

Division(s):

## **AUDIT & GOVERNANCE COMMITTEE**

**16 SEPTEMBER 2015**

### **LOCAL GOVERNMENT OMBUDSMAN – ANNUAL REVIEW REPORT**

**Report by Peter G Clark, County Solicitor and Monitoring Officer**

#### **Introduction**

1. Each year, the Local Government Ombudsman (LGO) issues an Annual Review Report about each council in relation to the complaints made to the Ombudsman about that Council in the previous financial year. My report to this Committee therefore informs members about the LGO's Annual Review Report for Oxfordshire County Council for the year 2014/15.
2. In previous years, the Ombudsman issued more detailed Annual Reports with a commentary on each authority's performance. Following changes to the LGO's investigations procedures, this is no longer the case.
3. However, these figures, in comparison with other information published separately by the Ombudsman for all authorities, demonstrate that the Council's system of control as expressed through the Council's engagement with the Ombudsman is working well.

#### **The LGO's 2014/15 report**

4. Under the Local Government Act 1974, the LGO has two main statutory functions:
  - To investigate complaints against councils (and some other authorities)
  - To provide advice and guidance on good administrative practice
5. Following changes to the structure of the Ombudsman's investigative and recording procedures, the Ombudsman now records the following categories of information – summarised in their Annual Review Report (attached as Annex 1 to this report):
  - Complaints and enquiries received - by subject area
  - Decisions made (upheld, not upheld, advice given, closed after initial enquiries, incomplete/invalid and premature)

#### ***Complaints and enquiries received by LGO***

6. During 2014/15, the LGO received **53** *complaints and enquiries* about the Council. In 2013/14 this had been 50; and in 2012/13 39. The number therefore fluctuates each year and cannot of itself be regarded as an accurate assessment of Council performance.
7. A note of caution, regrettably, also needs to be expressed about the LGO's figures in any case. For the second year in a row, I have had to correct the LGO on its published figures. In two cases, the LGO had noted cases as 'upheld' although their actual decisions were that those complaints were 'not upheld'. Unhelpfully, the LGO is unwilling to correct the statistics once issued, due to their own resourcing issues, and do not supply us with a draft in advance. I have written to express my concern about this and the consequent undermining of the usefulness of any comparative information. That said, the LGO is clear in her letter that numbers themselves do not give a full picture of a Council's performance in handling complaints. I agree and also welcome the LGO's intention, over the coming year, to gather "more comprehensive information about the way complaints are being remedied so that in future our annual letter focuses less on the total numbers and more on the outcomes of those complaints".
8. Annex 1 to this report includes the LGO's full list of subject areas for Oxfordshire County Council which has attracted referrals to the Ombudsman. The top three were:
- Education and children's services      24
  - Adult care services                              16
  - Highways and transport                        7
9. To put this in context, the LGO's publication *Review of Local Government Complaints 2014/15* notes that of the 18,500 complaints it received that year, these three services also attracted a significant number of complaints on a national basis:
- Education and children's services      17% of all LGO complaints
  - Adult social care                                14%
  - Highways and transport                        11%
10. It's noteworthy that the LGO's publication confirms that while Education and Children's Services continue to attract the *most* complaints nationally, the *biggest increase* (10%) nationally is in the area of *Adult Care Services*. Therefore, occurrence of complaints about the three subject areas in paragraph 8 is not itself surprising and accords with national trends.

### ***Decisions made by LGO***

11. The more telling figure relates to the actual *decisions* about Oxfordshire County Council made by the LGO (of which there were 47). Some complaints received by the LGO were simply closed and not pursued at all (6 of 47 cases); or were referred to the Council for resolution (21 out of 47 cases) as the complainant had not allowed the Council to consider the complaint first.

12. **Investigations** were therefore carried out only into 17 complaints. The LGO's report indicates that of these, 7 were not upheld, while 9 were upheld. However, after checking these figures with the actual decisions issued by the LGO, these figures should be reversed i.e. **9 cases were 'not upheld' and 7 cases were 'upheld'**. The LGO has been asked to correct this on its own records but is unlikely to do so. Of all of the complaints received by the Council during 2014/15 (517), those upheld by the Ombudsman reflect only 1.4%.
13. Thumbnail details of these 7 "upheld complaints" are as follows:

Nature of complaint	Decision	Remedy
Complaint that a children's centre didn't offer appropriate help and advice when complainant reported safeguarding concerns about a day nursery; and did not make a referral to children's services.	While staff had discussed the concern with the complainant originally, they did not make a referral to the Assessment Team as procedures required. Concerns were not recorded or referred appropriately.	Council undertook to provide further safeguarding training to children's centre staff; and to review recording practices in relation to concerns made. To carry out a further review with staff of communication and responsibilities. Council apologised for distress caused and paid £250 in recognition of this
Complaint of a failure adequately to consider the impact on the traffic and parking in complainants street when parking restrictions were implemented nearby; Failure to consult the residents of his road or respond to their objection.	The Council adequately considered the impact of nearby parking restrictions. It did not consult the residents of that street or make the decision-maker aware of a petition, but did adequately consider their objections. The Council has explained why it is not reviewing whether further restrictions are needed.	No remedy needed.
Complaint that the Council failed to take appropriate action when a bridleway became flooded. The Council failed to respond to concerns.	The Council was not at fault for the way it reached decisions about how to deal with the drainage problems on the bridleway. The Council failed to respond in writing to the complainant's original concerns.	Apology given for failing to respond in writing.
Complaint that the Council failed to consistently and fairly apply its policy on acceptable proof of residence when making its 2013 infant school	There was no fault in the way the Council administered the school admission applications and appeal for the child. The Council incorrectly	No remedy needed.

Nature of complaint	Decision	Remedy
admission decisions. As a result of the Council's fault, a child didn't get a place at the school closest to the family home.	allocated a place at School A to one child. That was fault. But this fault, and the Council's decision not to withdraw the place, did not mean the child was denied a School A place.	
Complaint about failing to deal with safeguarding issues appropriately and to keep relevant records Council demonstrated bias and failed to provide support.	There were minor faults in following safeguarding procedures and in record keeping but these did not result in significant injustice. No evidence of bias, lack of impartiality or lack of support.	Council provided a suitable apology.
Complained that the Council wrongly decided that a child should be adopted; presented incorrect information to the Court which decided child should be adopted; and did not assess a friend as a potential adopter.	The Council was at fault in failing to provide a clear explanation at an earlier stage of why it did not proceed with the assessment of A as potential adoptive parent for X's child. There is no evidence of fault in how the Council made its decision not to bring forward a review of X's letterbox contact with the child.	Apology provided for the uncertainty created.
Complaint that the Council has refused to undertake a second stage investigation of the complainant's set of additional complaints regarding child protection proceedings	The Council was at fault in declining to investigate new complaints at Stage 2 of the statutory complaints procedure.	The Council agreed to undertake a Stage 2 investigation of the complaints

### ***Comparison with other county councils***

14. A comparison of overall LGO 'decision statistics' for other county councils shows that Oxfordshire County Council:
- Had the second highest number of complaints closed by the LGO after first enquiry (i.e. no case to answer)
  - Had the third lowest number of upheld complaints (3) per 100,000 population
  - Had the ninth lowest percentage of complaints actually upheld by the LGO
15. This sound position continues to reflect well on the work of the Council. It is noteworthy that the Council's complaints processes stand up well in comparison with best practice. In the LGO's report *Review of Local Government Complaints 2014/15*, the Ombudsman makes particular mention

that 43% of complainants nationally were not advised that they could refer their complaint to the Ombudsman. Oxfordshire County Council makes particular mention of this right in every final response sent by the Council and supplies up to date contact details for doing so.

### ***Councillors' guide to complaints***

16. This year the LGO's Annual Report draws attention to a guide for councillors that the Ombudsman and the Local Government Association have produced (*Handling complaints for service improvement*). This provides advice to elected members about good practice in relation to receiving 'complaints' from members of the public and how to recognise the need to refer these through the Council's formal complaints procedures. The guide also draws attention to the importance of complaints as an indicator of a council's willingness to learn from complaints and to have processes that are clear and accountable. The Council's delegation of oversight to this Committee is part of that framework in Oxfordshire.
17. A copy of the guide is being made available on the members' intranet.

### **Conclusion**

18. This year's Annual Letter from the Ombudsman is encouraging. In comparison with other counties, the Council had the sixth lowest number of referrals to the Ombudsman and the third lowest number of complaints upheld per 100,000 population. This suggests that the Council's complaints handling is robust, contains clear referrals to the Ombudsman and that the Council is among the proportion of Ombudsman complaints upheld.
19. This is not a matter for complacency but does indicate that this important strand of governance is working effectively.
20. On my behalf, the Complaints & Freedom of Information team continues to disseminate best practice, case studies and advice to managers on the handling of complaints, to keep knowledge current. The Team also leads on the co-ordination of LGO complaints, liaising with service managers to ensure that the LGO receives a full and frank response, in the interests of accountability and good governance.

### **RECOMMENDATION**

21. **The Committee is RECOMMENDED to note and comment upon this report and on the Local Government Ombudsman's Annual Review of Oxfordshire County Council for 2014/15.**

Peter Clark  
County Solicitor and Monitoring Officer

Background papers: Local Government Ombudsman publications:

- Review of Local Government Complaints 2014/15

AG7

- Handling complaints for service improvement

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