



## **CORPORATE GOVERNANCE COMMITTEE – 17 NOVEMBER 2023**

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

#### **LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN ANNUAL REVIEW 2022/23 AND UPDATE ON CORPORATE 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 2022/23.
  - 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 2022-23 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. Between April 2022 to March 2023 a total of 117 Complaints and Enquiries were received by the LGSCO with regard to Leicestershire County Council services. This is a significant increase up 31% on last year (89).
8. To add further context to the number of complaints received by the LGSCO, population data has been obtained which shows that Leicestershire receives 16.4 referrals to the LGSCO per 100,000 residents. This is an increase on last year where the Council received 12.5 referrals per 100,000. Appendix C shows that Leicestershire performance is ranked fourteenth out of the 16 authorities classed as statistical neighbours.
9. The number of complaints escalated to the LGSCO has risen from 77 in 2021/22 to 117 in 2022/23, an increase of 64%. In 33 of these cases the Ombudsman decision was that that the escalation of the complaint was premature.
10. Whilst referrals to the Ombudsman should not always be seen as a negative (as it provides assurance that signposting information is always provided) there are a number of complaints this year that have escalated solely due to delay in responding to complaints.
11. 56 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 to be outside of the Ombudsman's jurisdiction as well as those where it was clear the Council had acted appropriately.
12. The Ombudsman carried out 38 detailed investigations during the year. This equates to 30% of the complaints determined. The numbers investigated in detail by the LGSCO increased this year by twelve.
13. Of the 38 complaints subject to detailed investigation, 27 (71%) had a finding of some fault and were consequently upheld. This is a decrease from last year upheld rate (81%).
14. Overall for the cases investigated by LGSCO the upheld rate for Leicestershire's was 71%. This ranks the Council as having the 2<sup>nd</sup> lowest upheld rate out of 16 for statistical neighbours and places the Council in the upper quartile against an average of 80% of cases upheld.

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 was 1 such case in 2022-23. (This represented 4% of the overall upheld number compared to the average upheld rate for all English county councils of 6%).
19. Two of the LGSCO decisions were issued as Public Reports during the 2022-23 reporting year. (Further information can be found in the Annual Review letter)
20. Themes emerging from the 27 upheld complaints appear below. For ease these have been grouped by Council Department.

### **Children and Family Services – Education**

21. This was both the most frequently escalated area and where most upheld cases were found (10).
22. Common areas of fault included:
  - Delays in meeting statutory timescales for Education and Health Care Plans (EHCP)
  - Gaps in putting in place alternative education when a child was unable to attend a school setting for whatever reason
  - Delay in carrying out and completing Annual Reviews of EHCPs
  - Failure to ensure that provision as specified within an EHCP was being fulfilled.
23. Financial redress payments ranging from £300 to £13,975 were made
24. In one case the Ombudsman exercised his powers to ask the Council to undertake further work to ascertain whether other families had suffered any similar injustice. This resulted in the identification of 7 cases and further payments of £25,100

**Total compensation paid £54,275****Children and Family Services – Social Care**

25. There were 6 complaints upheld by the Ombudsman in this area.
26. Identified fault included:
- Inadequate communication with families.
  - Inaccurate record keeping.
  - Failure to properly explain procedures
27. Financial redress payments ranging from £100 to £2,400 were made.

**Total compensation paid £2,700****Adult Social Care**

28. There were 9 complaints upheld by the Ombudsman in this area. This included 1 issued as a Public Report.
29. Identified fault included:
- Care Providers failing to keep accurate records or deliver care in line with agree care plans.
  - Failure to properly explain charging policies.
  - Insufficient oversight to ensure services were re-instated following a pause during the pandemic and failure to re-assess.
  - Lack of continuity of home care following a provider serving notice.
30. Financial redress payments ranging from £150 to £10,020 were made

**Total compensation paid £11,770****Others**

31. There were 2 other complaints upheld by the Ombudsman. These were in Trading Standards and School Transport. The Transport decision was issued as a Public Report.

**Total compensation paid £200****SUMMARY**

32. The LGSCO produced two public reports against the Council during 2022/23.
33. Financial remedies determined by the LGSCO amounted to £68,945. This is a significant increase from last year (£11,950).

34. 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.
35. The Chair of the Corporate Governance Committee was consulted regarding three payments that exceeded £5,000 limit in line with the Director's delegation.
36. 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**

37. The Council has a statutory duty to produce an annual report on both children and adult social care complaints.
38. The Council also produces a Corporate Complaints Annual report which considers all other non-statutory complaints.
39. Collectively these reports highlighted the following key themes and performance:

### **Corporate Complaints**

#### **Complaints received and outcomes (2021-22 comparative data is in brackets)**

- During 2022-23 781 Corporate complaints were received (610) – a 28% increase
- 398 Corporate complaints were upheld - which is 51% of the total received (39%)

### **Response times**

40. During 2022-23, complaint response times show ongoing pressures on services, particularly those requiring senior manager review.

#### **Stage 1**

- 46% of all complaints received a response within 10 working days (41% in 2021-22)
- 70% received a response within 20 working days (68% in 2021-22)
- 85% received a response within the maximum 40 days recommended by LGSCO (87% in 2021-22)

## Stage 2

- 37% of all complaints requesting a Stage 2 review received a response within 20 working days. There is no comparative reporting available.

### **Issues most frequently complained about**

- The top five issues complained about were as follows

School Admissions	237
SEN Assessment	193
SEN and School Transport	79
Highway Maintenance	26
Public Transport	24

### **Adult Social Care Statutory Complaints**

- There were 204 adult social care complaints recorded in 2022-23, a very slight decrease of 3% on 2021-22 (210).
- Response times for social care complaints improved this year with 76% responded to within 20 working days. This is a good improvement on last year. There were however 19 complaints exceeding the statutory maximum 65 working days which needs improvement.
- Fault was found in 38% of complaints. A slight reduction from last year (43%).

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

- 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.
- A total of 86 Stage 1 complaints were accepted, a significant increase from 65 in 2021-22 (+32%).
- Of the 86 complaints considered at Stage 1, 10 requested escalations to Stage 2 (Independent Investigation) equating to 12%. Of these, 5 requested further escalation to Stage 3 of the process (Panel Review) and 3 of these 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 37% achieving this. There were also 12 complaints (14%) which exceeded 40

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

- An additional 82 Children's Social Care complaints were handled under the Corporate Complaints procedure.

### **Improving Complaint Handling**

41. During the year, quarterly training sessions have continued promoting softer skills of complaint investigation and response. This continues to be well attended.
42. The complaints team continues to work closely with departments to discuss responses to complaints and act as a critical friend.
43. There have been minor policy amendments made this year to our corporate complaints procedure. This was to more clearly define timescales for the Stage 2 "Review" stage.
44. In house Complaints Investigators continue to support SEN and Children's Social Care and this is working well.

### **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**

45. 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).
46. 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 2022 – March 2023**

### **Analysis of requests received**

47. Between 1 April 2022 and 31 March 2023, 880 requests were received compared to 832 in the previous year. This represents a 6% increase.
48. Requests were received across a wide range of subject matters with the top three areas being:
- Education Services 134
  - Children in Care 85
  - Adult Social Care 73
49. 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	300
Business	126
Media	108

50. 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 2022 – 31 March 2023**

51. During the reporting year, 883 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:

783 FOIA requests  
100 EIR requests

52. Information was provided in full for 699 requests (79%) with a further 71 instances (8%) where partial information was provided with part of the request refused as either "not held" or using a valid exemption.
53. 65 requests were refused in full. The majority (39) because the cost of responding would exceed the reasonable limits set out in legislation.

### **Compliance with statutory timescales**

54. 772 (87%) of the requests were responded to within 20 working days. This was a 3% reduction on 2021-22.



55. Information Commissioner Office (ICO) guidance suggests a target of 90% should be set by Local Authorities in this area. Whilst not meeting this for 2022-23, it is unlikely that the current performance would attract any criticism.

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	18 (24%)	13 (17%)	20 (26%)	9 (12%)	16 (21%)
CEX	17 (29%)	9 (16%)	13 (22%)	8 (14%)	11 (19%)
CFS	47 (21%)	74 (33%)	57 (26%)	35 (16%)	10 (4%)
CR	56 (24%)	40 (17%)	48 (20%)	46 (20%)	45 (19%)
E&T	25 (16%)	35 (22%)	37 (23%)	50 (31%)	12 (8%)
PH	2 (10%)	6 (29%)	8 (38%)	3 (14%)	2 (10%)
MULTI	19 (17%)	24 (22%)	22 (20%)	31 (28%)	15 (14%)
<b>ALL</b>	<b>184 (21%)</b>	<b>201 (23%)</b>	<b>205 (23%)</b>	<b>182(21%)</b>	<b>111 (13%)</b>

56. The above data suggests no significant outliers departmentally with CFS and E&T continuing to perform very strongly.

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

57. There have been 11 internal reviews requested during 2022-23. This equates to 1% of the overall requests responded to.
58. Five of the internal reviews were upheld and resulted in additional information being disclosed. The remaining 6 cases were referred to the ICO.
59. There have been three ICO enquiries made during the year, with 1 decision made. This found no significant fault with the Council's handling but did result in some additional disclosure of records.

#### **Recommendations**

60. 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 Implications**

61. 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.

### **Human Rights Implications**

62. There are no Human Rights implications arising from this report.

### **Background Papers**

Report to the Scrutiny Commission dated 12 June 2022 'Corporate Complaints and Compliments Annual Report 2022/23'

<https://politics.leics.gov.uk/documents/s176677/Complaints%20and%20Compliments%202022-23.pdf>

Report to Adults and Communities Scrutiny and Overview Committee dated 4 September 2023 'Annual Adult Social Care Complaints and Compliments Report'

<https://politics.leics.gov.uk/documents/s178162/Annual%20ASC%20Complaints%202022-23.pdf>

Report to Children and Families Scrutiny and Overview Committee dated 5 September 2023 'Childrens Social Care Statutory Complaints and Compliments Annual Report 2022-23'

<https://politics.leics.gov.uk/documents/s178148/Childrens%20Social%20Care%20Statutory%20Complains%20and%20Compliments%20Annual%20Report%202022-23%20-%20CFS%20OSC%20050923.pdf>

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

None.

### **Officers to contact**

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### **List of Appendices**

Appendix A: The Local Government and Social Care Ombudsman's Annual Review Letter dated 19 July 2023 – Leicestershire County Council – for the year ended 31 March 2023.

Appendix B: The Local Government and Social Care Ombudsman Review of Local Government Complaints 2022-23.

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

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