

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: Audit Committee

Report of: City Solicitor and Monitoring Officer

Date of Meeting: 14 February 2023

Subject: The Local Government and Social Care Ombudsman and the Housing Ombudsman Annual Review 2021/22

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.

1.2 Similarly, the Housing Ombudsman issue a performance report for each landlord which provided residents with more information and insight and learning for landlords to improve their services. They also produce a national landlord report plus geographical analysis of their 2021-22 determinations by region and district.

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

1.4 This report compares Birmingham's performance against the Local Government and Social Care Ombudsman's and Housing Ombudsman's findings about the performance of councils in its remit across England.

2. Recommendation

2.1 To receive this report concerning the Local Government and Social Care Ombudsman's Annual Report and the Housing Ombudsman performance review for 2021/22.

2.2 Accept the Professional Standards Team's proposal to separate the LGSCO/HO reports in future years.

Key Issues

For matters across the Council, the key issues are as follows;

LGSCO Annual Review – Areas of concern;

Public Interest reports

During the year (2021/22) the LGSCO issued 5 public interest reports about the Council;

- City Operations Directorate – LGSCO reference 20011230
- Adults and Social Care Directorate – LGSCO reference 21000323
- Children and Families Directorate (2) – LGSCO references 19016798 and 19019859
- City Housing Directorate – LGSCO reference 20007658.

City Operations Directorate

The LGSCO raised concerns in their annual review letter last year about ongoing problems with waste collections and were disappointed to issue a report about further failings this year.

The LGSCO are concerned there continues to be significant ongoing systemic issues with the Council's waste collection service. The LGSCO continue to receive regular complaints, with 90% of investigated complaints being upheld.

Despite concerns having been raised since 2019, there appears to have been limited improvements. Residents are not getting the service they are entitled to. The LGSCO urged the Council to robustly tackle the issues at the heart of these problems and ensure an improved service for residents. Evidence of improvements plans as well as the report being considered by this committee were provided to the LGSCO as part of complying with the report recommendations, which were accepted, and it is understood work on these plans is underway.

Adults Social Care Directorate

A report was issued about the Council's handling of home adaptations to meet a disabled child's needs. The investigation found the Council failed to keep accurate and detailed records and to evidence a proper decision-making process. The LGSCO also found the Council at fault because building works were not to an acceptable standard. To remedy the injustice, the Council agreed to pay a financial remedy to recognise the distress, uncertainty, and impact the faults had on the complainant and his son. The Council also agreed to pay for inspection works, any remedial works, and for the works needed to complete the home adaptations. The LGSCO welcomed the Council's new Disabled Facilities Grant policy, which helps to avoid replicating the circumstances that led to this case.

Children and Families Directorate

This report related to two different families and concerned the Council's handling of home to school transport arrangements. The investigation found the Council had wrongly expected parents to accompany their children on the journey to school, could not show how it considered the suitability of the transport offered to the children, and did not ensure the transport could be accessed without families incurring additional costs. The failures meant the families incurred unnecessary costs as well as the stress and inconvenience of having to accompany their children to school on unsuitable transport.

The Council accepted the recommendations by apologising to both families, reimbursing their costs, and making further payments to recognise the injustice caused. The LGSCO were particularly impressed by the Council's commitment to review other cases that had been affected by the same fault and the efforts it took to identify families entitled to have costs reimbursed. The Council agreed to the reimbursement, estimated to be in the region of £100,000. The LGSCO welcome the actions being taking to ensure families receive the money they are entitled to. The Council has also committed to making the information public, to alert families whose contact details are no longer up to date to enable them to request reimbursement.

City Housing Directorate

The fourth public report detailed the Council's delay in processing applications to the housing register. The investigation found it took the Council six months to assess the complainant's application. The delay in this case was not an isolated incident. The LGSCO found systemic delay, resulting in a wait time of up to 12 months for the Council to deal with applications.

The Council acknowledged the extent of its backlog and had already taken some steps to try and improve matters, including hiring additional staff. The Council agreed to the recommendations to apologise to the complainant and backdate her application to the date she applied. It also agreed to improve its service for future applicants by committing to an application processing time of four to six weeks. The Council also committed to reviewing its Housing Allocations Policy to ensure any delay by the Council did not impact on an applicant's priority band date and to deal with any other complaints about delay in line with the LGSCO's report.

The Council complied with the recommendations fully and within the agreed time frame. The LGSCO was pleased to note that by January 2022, the Council had succeeded in reducing the wait time to four months and projected that it would achieve its goal of 6 weeks by March. However, this was not fully met.

The current position is that there are 19,833 households registered on the housing register. There are 5680 new housing applications awaiting assessment, of these 2977 (52.41%) are within the target 6 weeks. The team assess the oldest case first and are currently assessing the oldest cases at 10th Nov 2022. That is a period of 11 weeks and 4 days. The work to ensure

all applications are assessed in the 4–6-week period after receipt has been consistently planned and pursued over the last 12 months. The service has in this time reached a point where over 85% of applications were within 6 weeks. The average number of applications received each week in 2022 was 500, compared to 477 in 2021, 391 in 2020 and 383 in 2019. The service has mobilised additional staff, overtime and support from other teams in order to manage the pressures of applications presenting. Performance is monitored and reported as a key performance measure within the Council. To maximize performance individual performance monitoring has been implemented across the service to identify any performance/training issues. In addition, the service area is working collaboratively with the Special Projects, Improvement & Delivery Unit to undertake a specific review to look at the end to end process of Housing Applications awaiting to be assessed to see how the KPI performance can be improved.

The Council also launched the statutory consultation for a revised Housing Allocations Policy. The LGSCO was pleased to see the proposed scheme includes a commitment that the Council will deal with applications in a timely manner.

Remedy Compliance

The LGSCO recorded their satisfaction with the Council's compliance in **77** cases where they recommended a remedy. However, the LGSCO are disappointed that in **24** of these cases, remedies were not completed within the agreed timescales. Concerningly, the Council delayed by almost four months in ensuring effective monitoring of waste collection, further reinforcing the concerns previously set out about ongoing, systemic issues in that department.

This is the third consecutive year where the LGSCO have raised concerns about delays in the remedy process and yet these delays persist. Once again, the LGSCO invited the Council to consider how it might make improvements to act on our recommendations within the agreed timescales. The Council have recently introduced an improved system for monitoring and recording remedy compliance. Each recommended action is listed and the deadline for each action is recorded as they may be different, the date actions have been completed is also recorded, which allows easy identification of matters where the recommended actions are overdue or incomplete. This data is then shared with CLT and the Chief Executive and is incorporated into one to one meetings with Directors. These improvements have been shared with the LGSCO personally and were noted as a welcome commitment to improvement.

The LGSCO have investigated a number of complaints involving children and young people with special educational needs. In all but one case the LGSCO found significant systemic failings, which reflect the findings of the Ofsted and CQC reinspection of May 2021. In many of these complaints, children and young people were out of education, and not receiving alternative provision or the provision they are legally entitled to, significantly impacting them and their

families, and profoundly affecting future opportunities. The LGSCO intend to work collaboratively with the Commissioner, appointed by the Department for Education, and the Improvement Board to ensure their recommendations support and reinforce the work being undertaken to address the issues identified.

HO Annual Review – Areas of concern;

The HO's annual performance report shows that they found 54% maladministration for the Council in their findings made during 2021/22. This rate of maladministration is higher than average for the sector. During 2021/22 they upheld at least one part of the complaint in 48% of their cases. The HO recognises there are many separate, often conflicting, pressures placed on landlords and their finances, a positive complaint handling culture remains vital. The HO is concerned with the high rate of maladministration and for issues to occur across this proportion of findings suggests improvements could be made to prevent complaints.

It is noteworthy that subsequent to the period their report covered (April 21 – March 22), the HO implemented a focussed review period under Paragraph 49 of their powers, which culminated in a report that is forming an action plan presented to CLT during January 2023.

3. Annual Review

3.1 Content

The LGSCO complaint statistics focus on three key areas:

Complaints upheld - They uphold complaints when some form of fault is found in an authority's actions, including where the authority accepted fault before they investigated.

Compliance with recommendations – They recommend ways for authorities to put things right when faults have caused injustice and monitor compliance with their recommendations. Failure to comply is rare and a compliance rate below 100% is a cause for concern.

Satisfactory remedy provided by the authority - In these cases, the authority upheld the complaint and the LGSCO agreed with how it offered to put things right. They encourage the early resolution of complaints and credit authorities that accept fault and find appropriate ways to put things right. The LGSCO compare the three key annual statistics for our organisation with similar authorities to provide an average marker of performance.

Similarly, but in addition to the LGSCO, the HO landlord performance review for each landlord shows:

- the overall outcomes of their decisions
- findings by category and decision
- the types of orders made for landlords to put things right

- the timeliness of landlord compliance with orders where the target date for compliance was during 2021-22
- the total amount of compensation ordered.

3.2 Volume of Complaints

The Annual Review shows that nationally, there were 15,826 complaints and enquiries to the LGSCO during 2021/22, compared to 11,830 in 2020/21. This reflects an overall increase in tendency of UK citizens to complain of 34%.

3.3 Volume of Complaints about Birmingham City Council

The number of complaints about Birmingham determined by the LGSCO in 2021/22 was 461, this is an increase of about 70 cases (18%) over 2020/21.

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 LGSCO complaint statistics for 2021/22 have identified the following national trends;

- The LGSCO continue to uphold around two thirds of complaints they investigate.
- Complaints they investigate about Education and Children's Services have the highest uphold rate (77%).
- The LGSCO are recommending more service improvements than ever before, with 1,848 recommendations nationally, focused on policies, procedures and staff training.
- Compliance with recommendations nationally was at 99.7%

3.5 Subject of Complaints about Birmingham City Council

Again, this year, both the City Housing directorate and Environmental Services, Public Protection and Regulation (City Operations) complaints resulted in the highest number of determinations in comparison to other directorates.

In 2021/22 the LGSCO determined 461 cases against the Council, as illustrated below;

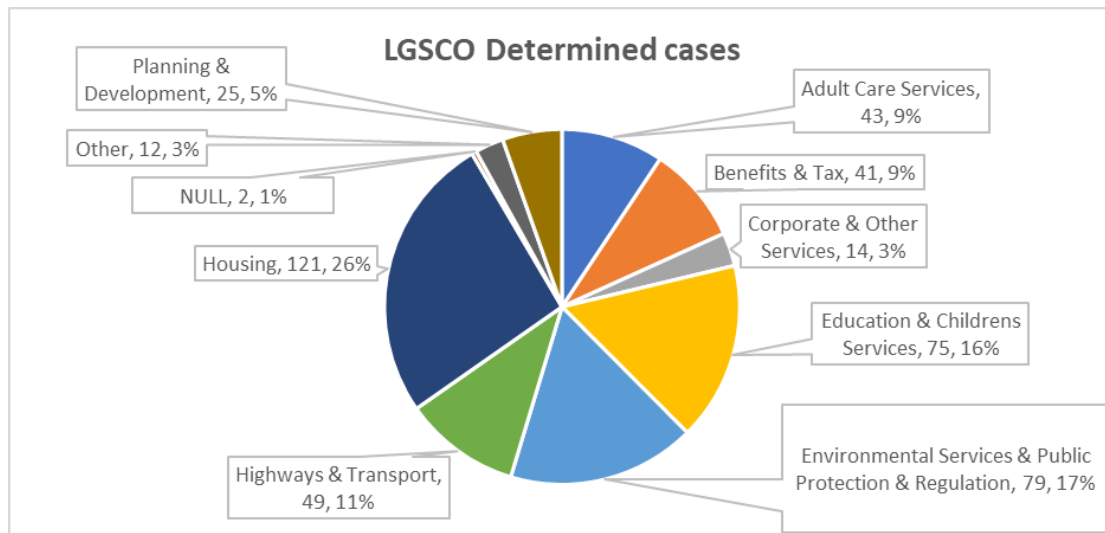


Fig 1.0 Cases determined against BCC 21-22

The LGSCO combine both Regulatory Services and Waste Management into 'Environmental Service' category. This, however, causes a discrepancy when compared to our data because we record complaints for these services separately for each service area.

Appendix 2 is provided by the LGSCO and gives three different forms of information. The first demonstrates the numbers of complaints received, with the second shows the number of complaints determined by the Ombudsman about Birmingham in 2021/22. The third set of information demonstrates compliance of the recommended actions.

3.6 Outcomes

For the period between 1 April 2021 to 31 March 2022, the LGSCO have recorded the following statistics for the Council;

- 100 upheld decisions* (78%), this compares to an average of 68% in similar authorities,
- In 100% of cases the Council successfully implemented recommendations (Statistics are based on a total of 77 compliance outcomes for this period), this compares to an average of 100% in similar authorities,
- In 7%* of upheld cases the Council provided a satisfactory remedy before the complaint reached the Ombudsman. This compares to an average of 11% in similar authorities.

* Statistics are based on a total of 128 investigations for this period

3.7 Reports

The LGSCO issued 43 public interest reports nationally in 2021/21. Three quarters of which were about Education and Children's Services and Adult Care Services.

3.8 Settlements

We can advise that for 2020/21 the Council did not pay a local settlement greater than £10,000.

However, in a City Housing – Homelessness complaint where we were issued with a public interest report matter (LGSCO reference 21015013). One of the recommended actions was to make payment of £29,700. This amount was payable in sums of £300 for each month the Complainant spent in unsuitable temporary accommodation from July 2014 until the Council ended its duty in October 2022. Whilst this matter does not fall within the reporting period of 2021/22, we are reminding you this matter which was reported to the Committee in January 2023.

4. The Housing Ombudsman

The Housing Ombudsman's remit is 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.

The Housing Ombudsman recognise the unprecedented challenges social landlords and residents are facing due to the cost of living crisis and ageing homes. This is reflected in the continued high volumes.

Their annual complaints review reveals challenges with embedding a positive complaint handling culture, and poor performance in some service areas still at unacceptably high levels. They also reported that this makes the role of the Member Responsible for Complaints, set out in their strengthened Complaint Handling Code, essential and reinforces the need to maintain an accessible and empowered complaints team, even as budget pressures increase.

Appendix 4 is provided by the HO and sets out the Landlord Performance data for 2021/22.

Performance

Performance has improved little on the prior year.

Property condition remains the biggest reason for referrals to the Housing Ombudsman and this is highly likely to continue as properties age and climate change brings more extremes of weather. In 59% of property condition complaints there had been service area failures by the landlord, 20% of which were resolved through the landlords' own complaints procedure. However, the HO upheld 39% of all property condition complaints. This indicates more action is required to improve the quality of homes and service standards.

Nationally, the sector's performance on complaint handling is concerning. There were failures in 86% of complaint handling complaints, 20% of which were put right during the landlord's own procedure. That landlords have

identified and addressed failure through their own procedure demonstrates the Complaint Handling Code and the principles of good complaint handling are starting to work. However, the HO upheld 66% of the complaints about complaint handling they investigated nationally, also indicating that significantly more progress is required in the sector.

The Social Housing (Regulation) Bill contains provisions to put the Complaint Handling Code on a statutory footing and gives the HO a duty to monitor compliance against it. In addition, to unify complaint handling requirements across housing associations and local authorities, the HO are developing a joint Code with the Local Government and Social Care Ombudsman that will be heavily based on their existing Code.

Individual landlord performance

The HO has published 115 landlord performance reports where they investigate five or more complaints.

The Ombudsman has written to the 32 chief executives or equivalent of landlords where they found maladministration in at least half of their decisions, comprising of 21 local authorities and 11 housing associations. Five of the 32 landlords had maladministration found in at least three quarters of their decisions.

A positive complaint handling culture

The HO annual resident and landlord surveys, show there has been a 17% decline nationally in the number of residents who think making a complaint would make a difference compared to last year. Resident and landlord views on learning from complaints differ markedly: 60% of landlords stated that they share learning from complaints with their residents but only 36% of residents agreed with this statement. Similar differences in perception exist regarding resident participation in landlord self-assessments against the Complaint Handling Code – 41% of landlords said they involved residents but only 22% of residents surveyed said they had been consulted.

These are concerning statistics and come after the first full year of the Complaint Handling Code. This sets out steps to ensure continuous learning and improvement – essential for landlords to improve their services and which can, ultimately, lead to cost savings. At the very least, they indicate that landlords should consider how they can communicate more effectively with residents on these matters.

Accessibility of complaints procedures

The HO annual surveys show residents who considered that the ease of access to their landlord's complaint process was acceptable or better, dropped from 68% to 51%. Perceptions as to ease of use and responsiveness were maintained but only 44% of residents agreed that their

landlord promoted its complaints process and only 58% agreed that it signposted to the Ombudsman.

These results are concerning; the updated Complaint Handling Code strengthens the provisions on access and awareness raising to ensure residents' voices can be heard.

Housing Ombudsman's performance report for the Council

For the Council the Housing Ombudsman has reported for 2021/22 as follows:-

The Housing Ombudsman determined **51** complaints about the Council during the year, the determination outcomes are set out in the graph below.

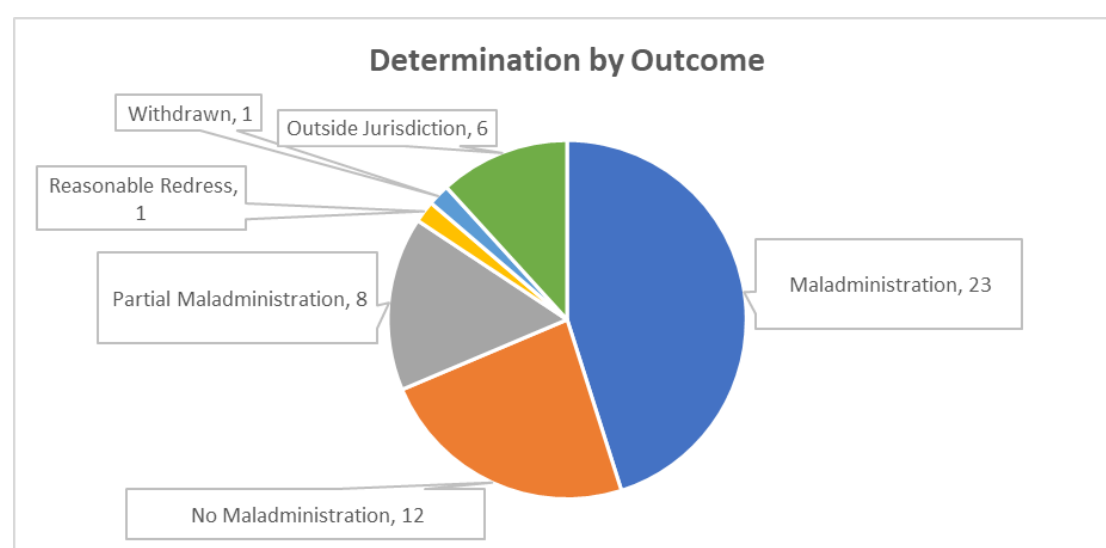


Fig 2.0 Cases determined between 01/04/2021 - 31/03/2022 by overall determination

Of the 51 cases determined, 42 resulted in a finding against the Council. The findings by category are set out in the table below.

Category	Severe Maladministration	Maladministration	Service failure	Redress	No maladministration	Outside Jurisdiction	Withdrawn	Total
Anti-Social Behaviour					5	1	1	7
Charges			1		1	1		3
Complaints Handling		9	3		4			16
Estate Management		1			1			2
Health and Safety (inc. building safety)		2						2
Information and Data Management			1			1		2
Property Condition	1	16	5	1	8	7		38
Reimbursement and Payments			3		2	1		6
Staff					2			2
Total	1	28	13	1	23	11	1	78

Fig 3.0 Findings on cases determined between 01/04/2021 - 31/03/2022 by category and decision.

In total 82 orders were made in cases determined during the period and are set out in the graph below;

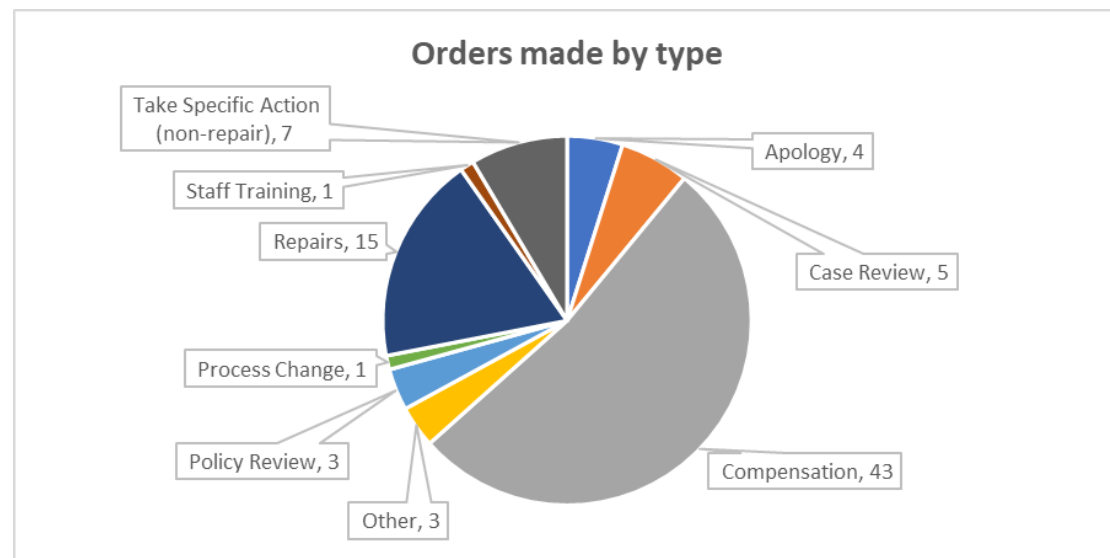


Fig 4.0 Orders on cases determined between 01/04/2021 - 31/03/2022 by order type.

Order compliance

Order compliance within 3 months

Time to comply	Count	%
Within three months	59	98%
More than three months	1	2%
Grand Total	60	100%

Fig 5.1 Orders with compliance target dates between 01/04/2021 - 31/03/2022

Order compliance within 6 months

Time to comply	Count	%
Within six months	60	100%
Grand Total	60	100%

Fig 5.2 Orders with compliance target dates between 01/04/2021 - 31/03/2022

The total amount of compensation ordered in determinations made between 1 April 2021 to 31 March 2022 was **£10,756.00**.

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.

We are pleased to advise that there were no complaints against the Council about Police and Crime Panels in 2021/22.

6. Learning from Complaints as a route to Service Improvement and Engagement with the Ombudsmen

The Council introduced a new Corporate complaints procedure which was launched at the beginning of this review period (April/May 2021). A review of the previous complaints process found the following:

- The complaints process was performing badly and was in “crisis” and an intervention was urgently needed.
- Citizens had seven different channels to use to complain and there were at least three different systems in use to record and track complaint.
- Different areas within the Council had different levels of resources committed to complaints.
- There was no clear, consistent process for Members of the Council/MP’s to follow. A high number of complaints went unrecorded, and the volumes included in reporting did not reflect the true volumes.
- The cost of complaints (compensation & re-work) is not tracked or measured across the council.
- Service failings that cause complaints were not resolved, creating complaints that could have been avoided.

The following changes were made to the complaints process;

- One system (iCasework) is used to record complaints across the Council.
- There is one single complaints process which went live on 26 April 2021.
- Dedicated complaints teams are in place across the Council and 29 additional employees were recruited.
- Root cause analysis is undertaken routinely for every investigation, this assists in identifying where improvements are required.
- Data is retrieved from iCasework on a monthly basis and a new dashboard has been created to allow interactive investigation of data.

Next steps in the process to further assist with service improvements are as follows;

- Further training of Complaints Leads by LGSCO to improve the Quality of response
- Embedding strong communication with citizens throughout the journey of a complaint

- Effective Triage of complaints for early intervention
- Addressing service failure with Contractors and the impacts of failure
- Align root cause analysis and upheld Ombudsman outcomes with improvement activity to reduce complaints

LGSCO

We have had recent engagement with both Ombudsmen. We met with Mick King, LGSCO Ombudsman in late November 2022, where we discussed wider learning from complaints and changes to our systems and processes. We shared the above information on the new complaints procedure and the improvements that have been made within the Professional Standards Team (PST) which include the following;

- Collation of data, recommendations, actions and learning are provided into monthly bespoke reports to all Directors and Portfolio holders, which includes an overview of all ongoing cases and compensatory awards.
- PST manager invited to several Directorate Management Team and Cabinet Member Briefing attendance including discussing key areas identified in report and discussing findings and remedy implementation.
- The Head of PST appointed as Deputy Monitoring Officer (DMO) and attends Corporate Leadership Team meetings to spotlight key matters (currently Public Interest Reports) and remedy compliance, trends and numbers and detail on decisions upheld against the Council.
- The Monitoring Officer and DMO attend monthly Deputy Leader Briefings to spotlight key matters, trends and numbers and detail on decisions upheld against the Council.

The Ombudsman was pleased with the improvements being made and encouraged the Council to take individual complaints as an opportunity to learn as this influence's good governance and public accountability.

HO

In June 2022, we received correspondence from the Housing Ombudsman advising that they will be conducting an investigation under Paragraph 50 of the Housing Ombudsman Scheme in relation to 2 repairs complaints which concerned the Council's complaint handling and the housing repairs compensation procedure.

Paragraph 50 (amended to Paragraph 49 during the review period) of the Scheme allows the Housing Ombudsman to conduct further investigation to ascertain whether there is a systemic failure:

“The Ombudsman may conduct further investigation beyond the initial complaint or landlord to establish whether any presenting evidence of

service failure is indicative of a systemic failing. Where this is the case it will be referred to the appropriate regulatory body.”

The HO advised they were monitoring cases for a six month period (with effect from 15 March 2022). The HO advised they would be monitoring the outcome of the cases to establish if there have been other instances of service failure and whether any issues identified appear to be systemic.

At the end of the six-month period, the HO will publish a learning report highlighting any issues they have identified in the cases investigated and making recommendations where appropriate.

To date we have attended two meetings with HO officers, the first meeting was to answer any questions we may have in relation to the paragraph 49 investigation and discuss engagement with the Council over the monitoring period.

The second meeting was following receipt of the draft report, where we were invited to provide comments to be included in the final report. We were advised of the next steps in the process and of future engagement with the HO. Further meetings will take place following publication of the report, these will be arranged where the action/implementation plan of the recommendations will be reviewed and discussed, any concerns with current cases and any potential future issues will be addressed and may result in a further monitoring period.

The final report was published on 17 January 2023, a number of recommendations were made which are due for completion on 17 April 2023. A copy of the Paragraph 49 report is attached at appendix 5.

The recommendations set out in the report are currently being worked on and we will provide a detailed update in next year's report.

7. Legal and Resource Implications

No specific legal implications have been identified (see para. 9 below), and 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 has resulted in revision of current procedures and/or retraining of staff. Where reports have been issued, they have been escalated to the Audit Committee via delegated power under Local

Government Act 1974 section 31(2), in addition to being highlighted to the Chief Executive.

10. Future years

We propose to separate the LGSCO and HO annual reports for future years with a view to providing more accurate and timely updates. We receive the LGSCO report in July and the HO report in September/October each year. Due to the time lapse between receipt of the reports and presentation to this Committee, we propose to present the reports separately. This will allow for our reports to be more succinct, highlighting concerns and attaching reports as appendices, which will be more digestible. We accept that this may take up more time on the Committee's agenda, however, the time allocated will be equal but at different points in the year.

Appendices

Appendix 1 – LGSCO Annual Review letter 2021/22

Appendix 2 - LGSCO Annual Review BCC figures 2021/22

Appendix 3 – HO Annual complaints performance report 2021/22

Appendix 4 - HO Landlord Performance Data 2021/22

Appendix 5 – HO Paragraph 49 report

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