

Standards Committee – 17 October 2011

Local Government Ombudsman Annual Review 2010/11

Service Area: Business Change (Programme Delivery & Governance)

Summary of report:

The purpose of this report is to:

- a) provide information on the number and range of complaints referred by the Local Government Ombudsman to the Council during the financial year 2010/11
- b) submit for Committee's consideration the Ombudsman's annual letter
- c) provide Committee with an update on recent developments relating to the Ombudsman service

The report links to the council's values, and contributes to the working smarter agenda. Complaints handling, and the ability of residents and other service users to make complaints about our services, helps the council to identify and address customer needs and expectations, and by learning from complaints to improve service delivery.

Recommendations: To note the contents of this report.

Resource and legal considerations:

There are no specific financial implications arising from this report. In some cases, the local settlement of particular complaints may include a financial element, including comparatively small cash sums for the complainant's 'time and trouble' in pursuing the matter, and in appropriate cases the payment of sums reflecting the loss incurred by a complainant as a result of the council's actions.

The Ombudsman service operates in accordance with provisions in the Local Government Act 1974, as amended by subsequent legislation. Councils are expected to respond to enquiries received in the Ombudsman within a set timescale – 28 calendar days for our initial response – and, where required, must give the Ombudsman access to files and other information relevant to the complaint, and to officers and Members who have had an involvement in the matter. Any reports of maladministration that are received must be considered by the council, as must further reports issued in cases where the council declines to implement the Ombudsman's recommendation.

Citizen impact:

The Ombudsman's role mainly revolves around the consideration and, where appropriate, the investigation of specific complaints by individual residents and service users, about the actions of local councils, some other public authorities, and (solely in

relation to school admissions) schools. The Ombudsman has recently taken on a new role in respect of complaints about private care homes from self funded residents. The Ombudsman service also has a broader role in relation to good administrative practice, and through its conclusions on individual complaints, sometimes highlighted in its annual report and the annual letters to authorities, seeks to identify learning points of more general applicability. The Ombudsman also from time to time produces guidance notes on good administrative practice to assist councils to identify best practice.

Environmental impact:

A significant proportion of the Ombudsman's caseload relates to issues of an environmental nature, including planning, highways, and housing.

Performance and risk management issues:

The Ombudsman's annual letter and annual report provides details relating to the number of complaints received, the outcome, and the average time taken to provide an initial response. These details are also published on the Ombudsman's website www.lgo.org.uk.

Equality implications:

The Ombudsman service provides information on its own website in a number of languages. The Ombudsman's introductory leaflet is circulated within the council, including libraries and other local service points, and is available externally, for instance at the Citizens Advice Bureau.

Consultation:

The preparation of the council's initial response to complaints received, and the councils' response to subsequent enquiries, comments or proposals from the LGO's team of investigators, is coordinated by Programme Delivery & Governance, working closely with relevant services.

Details of the Ombudsman service are available in the council's corporate complaints (Tellus) leaflet, via our web site, and directly from the Ombudsman via their own website and through their Advice Team.

Background papers: None

Contact officer:

John Pryce-Jones, Corporate Policy & Performance Officer
Ext. 2077
E-mail: pryce-jonesj@walsall.gov.uk

Signed:



Head of Business Change: Paul Gordon

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1. FURTHER INFORMATION

- 1.1 The Commission for Local Administration, usually known as the Local Government Ombudsman service ('the Ombudsman', or 'the LGO'), was established by Part 3 of the Local Government Act 1974. The service investigates complaints about the range of local authority functions and services. The Ombudsman can investigate complaints about how the council has done something, looking at the council's administrative practice, and at how the service has acted in the matter concerned but cannot question what a council has done simply because someone does not agree with the outcome. The Ombudsman service which deals with complaints relating to Walsall is based in offices to the south of Coventry, headed by Dr Jane Martin, one of the Commissioners. Dr Martin commenced her duties as Ombudsman in January 2010.

2. THE OMBUDSMAN'S PROCEDURES

- 2.1 Residents and service users can make a complaint to the Ombudsman, using one of their complaint forms, by e-mail or letter, or by phone to the service's Advice Team (0845 602 1983). A small number of complaints are rejected by the Ombudsman service at this stage: they may be outside the Ombudsman's jurisdiction; the complainant may have other remedies (e.g. a tribunal, or formal appeal procedure); or the complaint may have been submitted too late to be considered (normally over 12 months after the incident or issue arose – though the LGO has discretion to investigate, if there are reasonable grounds). These cases are generally referred back to the relevant council purely for its information, although since the Autumn of 2010 the LGO has had to issue a decision notice setting out the complaint and its reasons for not investigating that matter. Also, in a significant number of cases, including many made to the Advice Team, the Ombudsman may decide to pass the complaint back to the council concerned because the complainant has not used the council's complaints procedures first, or has not exhausted local complaint procedures, and he will then ask the council to review the complaint through those procedures.
- 2.2 All other cases are referred to the relevant council, seeking a detailed written response within a 28 calendar day period. The Ombudsman will then consider the council's response, asking for further information or clarification as appropriate, before deciding whether to take the matter further. The LGO may at this stage consider that the council has acted reasonably, and therefore decide not to pursue the complaint. He may consider that the council has settled the matter locally or on occasion he may suggest to the council a local settlement at this stage.
- 2.3 Where the Ombudsman considers that the council's initial response leaves matters unclear, he will continue with his investigation procedure, to establish and record all relevant facts, so that he can reach a decision on the complaint. This may involve an inspection of all relevant files, and can occasionally include interviews with relevant individuals involved in the matter to a significant degree, including Members, employees, ex-employees, and the complainant(s).

- 2.4 After carrying out these enquiries, the Ombudsman will either end the investigation, if no fault on the council's part is found; he may again propose a local settlement; or in increasingly rare instances he may prepare a formal report setting out the facts. As noted in paragraph 2.1 above, in all cases the LGO will now prepare a decision notice setting out the facts of the case, conclusions and the outcome of the investigation. At some stage the LGO intends to place decision notices on its web site, anonymised but identifying the council concerned, as a means of demonstrating the role that the Ombudsman service plays in addressing complaints that it has received. It is not clear at this stage whether all decision notices will be included on its web site, or whether only some of these notices will be included (for instance, those concluded as local settlements). For the time being, services have been advised, with each decision notice that is received, to review it for possible errors, text which could be misunderstood or which is unclear, or where an individual might be identified, and comments have been fed back to the LGO in each case.
- 2.5 The investigation of some complaints can take a considerable time, sometimes more than a year, with correspondence back and to, interviews with officers or Members, file inspections, and the preparation of decision notices or reports.
- 2.6 On occasions that a formal investigation report is proposed, the council and all those who have been interviewed will be asked to comment on the draft report before the Ombudsman publishes the report, which will include his conclusions and recommended course of action. In such cases, the report will be sent by the Ombudsman to the complainant, the council, and also to the news media. The council must publish a notice in the local press, within two weeks, and must make the report available for viewing. Within three months, the report should be considered by a committee of the council and the Ombudsman advised of the council's response to his recommendations. The council's constitution currently places responsibility for considering any reports of this nature with the Standards Committee. Committee members may recall that such a report was last submitted to your meeting of 30 October 2008.
- 2.7 If the Ombudsman is not satisfied with the council's response to a formal investigation report, a further report may be issued, which the council must consider. If the Ombudsman considers the council's response to the further report to be unsatisfactory, provisions in the Local Government and Housing Act 1989 require the council to publish in 2 editions of a local newspaper of the Ombudsman's choice, a notice setting out details of the complaint, the Ombudsman's proposed course of action, and, if the council wishes, its own reasons for not following the Ombudsman's recommendations.

3. ANNUAL LETTER AND STATISTICAL REVIEW

- 3.1 Each year the Ombudsman sends each council an annual letter, setting out details of the Council's performance during the year, and offering advice and guidance. The letter sent to the Council by the Ombudsman on 24 June 2011 and published on 14 July 2011 is attached to this report. The letter is available publicly via the Ombudsman's website www.lgo.org.uk. The main points are set out below.

3.2 New complaints received

During the year 2010/11 the Ombudsman received 84 new complaints about the council. This represents a significant increase on previous years: 62 new complaints were received in 2009/10 and 61 in 2008/09. This increase may possibly reflect the changes made to the LGO's public profile including the establishment of an initial Advice Team and advice line. Comparative details relating to neighbour authorities are set out below; the figures of the five authorities marked with an asterisk include significant numbers of complaints relating to housing management issues.

	2008/09	2009/10	2010/11
Birmingham*	522	467	602
Coventry	87	78	94
Dudley*	118	91	88
Sandwell*	154	123	179
Solihull*	49	45	52
Walsall	61	62	84
Wolverhampton*	84	86	114

3.3 Analysis by nature of complaint

Of the 84 complaints received by the council in 2010/11, 22 were categorised by the LGO as relating to education and children's services, 14 to adult care services, 13 to environmental services, public protection and regulation, 13 to benefits & tax, 12 to planning and development, 3 to corporate and other services, 2 to highways & transport, 2 to housing matters, and there were 3 others.

3.4 Analysis by outcome

Set out below is an analysis of the 29 complaints investigated to a conclusion by the Ombudsman during 2010/11. Please note that the number of complaints concluded in a year is different to the number received in that year, as some cases received in one year will be concluded in the following year. Also the figures shown in paragraph 3.2 include complaints which the Ombudsman refers back to the council for local investigation. Of the 29 cases, none resulted in a formal report of maladministration being published. There were 6 local settlements; in each of those cases, the service concerned has acted as agreed, and where necessary looked at procedures or made changes.

3.5 In summary, the 29 complaints can be divided into the categories set out below. Comparative figures have been added for 2009/10.

	2010/11 (2009/10 figures in brackets)
Cases investigated by the Ombudsman, discontinued with no maladministration found	14 (18)
Cases where investigation was discontinued at the Ombudsman's discretion	4 (2)
Cases rejected by the Ombudsman as being	5 (6)

outside his jurisdiction	
Cases investigated by the Ombudsman, considered to have been settled locally	6 (12)
Cases investigated by the Ombudsman, leading to a formal investigation report finding: <ul style="list-style-type: none"> • maladministration, no injustice; • maladministration with injustice; • no maladministration 	0 (0) 0 (0) 0 (0)
Total	29 (38)

3.6 Average response time

The council's average initial response time, for the 22 complaints where a detailed, formal response to the Ombudsman was required, was 28.7 calendar days. The council's figure remains just outside of the Ombudsman's 28.0 day target timescale but nevertheless representing a further improvement on the council's average for 2009/10 (30.1 days) and 2008/09 (34.9 days). Walsall's figure places the council fifth of the seven West Midlands metropolitan authorities. These figures are calculated by the Ombudsman based on calendar days, including weekends and bank holidays, and are calculated from the day of despatch to the date of receipt back at the Ombudsman's Coventry offices. Given the volume of documentation that is generally required, and the sensitive nature of some of that documentation, the council's reply is generally made by post. Of the 22 cases, 11 were returned within the 28 calendar day period.

For further information on interpretation of statistics click on this link to go to www.lgo.org.uk/CouncilsPerformance

LGO Advice Team

Enquiries and complaints received	Adult Care Services	Benefits & Tax	Corporate & Other Services	Education & Childrens Services	Environmental Services & Public Protection & Regulation	Highways & Transport	Housing	Other	Planning & Development	Total
Formal/informal premature complaints	4	9	1	4	5	0	1	0	3	27
Advice given	1	3	0	3	1	1	1	0	2	12
Forwarded in investigative team (resubmitted)	1	1	0	2	2	1	0	2	3	12
Forwarded to investigative team (new)	8	0	2	13	5	0	0	1	4	33
Total	14	13	3	22	13	2	2	3	12	84

Investigative Team

Decisions	Reports: maladministration and injustice	Local settlements (no report)	Reports: Maladministration no injustice	Reports: no Maladministration	No Maladministration (no report)	Ombudsman's discretion (no report)	Outside jurisdiction	Total
2010 / 2011	0	6	0	0	13	4	5	28

Adult social care decisions made from 1 Oct 2010*

	Not to initiate an investigation	Total
2010 - 2011	1	1

*These decisions are not included in the main decisions table above. They use the new decision reasons from 1/10/10.

Response times	First enquiries	
	No of first Enquiries	Avg no of days to respond
01/04/2010 / 31/03/2011	21	28.8
2009 / 2010	23	30.1
2008 / 2009	24	34.9

Provisional comparative response times 01/04/2010 to 31/03/2011

Types of authority	<= 28 days %	29 - 35 days %	> = 36 days %
District councils	65	23	12
Unitary authorities	59	28	13
Metropolitan authorities	64	19	17
County councils	66	17	17
London boroughs	64	30	6
National parks authorities	75	25	0

Response times adult social care 1/10/10 - 31/3/11	First enquiries	
	No of first Enquiries	Avg no of days to respond
2010/2011	1	27.0