

Division(s):

AUDIT & GOVERNANCE COMMITTEE

18 SEPTEMBER 2013

LOCAL GOVERNMENT OMBUDSMAN – CHANGES TO ANNUAL REVIEWS AND TO INVESTIGATIONS

Report by County Solicitor and Monitoring Officer

Introduction

1. This report highlights changes to the ways in which the Local Government Ombudsman intends now issues annual reports about each Council. It also summarises the changes to the Ombudsman's approach to assessing and investigating cases. This follows a reorganisation of the Ombudsman service earlier this year.
2. One consequence of the changes in the Ombudsman's approach is that, this year, there is no traditional Annual Letter giving the Ombudsman's detailed views on the County Council's performance during 2012/13; and therefore no ability to provide benchmarking against previous years' performance.
3. The Ombudsman's 'annual letter' for 2012/13 (Annex) does, however, highlight that complaints received by the Ombudsman about Oxfordshire County Council are well below the average for county councils generally.

The LGO's 2012/13 report and changes to annual reporting

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. Until this year, the LGO issued an Annual Letter to each council providing a summary of the complaints dealt with by the LGO relating to that council. Changes to the LGO's structure and business processes means that, for the year 2012/13, there will be no such report. The LGO are in the process of determining a new approach to providing authorities with information on their performance, which will be effective next year on the 2013/14 council year.
6. However, the LGO has given a headline statistic for 2012/13. During that year, the LGO received 39 complaints about Oxfordshire County Council.

This compares very favourably with the county council average of 54 complaints received. This statistic itself continues an encouraging trend. In the previous year, the LGO received 47 complaints about this council (which was itself down on the 2010/11 figure).

7. Importantly, for the year 2012/13, the Ombudsman has raised no issues of concern over the Council's handling of complaints, either generally or with regard to any specific case.

The LGO's new assessment regime

8. The Committee may find it useful to understand the new assessment regime adopted by the LGO following their reorganisation. This has been in operation since 1 April 2013. This has two stages.
9. A complainant to the Ombudsman should normally set out:
 - what they believe the service provider has done wrong
 - the injustice they claim to have suffered as a direct result, and
 - what they are looking for to put the matter right.
10. The Ombudsman then applies the two-stage approach.

Stage 1 – jurisdictional phase

This considers whether the complaint is 'in scope' having regard to whether:

- the LGO has power in law to act on the issue raised (e.g. criminal, commercial, employment and some educational matters are outside the LGO's jurisdiction)
- the complaint has been considered by the Council
- the complaint is 'in time' – the LGO will not normally consider a complaint made 12 months after the events complained about
- another body is best placed to provide a resolution e.g. appeal against a parking ticket

If a complaint does not pass the jurisdictional phase it does not continue.

Stage 2 – discretionary phase

Four inter-related tests are applied to complaints that are within jurisdiction.

- i. Injustice test: this is the most important strand. The complainant must have experienced serious loss, harm, or distress as a direct result of faults or failures by the service provider; OR continuous and ongoing instances of a lower level injustice that remain unresolved over a long period of time.
- ii. Fault test: covers a wide range of action or inaction by a public body or a care provider. This means, for example, serious failure to meet normally expected standards of public service, systemic failure in a service provider's policies or procedures where our intervention may

- result in a wider public benefit; AND the service provider is directly responsible for the action that has caused the alleged fault
- iii. Remedy test: the LGO won't take on a complaint if the service provider's response to it already represents a reasonable and proportionate outcome, or if the LGO process is unlikely to achieve a significantly different result; OR there is no achievable or realistic remedy.
 - iv. Public interest test: the LGO is likely to investigate where an issue is of significant public interest or current concern to the Ombudsman; OR if it relates to the "abuse of power" by a public body against a person. This may arise, for example, where a council behaves in an arbitrary and unreasonable manner. In such situations, the LGO has a role important role in addressing the unequal balance of power between the person and the state. The LGO will also have regard to the 'vulnerability' or particular circumstances of the complainant.
11. The new assessment regime means that the LGO is making more frequent and earlier requests for information from authorities about complaints. This can include minor queries such as 'has the council considered the complaint already' to more complex requests for evidence. The turn-round time for these requests can often be a few days. It remains to be seen whether responses to these 'preliminary' queries will be subject to performance assessment in future.
 12. When matters are being formally investigated, the Ombudsman's traditional target has been '28 calendar days'. While it has not been formally published, the LGO's target on recent requests has now changed to '20 working days'. This is being clarified but, in any event, compliance with the finally agreed performance target will be monitored and reported to this Committee. The LGO has formally said that the Christmas holiday period will no longer be 'counted' as part of the timescale.

The LGO's new 'decision reasons' and publication of reports

13. The new 'decision reasons' being used by the LGO – and which will be incorporated in future reporting on councils' performance – are summarised in the table below.

LGO – New decision reason from 1 April 2013
Not in jurisdiction and no discretion <i>(Formerly 'out of jurisdiction')</i>
Not in jurisdiction and discretion not exercised <i>(Formerly 'out of jurisdiction')</i>
Not investigated <i>(Formerly 'Ombudsman's discretion')</i>
To discontinue investigation

LGO – New decision reason from 1 April 2013
<i>(Formerly ‘Local settlement/Ombudsman’s discretion to discontinue investigation’)</i>
Investigation complete and satisfied with the authority actions or proposed actions and not appropriate to issue a report*. Includes subsections for ‘no maladministration/injustice’.
<i>(No change)</i>
Investigation complete and appropriate to issue a report*. Includes subsections for ‘maladministration/injustice’.
<i>(No change)</i>
Public Report
In instances of serious maladministration, the Ombudsman can issue a finding which the Monitoring Officer of the relevant Council must then lay before Full Council. This ‘public report’ is different from the more routine ‘reports’* or ‘findings’ mentioned above in this table.
<i>(No change)</i>

14. The LGO has decided that its routine decisions on maladministration/injustice will be published on its website to encourage greater learning from complaints for all authorities. It is the LGO’s practice to create draft decision letters or ‘provisional views’ for comment by the relevant council and the complainant. This is useful and allows councils to offer constructive challenge to the LGO on their construction of facts and findings.

Training

15. Last year, the Council held two well-received training events with the Local Government Ombudsman about effective complaints handling. This involved thirty managers from across the Council. This has proved very beneficial in the past in building the skills and perspectives necessary to handling complaints effectively and to improving services. Such training has been arranged every two to three years.
16. This can itself minimise complaints to the LGO through the quality of proportionate investigations and an ability to learn from experiences.

Conclusion

17. This year’s Ombudsman’s Annual Letter contains no specific comments about the Council’s performance, due to business reorganisation. This year is effectively a hiatus and a more detailed formal report on the 2013/14 year will be published next summer.
18. It is encouraging that the number of complaints about the Council referred to the LGO has yet again gone down. There are no grounds for

complacency however and on my behalf the Complaints & Freedom of Information team disseminates best practice information, case studies and advice to managers on the handling of complaints, to keep knowledge current. An e-learning package is also currently in the early stages of formation to increase further the consistency of standards of investigation. This would appear early in the new year.

Financial and Staff Implications

19. None.

RECOMMENDATION

20. **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 2012/13.**

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Background papers: Local Government Ombudsman's Annual Review of Oxfordshire County Council 2012/13

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