.

The Council had already accepted fault in the delayed finalisation of the plan and apologised. The Ombudsman found there was no direct fault caused other than raised uncertainty and asked the Council to make a payment of £150 in recognition of this. He also asked the Council to issue reminders to all staff of the need to ensure compliance with statutory timescales.

The Council accepted these recommendations.

- **Case 4** was a complaint that there was delay in making amendments to an EHCP.

The Ombudsman determined fault but that there was no injustice arising as the EHCP remained unchanged and provision continued throughout. Although appeal rights were delayed, they were not subsequently used.

The Council had already issued an apology and provided an update on improvement work taking place. The Ombudsman was satisfied this had addressed the complaint appropriately.

- **Case 5** was a complaint that the Council failed to put in place education, health and care provision as set out in an EHCP and failed to put in place any alternative provision whilst the service user was not in school.

The Council had already recognised fault in their complaint response and had agreed to make a payment of £200 per month of missed education. The Ombudsman welcomed this but felt it did not sufficiently remedy the situation and asked the Council to raise this to £400 per month. A time and trouble payment of £300 had also been offered already and the Ombudsman agreed this was appropriate.

The total payment was £8,300.

The Ombudsman also asked the Council to carry out an early review to ensure the provision remains appropriate. He also asked the Council to review our position with SEN officers attending annual reviews, take steps to improve recording of key information and review how it responds when it is known that a child is not attending school.

The Council agreed to all the above recommendations.

- **Case 6** was a complaint that spanned School Admissions and Inclusion Services. The Council had already accepted that it did not act quickly enough to help find a school place for the complainant's son.

A payment of £1000 in recognition of missed education and £300 in recognition of time and trouble had already been offered and the Ombudsman determined that this was an appropriate remedy and made no further recommendations.

Children and Family Services – Social Care

- **Case 7** was a complaint that the Council had delayed in implementing agreed actions following a previous complaint made.

The Ombudsman identified two outstanding actions that had not been completed and asked the Council to complete these. This included the completion of a carers assessment and the introduction of a policy around calls and/or meetings being recorded.

The Council accepted and completed these recommendations.

- **Case 8** related to the process the Council followed when it conducted enquiries under S.47 of the Children Act (Child Protection).

The Ombudsman found fault that the Council did not sufficiently explain the process and failed to adequately explain their rationale for proceeding with enquiries.

The Ombudsman concluded that, on balance, these faults were unlikely to have significantly altered events, but the fault did lead to some avoidable frustration. The Council agreed to make a payment of £300 in recognition of this.

- **Case 9** was a similar complaint around a failure to properly explain child protection procedures. Concerns were also raised regarding intimidating behaviour and an inaccurate assessment

The Ombudsman did not uphold any conduct concerns but did find that there was a lack of clarity around the procedures. There was also misleading information reported in an assessment.

The Ombudsman considered the background context and concluded an apology was sufficient redress but also asked the Council to add an addendum to the assessment to clarify events and to share this with other professionals. The Council accepted these recommendations.

Environment and Transport – Transport

- **Cases 10, 11 and 12** were considered severally by the Ombudsman and concerned the Council's removal of the Farepayer scheme whereby parents not eligible for school transport could purchase seats on Council buses.

The Ombudsman determined that as a discretionary scheme the Council was free to withdraw the scheme but that it should have undertaken consultation with affected parties as set out in statutory guidance.

He was also critical that the Council did not review the situation around relevant exemptions that could be sought.

The Council was asked to apologise, make a payment of £150 to each of the parties and re-consider whether to apply for an exemption and temporarily continue to offer a space should parents still want this.

The Council was also asked to review its procedure on consulting when making changes to transport arrangements.

- **Case 13** was that the Council failed to properly conduct an appeal against the default Personal Transport Budget for Post 16 Transport.

The Council was criticised for not offering verbal representations to be made, contrary to statutory guidance. The Ombudsman also ruled that the panel did not consider all the evidence appropriately.

The Council agreed to apologise for the faults identified and to reconvene a fresh panel ensuring the opportunity for verbal representations was provided.

The Council also agreed to review its post 16 Home to School Policy to ensure that the appeals process was in line with statutory guidance.

Environment and Transport – Highways

- **Case 14** was a complaint that the Council did not deal properly with a Road Closure.

The Ombudsman found fault that the Council had not ensured emergency services were properly notified of the closure.

The Council agreed to make an apology to the complainant. Steps had already been taken to update contact details for all the emergency services.

- **Case 15** was a joint complaint with Melton Borough Council (MBC) and about the way the Council dealt with flooding concerns.

The Ombudsman recognised that this was a complex situation but determined that there had been confusing and contradictory information shared with the complainant. The majority of the recommendations were for MBC but the County Council was asked to apologise and make a payment of £250 in recognition of a failure to provide clear advice regarding Ordinary Watercourse Consents.

The Council was also asked to jointly commission an independent assessment and to assist MBC in achieving any re-assessment.

Adults and Communities – Social Care

- **Case 16** was a complaint regarding how the Council made a deprivation of assets decision and the assessment of notional capital. Whilst the Ombudsman did not criticise many of the decisions reached, there was insufficient rationale set out to explain the decision making with regard to loans, costs of a car and other expenses.

The Ombudsman recommended an apology for the faults identified and asked the Council to carry out a review of its decision making and to re-assess if necessary. The Council accepted these findings, removing some charges and providing fuller detail on the others.

- **Case 17** was a complaint regarding home care and that the Council failed to provide clear information about charges.

The Ombudsman found fault that the Council had failed to provide clear information about charges that would apply for the complainant's mother's care.

The Ombudsman asked the Council to apologise, make a payment of £200 in recognition of uncertainty caused and remind all officers of the importance of discussing charges with service users and families and keeping a written record of these conversations.

The Council accepted the conclusions and recommendations.

- **Case 18** was a similar complaint around the failure to provide clear information about care costs.

The Council had already upheld this complaint locally and offered an apology together with an agreement to refund some administrative charges in recognition of the delays.

The Ombudsman determined that this was an appropriate course of action and did not investigate any further.

- **Case 19** was a complaint about the Council's care planning following a stay in hospital.

The Ombudsman found the Council failed to discuss all the care options and the complainant was not offered extra care housing which she was eligible for.

The Ombudsman identified that whilst this was fault, the Council had quickly identified this and taken a number of actions in response. This included extending NHS funding, explaining extra care options and providing an additional 1 month of financial support.

The Ombudsman was satisfied this had already addressed any injustice and made no further recommendations.

- **Case 20** was a complaint about the quality of care provided by a residential care provider.

The Ombudsman found fault in that there was a lack of any evidence the provider assessed a sore correctly or sought medical help.

The Ombudsman could not find a causal link between the Home's actions and any medical ailments but concluded there was uncertainty and distress caused.

As the commissioning body the Council was asked to make a payment of £300 in recognition of this and to ensure the care provider apologised to the family. There were also actions for the provider to review their complaints procedure, issue reminders to staff about record keeping and review their prevention of pressure ulcers policy.

CHIEF EXECUTIVES – REGULATORY SERVICES

- **Case 21** was a complaint about Trading Standards and their handling of a report regarding a rogue builder.

The Ombudsman found some fault with communication which may have caused uncertainty but that any injustice was limited in that another organisation independently reached a view not to pursue prosecution.

The Council agreed to apologise and make a payment of £100 in recognition of the fault identified.

SUMMARY

20. The LGSCO produced no public reports against the Council during 2021/22.
21. Financial remedies determined by the LGO amounted to £11,950. This is a decrease from last year (£24,347.50).

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 regarding the one payment that exceeded £5,000 in line with the Director's delegation.
24. The LGSCO 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

Complaints received and outcomes (2020-21 comparative data is in brackets)

- During 2021-22 610 Corporate complaints were received (527) – a 16% increase
- 224 Corporate complaints were upheld - which is 39% of the total received (40%)

Response times

During 2021-22, complaint response times were again impacted by the wider pandemic pressures and show some pressures on services (2020-21 figures in brackets):

- 41% of all complaints received a response within 10 working days (51%)
- 68% received a response within 20 working days (77%)
- 92% received a response within the maximum 65 days recommended by LGSCO (97%)

Issues most frequently complained about

- The top five issues complained about were as follows

Special Educational Needs (SEN) assessment	129
SEN and School Transport	93
Waste Management	60
Environmental Services	25
Parking Provision	22

Adult Social Care Statutory Complaints

- There were 210 adult social care complaints recorded in 2021-22, an increase of 14% on 2020-21 (184).
- Response times for social care complaints also saw some pressures during the year with 64% responded to within 20 working days. Importantly however just 5 (2%) exceeded the statutory maximum timescale of 65 working days (9).
- Fault was found in 43% of complaints. Almost identical to last year (42%).

Children's Social Care Complaints

- A total of 65 Stage 1 complaints were accepted, almost identical to 61 in 2020-21.
- The Council continues to assess complaints against the statutory guidance and practitioner guidance issued by the Local Government and Social Care Ombudsman in determining eligibility to the statutory procedure. This is important to control costs incurred through independent investigation.
- 76 Children's Social Care complaints were handled under the Corporate Complaints procedure.
- Of the 65 complaints considered at Stage 1, 6 requested escalations to Stage 2 (Independent Investigation) equating to 10%. Of these, 4 requested further escalation to Stage 3 of the process (Panel Review) and all of those went on to approach the Ombudsman.
- Response times for Stage 1 complaints showed some challenges with adhering to the stricter statutory timescale of 20 working days with 61% achieving this. There were also 10 complaints (17%) which exceeded 40

working days. This requires improvement to adhere to the statutory procedures.

Improving Complaint Handling

28. During the year there has been a pause on running internal complaints handling training due to the pandemic. This resumed in summer 2022 with a quarterly course arranged. This continues to be well attended.
29. The complaints team continues to work closely with departments to discuss responses to complaints and act as a critical friend.
30. There have not been any policy amendments made this year to complaints procedures.
31. To help respond to the increasing volume of complaints and using efficiencies gained in the wider Business Services team, general admin vacancies have been converted to enable the recruitment of an additional Complaints and FOI Officer.
32. In July 2022, a decision was taken to directly recruit a Complaints Investigator for Childrens Social Care complaints. This decision was made following a number of sub-standard independent investigations and criticism from the Ombudsman around undue delay. The post holder is settling in well and spare capacity is being used to help up-skill and work with social care Team Managers.
33. At the same time a temporary 12-month post was agreed ring-fenced to SEN to investigate and respond to complaints.

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

34. 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).
35. 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 2021 – March 2022

Analysis of requests received

36. Between 1 April 2021 and 31 March 2022, 832 requests were received compared to 883 in the previous year. This represents a 6% decrease.
37. This continues a gradual long term downward trend. It is hard to say with any certainty why this might be but there is more commonly requested information published online which may be helping.
38. Requests were received across a wide range of subject matters with the top three areas being:
- Schools 123
 - Children in Care 80
 - Adult Social Care 78
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	517
Business	171
Media	143

40. 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 2021 – 31 March 2022

41. During the reporting year, 801 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:
- 713 FOIA requests
88 EIR requests
42. Information was provided in full for 573 requests (72%) with a further 101 instances (13%) where partial information was provided with part of the request refused as either "not held" or using a valid exemption.

43. 83 requests were refused in full. The majority (62) because the cost of responding would exceed the reasonable limits set out in legislation.

Compliance with statutory timescales

44. 716 (90%) of the requests were responded to within 20 working days. This was a 4% improvement on 2021-22.
45. Information Commissioner Office (ICO) guidance suggests a target of 90% should be set by Local Authorities in this area and the Council is currently meeting this.

The table below charts the respective performance by Department:

Response times in working days

Department	<5	6-10	11-15	16-20	>20
A&C	5 (7%)	10 (14%)	13 (18%)	18 (25%)	27 (37%)
CEX	15 (38%)	8 (20%)	9 (23%)	7 (18%)	1 (3%)
CFS	48 (21%)	48 (21%)	70 (31%)	47 (21%)	12 (5%)
CR	54 (29%)	30 (16%)	39 (21%)	43 (23%)	20 (11%)
E&T	22 (13%)	29 (18%)	51 (31%)	59 (36%)	4 (2%)
PH	6 (23%)	3 (12%)	12 (46%)	5 (19%)	0 (0%)
MULTI	8 (10%)	14 (17%)	13 (15%)	39 (25%)	20 (24%)
ALL	159 (20%)	142 (18%)	207 (26%)	209(26%)	84 (10%)

46. The above data suggests there is still some room for improvement with FOI handling within the Adults and Communities Department but there has been significantly less responded to outside of timescale than in 2020-21 (67%) and it is not highlighted as a significant issue.

Internal reviews and Information Commissioner enquiries

47. There have been 16 internal reviews requested during 2021-22. This equates to 2% of the overall requests responded to.
48. Four of the internal reviews were upheld and resulted in additional information being disclosed. The remaining 12 cases were referred to the ICO.
49. There have been six ICO enquiries made during the year but no decisions made.

Recommendations

50. The Committee is recommended to:
- (a) note the contents of this report.

- (b) provide comment and feedback on the LGSCO's annual review letter and the complaints and FOI handling arrangements and improvements as outlined.

Equality and Human Rights Implications

51. 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 08 June 2022 'Corporate Complaints and Compliments Annual Report 2021/22'

<https://politics.leics.gov.uk/documents/s169203/Complaints%20and%20Compliments%202021-22.pdf>

Report to Adults and Communities Scrutiny and Overview Committee dated 5 September 2022 'Annual Adult Social Care Complaints and Compliments Report'

<https://politics.leics.gov.uk/documents/s170905/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 20 July 2022 – Leicestershire County Council – for the year ended 31 March 2022.

Appendix B: The Local Government and Social Care Ombudsman Review of Local Government Complaints 2021-22.

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