

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: Audit Committee

Report of: Stella Manzie, Interim Chief Executive

Date of Meeting: 30 January 2018

Subject: The Local Government Ombudsman's Annual Review 2016/17

Wards Affected: All

1. Purpose of Report

1.1 Each year, the Local Government Ombudsman for England issues a report summarising his work as independent arbiter of complaints about local government administration. A copy is attached to this report at Appendix 2.

1.2 This report highlights for Members the main issues dealt with by the Ombudsman, within the context of complaints involving Birmingham City Council.

2. Recommendation

To receive this report concerning the Local Government Ombudsman's Annual Report for 2016/17.

3. Annual Review: Key Issues

3.1 Content

The Local Government Ombudsman issues an Annual Review letter to every English Council, providing his statistics for the enquiries and complaints he has received concerning that Council.

In addition, Mr King presents to Parliament his Annual Report. Of these two items, the annual review letter concentrates on enquiries, complaints and their resolution and is most closely allied to the Council's handling of Ombudsman matters. The Annual Report is more general, including accounts for the service, etc..

This report includes general information about the LGO's performance during 2016/17 and specific information about the Council's Ombudsman complaints.

This is the first report of Michael King as the Local Government Ombudsman. He took up the post in January 2017, having been deputy to Dr Jane Martin for some time.

Mr King mentions in the foreword to his report that, as well as handling complaints against local government, his service also deal with complaints about adult social care. To raise awareness of this separate role, he will be known as the Local Government and Social Care Ombudsman in future.

3.2 Volume of Complaints

The Annual Review shows that there were 19,077 complaints and enquiries to the Ombudsman last year, a fall from the previous year, when there were 20,102.

3.3 Volume of Complaints about Birmingham City Council

The number of complaints about Birmingham determined by the Local Government Ombudsman in 2016/17 was 465, a fall from 527 in 2015/16. But, in addition, the Housing Ombudsman investigates complaints against the Council and she determined 61 complaints during the year, resulting in a total of 526 Ombudsman determinations in 2016/17.

Further information about Housing Ombudsman matters appears at paragraph 4 below.

3.4 Subject of Complaints

The largest category of complaints dealt with by the Ombudsman's investigators was Education and Children's Services, at 18%, followed by Adult Care Services at 17% and Planning, at 16% of all the complaints and enquiries received.

3.5 Subject of Complaints about Birmingham City Council

Birmingham has never followed the LGO's trend as complaints about Housing matters were traditionally our largest category. But the transfer of remit away from the LGO has affected this and Revenues and Benefits received the highest number of LGO enquiries.

Appendix 1 is provided by the LGO and gives two different forms of information. The first demonstrates the subject matter and numbers of complaints received and determined by the Ombudsman about Birmingham in 2016/17. However, it is misleading in that we will not have received the 452 referred to by the LGO, as some of these will have been enquiries which their staff advised on, without consulting us.

In addition, we would not include some complaints in the category the LGO has used – for instance, ASB complaints appear as 'Environmental Services, Public Protection and Regulation', because they may concern noise nuisance. We treat them as housing complaints as they are usually between tenants and will have been responded to by the Housing Service.

3.6 Outcomes

The second dataset in Appendix 1 provides the decisions made by the LGO during the year. It should be noted that of these, the largest category is for complaints which the LGO referred back to the Council to resolve itself. At 210 cases, this is close to half of the complaints they receive.

The LGO closed 105 cases after carrying out initial enquiries and undertook detailed investigations in 101 cases. Of these, 63 were upheld. As the LGO operates a triage procedure, only those cases considered to be the most serious are investigated in full. Others will have been returned to the Council at the assessment stage as premature complaints, or they will have been determined at this point, as the LGO's initial enquiries reveal that they could not achieve anything further by undertaking a full investigation. The determination 'Closed After Initial Enquiries' can be misleading in that it may take a number of months and a lot of information from the Council for the LGO to reach this view.

3.7 Reports

The LGO issued 30 reports in 2016/17, 10 concerning Education and Children's Services and 9 about Adult Social care.

None of these were against Birmingham and there are no current cases where the LGO has indicated that there could be a report this year. This is the third year without a report, which is very pleasing. However, this is completely unpredictable.

3.8 Settlements

At Committee in January 2010, Members requested information about any local settlements made by the Council involving a payment of £10,000 or more.

Whilst the Ombudsman upheld 63 complaints in 2016/17, no complaint resulted in a local settlement of this magnitude. We made 55 financial settlements during the year and the total compensation paid was £27,619. (This includes the 6 cases determined by the Housing Ombudsman, which resulted in compensation.) In 2015/16 settlements cost us £13,320, so the sum is more than double that this year. However, last year's sum was exceptionally low. The vast majority of settlements have involved small payments, £100 to £250, but five cases account for nearly £20,000 between them. Of these, three were cases from the Children's Directorate. It may be helpful to give more detail about our most costly complaints, as follows:-

The most expensive settlement of the year was £6,000 for a complainant who had agreed to care for the children of a distant relative back in 2000. The LGO found that we had not given her sufficient support at the time and based the settlement upon £2,000 for each of the three children she had cared for. The complainant had not come forward until 2014, having moved away from Birmingham years earlier. Much has changed in our practices since 2000.

A SENAR complaint cost us £3,300. This concerned the poor handling of a child's ECHP which failed to comply with the statutory guidance and resulted in the child being out of school for seven months. The LGO felt that this had caused significant injustice to the complainant and her child, hence the level of the settlement. SENAR advised that they had learned from the matter, introducing a Quality Assurance process regarding EHC planning and arranging interim education within 6 weeks of being made aware that a child is out of school.

The last of the Children's cases concerned our failure to act on all the recommendations of an Independent Investigation. This had related to failing to fully accommodate a child in need and the impact of this upon the family. It took two years to complete the statutory complaints procedure and so the LGO's remedy was quite punitive, at £2,500. The recently appointed Customer Relations Manager has reviewed complaints handling in order to make improvements to avoid this kind of complaint.

An Adults Occupational Therapy complaint, where it had not been possible to produce a satisfactory scheme for a kitchen and bathroom for some years, was settled by a payment of £5,000. The OT Service continues to try to work with the complainants to achieve the completion of a scheme which meets their needs.

The remaining high cost case was a planning matter. The LGO found fault in how the Council had considered the need to attach conditions to a planning permission for a madrassa in the property with which the complainant shared a party wall. He had suffered noise nuisance as a result and the LGO suggested that £3,000 plus the provision of sound proofing as a remedy. We were at fault and accepted the settlement.

4. The Housing Ombudsman

In order to give Members a picture of all Ombudsman matters, I am including here an update about this service as the Housing Ombudsman's remit is quite wide-ranging, covering complaints concerning Landlord Services, Estate Management, Home Loss Payments, transfer applications outside the Housing Act 1996, Part 6 and complaints about property condition, repairs and improvements.

Denise Fowler was the Housing Ombudsman, until June 2017. She has also issued an annual report for 2016/17. She notes that 15,112 complaints and enquiries were received by her service this year, a slight drop on the previous year. However, they did have an 18% increase in cases within their formal remit – effectively the ones which are the most complex to resolve.

The Housing Ombudsman highlights the fact that her service works with landlords to try to resolve complaints without a formal determination, succeeding in 81% of cases they handle. 1649 cases were determined formally in 2016/17, 50% more than the year before.

Some 34% of complaints to the Housing Ombudsman are about repairs, by far the largest category. Of the 54 new complaints received from the Housing Ombudsman in 2016/17 about Birmingham, 44 related to repairs – more than 80%.

The focus of the Housing Ombudsman states that cases currently joining the backlog of complaints to be investigated formally will mostly be determined within the next nine months. We have cases older than that – ten months is more usual. This is much slower than the LGO. Whilst it does not affect the Council, it must be very frustrating for complainants.

The Housing Ombudsman enquired about 54 complaints against Birmingham in 2016/17, 43 of them were premature complaints which we resolved ourselves directly with the complainant. Of the remaining 18, the Housing Ombudsman found in the Council's favour in 11 cases, 4 were outside her jurisdiction and just 2 resulted in a financial settlement. These cases concerned delay in completing repairs and delay in communicating about repairs and the decant process with a tenant following a fire at her council house. The cost was relatively low, at £400 and £250 respectively.

The Housing Ombudsman has a different approach to the Local Government Ombudsman in that complainants must exhaust the Council's own complaints procedure. The LGO may intervene at any point if he considers the

complaint to be serious enough to merit it. But, for Landlord Services, if still dissatisfied, the complainant must either wait eight weeks to complain to the Housing Ombudsman or ask a 'Designated Person' (a Councillor or MP usually) to help them to resolve their complaint. This makes the process slow in reaching the point where the Housing Ombudsman will investigate.

The Housing Ombudsman also differs from the LGO in that when she does investigate, she can order a landlord to take action or to make a payment if she finds against them. It is usual for the Housing Ombudsman to make recommendations or issue comments to assist in improving services.

5. Police and Crime Panels

The Police Reform and Social Responsibility Act 2011 established Police and Crime Commissioners, plus Police and Crime Panels. As the Police and Crime Commissioners perform the decision-making processes previously undertaken by Police Authorities, they are a 'body in jurisdiction' for the Local Government Ombudsman. Police and Crime Panels, insofar as they are a committee of a local authority, also fall within the Local Government Ombudsman's jurisdiction for non-criminal matters.

I am pleased to advise that there were no complaints against the Council about Police and Crime Panels in 2016/17.

6. Learning from Complaints as a route to Service Improvement

Members will be aware from the Learning from Complaints report to this Committee in March 2015 that a great deal of work is invested in resolving complaints whilst they are still within the Council's internal complaints procedure and in learning from those complaints in order to improve services. Therefore, only the most serious of complaints reach either the LGO or the Housing Ombudsman.

Complaints dealt with internally are generally reported via the 'Your Views' procedure and this area falls within the portfolio of the Deputy Leader of the Council as part of her performance review and improvement remit. But to give a picture of what is being complained about at the 'pre-Ombudsman' stage, the Your Views team in Customer Services, has advised me that the common themes of complaints they receive are: disagreement with a policy, disagreement with the application of policy in relation to an individual and delay in processing. This applies to areas such as benefit complaints, decisions on planning applications, Fleet and Waste.

Housing matters also attract high numbers of complaints which are resolved via Your Views. As with Ombudsman matters, repairs are the subject most complained about, particularly delay in attendance, expectation of what works would be carried out and follow-up appointments.

Services have taken steps to improve the information available on their websites so that the expectations of customers may be managed. An

example of this is that the information available about the planning process advises people that there is no right to an appeal as a third party to a planning application. Wherever it is possible to learn from complaints, services are proactive in doing so.

Everyone has the right to make a complaint to the Ombudsman and the LGO continues to criticise Councils which fail to make this clear to their citizens when they have exhausted their own complaints procedure. That does not apply in Birmingham, as our Stage 3 letters include advice about how to pursue a complaint further with the appropriate Ombudsman.

Once the Ombudsman has determined a complaint there is also consideration about how services might learn from them to make improvements. Quarterly reports are analysed by the Housing Service and Revenues and Benefits, both are proactive in implementing changes.

In addition, the Corporate Leadership Team has been holding monthly performance boards since 2016 to get a better grip on performance across all services and key indicators of operational health. Twice a year, the performance board has a particular focus on an analysis of all forms of complaints and citizen feedback to pick up on trends and drive service improvement.

7. Legal and Resource Implications

No specific legal implications have been identified, but resources are committed by individual Directorates in resolving Ombudsman complaints.

8. Risk Management & Equality Impact Assessment Issues

No specific issues have been identified.

9. Compliance Issues

City Council policies, plans and strategies have been complied with in this report. Where failings have been highlighted by the Ombudsman, individual directorates have been advised when they may have been in breach of their own policies and asked to take action. This can result in new policies, or revision of current ones or retraining of staff.

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**Attachments: Appendix 1 LGO Complaints and Decisions Table
Appendix 2 LGO Annual Report and Accounts**