

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: Audit Committee

Report of: Clive Heaphy, Chief Executive

Date of Meeting: 28 January 2020

Subject: The Local Government and Social Care Ombudsman's Annual Review 2018/19

Wards Affected: All

1. Purpose of Report

1.1 Each year, the Local Government and Social Care Ombudsman for England issues a report summarising his work as independent arbiter of complaints about local government administration. A copy is available at each of the Group Offices.

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 and Social Care Ombudsman's Annual Report for 2018/19.

Key Issues

- **This report compares Birmingham's performance against the Local Government and Social Care Ombudsman's findings about the performance of councils in its remit across England.**
- **It does not seek to compare Birmingham against other core cities because it is 1.446 times larger than Leeds - the nearest in size – which has a population of just under 790,000 people. We have the largest population and the most complaints, though not all of those which the Ombudsman refers to will have been subject to investigation by them or passed back to us for resolution.**

3. Annual Review

3.1 Content

The Local Government and Social Care Ombudsman (LGSCO) 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 his Annual Report to Parliament. 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 LGSCO's performance during 2018/19 and specific information about the Council's Ombudsman complaints.

3.2 Volume of Complaints

The Annual Review shows that there were 18,482 complaints and enquiries to the LGSCO last year, compared to 17,452 in 2017/18.

3.3 Volume of Complaints about Birmingham City Council

The number of complaints about Birmingham determined by the LGSCO in 2017/18 was 422, a fall of about thirty cases from 2017/18. But, in addition, the Housing Ombudsman investigates complaints against the Council and he determined 68 complaints during the year, resulting in a total of 490 Ombudsman determinations in 2018/19, a fall of 20 cases overall. The numbers do not usually fluctuate very greatly from year to year.

To give Members a complete picture of all contact with the two Ombudsmen, 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 LGSCO's investigators was Education and Children's Services, at 18%, followed by Adult Care Services at 16% and then Planning at 12% of all the complaints and enquiries received.

3.5 Subject of Complaints about Birmingham City Council

Birmingham has never followed the LGSCO's trend as complaints about Housing matters have traditionally been our largest category. Combining complaints determined by both Ombudsmen, this was still the case in 2018/19, with 151 cases. This was followed by what the LGSCO calls 'Environment Services' – both Regulatory Services and Waste Management fall into this category. There were 137 complaints, most were about failure to collect waste. The industrial action had a considerable effect here and this has continued into 2019/20.

Appendix 1 is provided by the LGSCO and gives four different forms of information. The first demonstrates the subject matter and numbers of complaints received and determined by the Ombudsman about Birmingham in 2018/19. However, it is misleading in that we will not have received the 484 referred to by the LGSCO - 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 specific category the LGSCO has used – as mentioned above.

The second dataset is referred to below at 3.6. The third and fourth are new this year, because the LGSO is focussing more on compliance with settlements than they used to. We regard it as good practice to ensure that our services complete the settlements agreed and that we confirm it to the Ombudsman. We have always done this. The final decisions issued by the LGSCO now tend to include a timeframe for compliance and the final dataset refers to this. It was not possible to meet it in 2 cases out of 48. Where a major policy review may be involved and staff may need training on the changes etc., it might not be possible to meet the Ombudsman's timeframe, but we do always advise them if we find that we cannot meet it.

3.6 Outcomes

The second dataset in Appendix 1 provides the decisions made by the LGSCO during the year. It should be noted that of these, the largest category is for complaints which the LGSCO referred back to the Council to resolve itself. At 173 cases, this is about 40% of the complaints they receive.

The LGSCO closed 112 cases after carrying out initial enquiries and undertook detailed investigations in 100 cases. Of these, 77 were upheld. As the LGSCO 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, if the LGSCO'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 LGSCO to reach this view.

Compared to 2017/18, the LGSCO has undertaken more detailed investigations than last year. Around 100 is usual and we do expect that more will be upheld than not, because they are the most serious and complex cases.

3.7 Reports

The LGSCO issued 45 reports in 2018/19, mostly about Education and Children's Services, Adult Social Care and Housing.

None of these were against Birmingham, but two reports have been received in 2019/20. These concerned Education Transport and Waste Management. Both of these have been reported to this Committee, in June and September 2019 respectively.

To update Members, I can confirm that the Ombudsman is satisfied with the actions taken by the Council in response to his report about Education Transport. We have not yet reached that point with the report about Waste Management due to the monitoring requested by the Ombudsman and the purdah period resulting from the December 2019 General Election. This has affected the independent report on the Waste Service being considered by the Council.

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 LGSCO upheld 77 complaints in 2018/19, no complaint resulted in a local settlement of this magnitude. We made 41 financial settlements during the year and the total compensation paid was £18,331 (including 15 cases determined by the Housing Ombudsman, which resulted in compensation.) This sum is higher than in 2018/19, but this is something that cannot be predicted from year to year.

Our most expensive settlement in 2018/19 was a SENAR complaint which cost £4,600. This was for a child whose EHC plan had not been reviewed, she was not offered a suitable school place and no educational provision was given for a year. The result was that she needed to repeat a year of school. It is usual for the Ombudsman to propose a tariff of between £600 and £1800 per term, depending on the circumstances. We had accepted

that we did not handle this matter well as we could, as we could not say why we had failed to provide for this child for so long. The LGSCO recommended that training be refreshed for staff, so that they were looking for suitable alternative education, as well as for a school place. We agreed, and this was carried out.

4. The Housing Ombudsman

In order to give Members a picture of all Ombudsman matters, I am including here an update about this service, too. 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.

After a series of Interim Housing Ombudsmen, there is now a permanent Housing Ombudsman, Richard Blakeway, who has been in post since September 2019. He succeeded an interim post holder, Andrea Keenoy, and has reported for 2018/19 as follows:-

16,883 complaints and enquiries were received by the Housing Ombudsman Service (HOS) this year, a rise of about 2,500. This is the sharpest rise since the HOS's remit was extended to include local authorities in April 2013.

The Interim Housing Ombudsman highlighted the fact that the service works with landlords to try to resolve complaints without a formal determination. 2442 complaints were determined formally by the HOS. That is only about 14% of the complaints and enquiries they receive.

Around 40% of complaints to the HOS are about repairs, by far the largest category. For Birmingham, between 80 and 90% of complaints received from the Housing Ombudsman concern repairs.

The service achieved its target of determining complaints within six months only in the final quarter of 2018/19. If this can be maintained, it would be a great improvement, especially for complainants. The delay in determination is the most common complaint against the HOS. This is not surprising as the service is much slower than the LGSCO.

The HOS enquired about 68 complaints against Birmingham in 2018/19, 27 of them were premature complaints which we resolved ourselves directly with the complainant. Of the remaining 46, the HOS found no maladministration in 25 cases, 5 were outside jurisdiction, 1 complainant withdrew her complaint, and 15 resulted in a finding of maladministration and a financial settlement. The general theme of these cases was issues around repairs: delay in completing them, dissatisfaction with their extent or quality and missed appointments. Handling of complaints also featured. The total cost of settlements was low, at £2,225, ranging from £400 down to £25.

The HOS has a different approach to the LGSCO in that complainants must exhaust the Council's own complaints procedure. The LGSCO 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 an MP usually) to help them to resolve their complaint. This makes the process slow in reaching the point where the HOS will investigate.

The HOS also differs from the LGSCO in that when he does investigate, he can order a landlord to take action or to make a payment if he 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 LGSCO. Police and Crime Panels, insofar as they are a committee of a local authority, also fall within the LGSCO'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 2018/19.

6. Learning from Complaints as a route to Service Improvement

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 LGSCO or the HOS.

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 remain much the same from year to year:- 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 and waste management.

Housing issues 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 either of the Ombudsmen. The LGSCO 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. I issue quarterly analysis reports detailing new and determined complaints to help services track their ombudsman complaints. These are analysed by the Housing Service and Revenues and Benefits, both are proactive in implementing changes.

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