

<b>Date of meeting:</b>		<b>Agenda Item:</b>
<b>Title of report:</b>	<b>Complaints Management – Annual Review Letter 2016/17 Local Government Ombudsman</b>	
<b>Lead Director:</b>	<b>Caroline Holland</b>	
<b>Lead Officer:</b>	<b>Monica Coleman, Complaints Team Manager</b>	
<b>To which strategic theme(s) does this item relate?</b>	Sustainable communities	Yes
	Safer & Stronger communities	Yes
	Healthier Communities	Yes
	Older People	Yes
	Children & Young People	Yes
	Corporate Capacity	Yes
<b>Is this item for:</b>	Information only?	Yes
	Discussion?	No
	Decision?	No
<b>If this report is for decision, please list the recommendations that you are making to CMT</b>	<ol style="list-style-type: none"> <li>1. To note the contents.</li> <li>2. To agree the manner in which the council will report on LGO decisions of maladministration / fault</li> </ol>	
<b>Is this report intended to...</b>	Come back to CMT?	No
	Go to Leader's Policy Group?	No
	Go to Cabinet?	No
	Go to Council?	No
	Go to Overview & Scrutiny?	No
	Go to the LSP?	No

## **CMT**

### **Date:**

Agenda item:

### **Subject: Complaints Management – Annual Review Letter 2016/17 Local Government Ombudsman**

Lead officer: Monica Coleman, Complaints Team Manager

Lead member: Councillor Mark Allison

Forward Plan reference number:

Contact officer: Monica Coleman, Complaints Team Manager

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### **Recommendations:**

1. To note the contents of the report.
  2. To agree the manner in which the council will report on LGO decisions of maladministration / fault
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## **1. Report and executive summary**

- 1.1 To give CMT an overview of the annual summary of statistics and reasons for complaints made to the Local Government and Social Care Ombudsman (LGO) for the year ended 31 March 2017.
- 1.2 These annual letters are published on the LGOs website.

## **2. Details**

- 2.1 The LGO submits an annual review letter to each local authority in the country which details:-
  - The number of contacts from people wishing to complain
  - The number of complaints not upheld.
  - The number of cases where the LGO decided the council had offered a satisfactory remedy during the local complaints process.
  - The number of cases where the LGO recommendations remedied the fault
  - Statistics on how the complaints upheld against the council were remedied.
- 2.2 The statistics in the annual review letter will not align with the data held by the council because the LGO counts investigations both in the year they are

received and the year they are completed, so the LGO might report investigations twice if they span two separate financial years.. The LGO numbers also include enquiries from people who are signposted back to the council, but who may never contact us. The LGO use their own service headings which although not the same as ours, are clear in relation to which service area the complaint is for.

### 3. Contact

- 3.1 The LGO reported that they had 91 contacts about the council in 2016/17, an increase of 12 on the 79 contacts in 2015/16.

Section	Total
Highways and Transport	25
Adult Care Services	15
Benefits and Tax	12
Environment Services	12
Planning and Transport	10
Education and Children's services	7
Housing	6
Corporate and other services	3
Other	1
<b>Total</b>	<b>91</b>

- 3.2 The council's statistics show that there were 46 contacts from the LGO on different individual cases. This does not include repeat contact on the same case.

Section	Total
Parking	8
Adult Social Care	5
Planning	5
Traffic and Highways	5
Council Tax	4
Children's Social Care	4
Housing	3
Housing Benefit	2
Bailiffs	2
ASB	2

Greenspaces	2
Fostering	1
SEN	1
Environmental Health	1
Waste	1
<b>Total</b>	<b>46</b>

## 4. Investigations

- 4.1 The LGO reports that there were 22 investigations undertaken in 2016/17. This varies slightly from the records held by the council (18 investigations) because the LGO counts investigations that are started in the previous financial year as well as the current if they overlap 2 years. This is an increase on the previous year 2015/16 of 10 investigations. The below shows investigations undertaken in 2016/17.

Department	Section	Number
<b>Community and Housing</b>	Housing	2
	Adult Social Care	4
	<b>Sub Total</b>	<b>6</b>
<b>Environment and Regeneration</b>	Leisure /Greenspaces / Planning (split)	2
	Planning	1
	Garden Waste	1
	Future Merton	1
	Safer Merton	1
	<b>Sub Total</b>	<b>6</b>
<b>Corporate Services</b>	Council Tax Recovery	2
	Enforcement Agents PCN Recovery (split)	1
	<b>Sub Total</b>	<b>3</b>
<b>Children, Schools and Families</b>	Children's Social Care	2
	Education	1
	<b>Sub Total</b>	<b>3</b>
<b>Overall total</b>		<b>22</b>

## 5. Decisions

- 5.1 The LGO reports that they made 93 decisions regarding complaints about the council in 2016/17 up from 79 in the previous year 2015/16. Two decisions were made on contact which took place in the previous year which is why there is a slight discrepancy in number.

Decision	2016/17 Total	2015/16 Total
Not Upheld	10	11
Upheld	12	11
Referred back for Local Resolution	34	28
Closed after Initial Enquiries	27	25
Incomplete or Invalid	9	2
Advice given	1	2
<b>Total</b>	<b>93</b>	<b>79</b>

- 5.2 The statistics the council holds is that there were 45 Final Decisions made by the LGO in 2016/17, there is one Final Decision yet to be made:-

Decision	Total	Percentage of total number of decisions (not investigations)
Not Upheld	8	18%
Upheld	7	15.5%
Case closed, local resolution	1	2.2%
Closed after initial enquiries - no further action	15	33%
Discontinued investigation	3	7%
No investigation straight to Final Decision	9	20%
Out of time / No fault	1	2.2%
Cannot investigate, Ombudsman has no power to do so	1	2.2%
<b>Total</b>	<b>45</b>	

In 2015/16, 6 complaints out of a total of 10 investigations were upheld (60%) compared with 7 complaints out of 18 investigations (39%) in 2016/17.

The decisions are explained as follows:-

- **Upheld:** These are complaints where we the LGO has decided that an authority has been at fault in how it acted and that this fault may or may not have caused an injustice to the complainant, or where an authority has accepted that it needs to remedy the complaint before the LGO makes a finding on fault.

•**Not upheld:** Where the LGO has investigated a complaint and decided that a council has not acted with fault, we classify these complaints as not upheld.

•**Advice given:** These are cases where the LGO gives advice about why the LGO would not look at a complaint because the body complained about was not within the LGO's scope or they had previously looked at the same complaint from the complainant, or another complaints handling organisation or advice agency was best placed to help them.

•**Closed after initial enquiries:** These complaints are where the LGO has made an early decision that they could not or should not investigate the complaint, usually because the complaint is outside LGO's jurisdiction and we they cannot lawfully investigate it or decided that it would not be appropriate in the circumstances of the case to do so.

•**Incomplete/invalid:** These are complaints where the complainant has not provided enough information to be able to decide what should happen with their complaint, or where the complainant withdrawn at any early stage.

•**Referred back for local resolution:** The LGO works on the principle that it is always best for complaints to be resolved by the service provider wherever possible.

### 5.3 Upheld decisions were as follows:-

Reference	Division / Section	Decision
15 010 067	Community and Housing Adult Social Care	Mrs S complained the council failed to deal appropriately with a safeguarding incident where her son walked away from his carer and was lost for over an hour in London. <b>There is evidence of fault and the council has agreed to apologise.</b>
15 008 728	Corporate Services Housing Benefit	The council failed to deal properly with Mr X's claim for housing benefit. The council's failure to respond to Mr X's queries, its delays and its failure to respond properly to

		requests for a review and an appeal caused significant distress and caused Mr X's eviction. <b>The Council agreed to pay Mr X £1,500 plus the £600 already offered.</b>
16 000 773	Environment and Regeneration Waste	Mrs X complains the Council has repeatedly failed to collect garden waste from her when she pays the Council for this service. The Council is taking action to understand the reasons for missed collections to help prevent this in future. It accepted there was fault. <b>It should pay Mrs X £100 to reflect the time and trouble she was put to when reporting the issues and bringing her complaint.</b>
15 018 108	Environment and Regeneration Leisure / Greenspaces	The complaint is about the Council not supporting a Tennis Club's application to register itself on Council owned courts. It is not the Ombudsman's role to question the merits of the Council's decision. <b>The Council has agreed a way to take the issue forward.</b>
16 003 136	Children, Schools and Families Fostering and Adoption	The complaint is upheld. There was fault by the Council in not treating Mrs X as a family and friends foster carer for her brother for over four years. The result of that failing is that Mrs X did not receive the allowances she would have received if the Council had acted without fault. <b>The Council has agreed to pay Mrs X those allowances now which amount to £43,478.</b>
16 007 963	Community and Housing Adult Social Care	The Council did not renew a standard authorisation for X's respite home to deprive him of his liberty. The Council did not tell Ms X, X's carer about new

		waiting list procedures, or when X would have his medical assessment. <b>The Council has apologised and agreed to review its procedures.</b>
15 017 684	Corporate Services Council Tax Debt recovery	The Council gave incorrect advice about a council tax debt and therefore acted unreasonably in referring the debt to bailiffs. <b>Refunding the enforcement fees of £310 the Council pays him £300 and issues him with a formal apology.</b>

## 6. Compensation and Payments

- 6.1 The council paid a total of £46, 288 to complainants following four Final Decisions in 2016/17. The amount paid in 2015/16 was £6,264.26.
- 6.2 £2,100 compensation was paid as a result of a delay and poor handling of a benefits review which caused a family to be evicted.
- 6.3 £100 compensation for Time and Trouble was paid as a result of the council repeatedly failing to collect garden waste. This was the first time the council has paid compensation as a result of a waste complaint.
- 6.4 A £43,478 payment was paid as a result of not treating the complainant as a family and friends foster carer for her brother for over a number of years. This payment was the allowance the complaint was entitled to had she been treated correctly.
- 6.5 A total of £610 was paid as a result of a decision that the council gave incorrect advice about a council tax debt and therefore acted unreasonably in referring the debt to bailiffs. £310 was the refund of Enforcement Fees and £300 in compensation.

	2016/17	2015/16
<b>Compensation</b>	2,500	2,739
<b>Refund of Fees</b>	310	3,525.26
<b>Payment of Allowances</b>	43,478	0
<b>Total</b>	<b>£46,288</b>	<b>£6,264.26</b>

## 7. Next Steps

- 7.1 There is duty under section 5(2) of the Local Government and Housing Act 1989 for the Monitoring Officer to prepare a formal report to the council where

it appears that the authority, or any part of it, has acted or is likely to act in such a manner as to constitute maladministration or service failure, and where the LGO has conducted an investigation in relation to the matter.

7.2 This requirement now applies to **all** Ombudsman complaint decisions, not just those that result in a public report. It is therefore a significant statutory duty that is triggered in most authorities every year following findings of fault by the LGO.

7.3 The LGO has not given a prescriptive manner in which they have said reporting should take place unlike maladministration decisions. Their guidelines say:-

- *Where my office has made findings of maladministration/fault in regard to routine mistakes and service failures, and the authority has agreed to remedy the complaint by implementing the recommendations made following an investigation, I feel that the duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the council summarising the findings on all upheld complaints over a specific period.*
- *In a small authority this may be adequately addressed through an annual report on complaints to members, except where:-*
  - *An investigation has wider implications for council policy or exposes a more significant finding of maladministration, perhaps because of the scale of the fault or injustice, or the number of people affected, I would expect the Monitoring Officer to consider whether the implications of that investigation should be individually reported to members.*
  - *In the unlikely event that an authority is minded not to comply with my recommendations following a finding of maladministration, I would always expect the Monitoring Officer to report this to members under section five of the Act. This is an exceptional and unusual course of action for any authority to take and should be considered at the highest tier of the authority.*

7.4 The proposed step would be for the Complaints Manager to continue to prepare an Annual Report on LGO activity for CMT and in addition prepare a report to the Monitoring Officer if either circumstance described above arose.

## **8. Alternative options**

8.1 Not applicable.

## **9. Consultation undertaken or proposed**

9.1 The Complaints Officers were consulted on this report.

## **10. Timetable**

10.1 This is dependant on receipt of the LGO annual letter but the report will be presented to CMT in future with to the Annual Complaints Report.

## **11. Financial, resource and property implications**

11.1 Compensation and payments are paid from the budget of the service complained about. This year due to the high amount of one decision the amount is much more than we would normally expect but this was payment of fees which should have been payable.

11.2 There may be an increase in compensation payable in 2017/18 for waste complaints due to the increase number received on moving to the new contractor.

## **12. Legal and statutory implications**

12.1 The Local Government Ombudsman has statutory powers to investigate complaints under the Local Government Act 1974

12.2 There is now a statutory duty to report on upheld decisions.

## **13. Human rights, equalities and community cohesion implications**

13.1 It is important all those involved in dealing with complaints are mindful of ensuring a consistent approach with all complainants in line with equalities principles.

## **14. Risk management and health and safety implications**

14.1 Poor complaint handling could be a reputational risk to the council.

## **15. Appendices – the following documents are to be published with this report and form part of the report**

15.1 Appendix A - Annual Review Letter of the LGO.

**16. Background Papers – the following documents have been relied on in drawing up this report but do not form part of the report**

16.1 None

**17. Report author**

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