



# Haverling

LONDON BOROUGH

## ADJUDICATION AND REVIEW COMMITTEE AGENDA

<b>7.30 pm</b>	<b>Wednesday 6 August 2014</b>	<b>Town Hall Main Road Romford</b>
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Members 10: Quorum 4

**COUNCILLORS:**

<b>Conservative ( 4 )</b>	<b>Residents' ( 4 )</b>	<b>Independent Residents' ( 1 )</b>	<b>UKIP ( 1 )</b>
Joshua Chapman (Chairman) Roger Westwood (Vice-Chair) Meg Davis Jason Frost	John Mylod (Vice-Chair) June Alexander Barbara Matthews Julie Wilkes	Michael Deon Burton	David Johnson

**For information about the meeting please contact:  
Grant Soderberg Tel: 01708 433091  
e-mail: [grant.soderberg@onesource.co.uk](mailto:grant.soderberg@onesource.co.uk)**

## **AGENDA ITEMS**

### **1 CHAIRMAN'S ANNOUNCEMENTS**

The Chairman will announce details of the arrangements in case of fire or other events that might require the meeting room or building's evacuation.

### **2 APOLOGIES FOR ABSENCE & SUBSTITUTE MEMBERS**

(if any) – receive.

### **3 DECLARATIONS OF INTERESTS**

Members are invited to declare any interests in any of the items on the agenda at this point of the meeting. Members may still declare an interest in an item at any time prior to the consideration of the matter.

### **4 MINUTES (Pages 1 - 18)**

To approve as a correct record, the Minutes of the Committee held on 17 April 2014 and to authorise the Chairman to sign them

### **5 PRESENTATION BY THE HEAD OF BUSINESS & PERFORMANCE (CHILDREN, ADULTS AND HOUSING) CONCERNING COMPLAINTS MANAGEMENT IN THE DIRECTORATE**

### **6 PRESENTATION BY THE CORPORATE POLICY AND COMMUNITY MANAGER (COMMUNITY & ECONOMIC DEVELOPMENT) CONCERNING COMPLAINTS AND MEMBER/MP ENQUIRIES**

### **7 REPORT ON THE LOCAL GOVERNMENT OMBUDSMAN'S ANNUAL LETTER FOR 2013/14 (Pages 19 - 28)**

### **8 UPDATE ON LGO ACTIVITY FOR THE YEAR TO DATE (Pages 29 - 34)**

Statistical detail to follow.

### **9 UPDATE ON STAGE THREE ACTIVITY FOR THE YEAR TO DATE & SUGGESTED CHANGES (Pages 35 - 40)**

Members are invited to note the review and decide whether the proposed changes to the Stage Three process should be implemented

### **10 REVISION OF THE FORMAL PROCESS FOR MEMBER CONDUCT COMPLAINTS (Pages 41 - 48)**

The Chairman is to announce a review of the procedures under which Member conduct complaints are conducted. Appended is the process agreed by Council at its meeting held on 13 June 2012 and the accompanying Minute.

**Andrew Beesley**  
**Committee Administration**  
**Manager**

# Public Document Pack Agenda Item 4

**MINUTES OF A MEETING OF THE  
ADJUDICATION AND REVIEW COMMITTEE  
Town Hall  
17 April 2014 (7.30 - 8.15 pm)**

**Present:**

**COUNCILLORS**

**Conservative Group** Frederick Thompson (Vice-Chair) and Barry Oddy

**Residents' Group** Barbara Matthews (Vice-Chair) and John Mylod

In the absence of the Chairman, a motion for Councillor Frederick Thompson to take the Chair was unanimously accepted.

Apologies were received for the absence of Councillors Rebecca Bennett, Pam Light and Denis O'Flynn.

All decisions were taken with no votes against.

There were no declarations of pecuniary interest

The Chairman reminded Members of the action to be taken in an emergency.

**36 MINUTES**

The Minutes of the Meeting held on 30 January 2014 were agreed and signed by the Chairman.

**37 QUARTER 4 OVERVIEW - CORPORATE COMPLAINTS AND MEMBER/MP ENQUIRIES - PRESENTATION**

**Corporate Complaints:**

Members received a presentation from the Corporate Policy and Community Manager providing them with an update on Corporate Complaints, Member and MP Enquiries for the three months from 1 January – 31 March 2014. The Committee was informed that not only had the number of complaints increased over the same period in 2013 (325 against 228), but the number of cases completed within 10 working days had also increased (228 as opposed to 143) and which represented an 70% success rate in 2014 to only 62.7% at the end of 2013.

The services with the highest proportion of complaints remained the outward facing ones: StreetCare (131) and Homes and Housing (101). Regulatory Services (which now included Trading Standards, Licensing and Environmental Health) had 19 cases.

Performance Indicators – which set the target for responding to complainants within 10 working days at 90% - had shown a steady improvement for the past four quarters and at the end of 2013/14 had reached 94%.

**Member & MP Enquiries:**

In the same period, MP and Member enquiries had numbered 1,217 compared with 878 in the same period in 2013 – a rise which was (in part) attributable to the very wet conditions of the winter and the impending local elections. Of these 1,059 had been responded to within ten working days compared with 680 the previous year – a rise to 87% from 77%.

By far the largest number of enquiries concerned StreetCare (883 – 785 of which were responded to within 10 working days). Homes and Housing related enquiries was the second highest area of concern with 186 – of which only 144 had a response within ten working days. This was a matter of concern and could be explained (again, in part) by the re-absorption of the old Homes in Havering activities and the impact of this on work processes and staff. Members were assured that management had taken steps to rationalise complaints handling across the service and – in an extension to this – was putting in place structures to ensure that complaints were properly dealt with across the directorate. Work in this area was on-going, but progress was being made.

The Performance Indicator of 90% of enquiries responded to within 10 working days was (again) almost attained in the fourth quarter of 2013/14 (87% up from only 77% for the same period the previous year).

The Committee **noted** the oral update and thanked the Corporate Policy and Community Manager for her presentation.

**38 MINUTES OF A MEETING OF THE ADJUDICATION & REVIEW - (STANDARDS - HEARINGS SUB-COMMITTEE)**

The Committee received a copy of the Minutes of a recent Standards hearing which it **noted**.

A Member raised the matter of whether the Standards process had time-scales and whether any procedures were in place. On being informed by the Clerk that neither currently existed as there had been nothing brought over when the Standards Committee was abolished, the Committee requested that a report be prepared and submitted to the next meeting covering draft proposals for:

- Time-scales for the various stages in the process from the time a complaint was received until final notification of the outcomes of investigations or hearings were delivered,
- A protocol for the attendance at reviews or hearings of the complainant(s) and whether there should be a distinction drawn between Members and members of the public,

- A formal procedure to ensure the efficient and effective handling of complaints against Members, but which allowed for a degree of flexibility and
- Clear lines of responsibility to be shown.

39 **CHANGES TO THE DECISION REASONS USED BY THE LOCAL GOVERNMENT OMBUDSMAN**

The Committee was informed of the recent changes made to the formal reasons given by the LGO to her decisions. Whilst this, in itself, was not unusual and had happened twice over the past three or four years, on this occasion there were two disquieting elements which were likely to impact on the way the public perceived Ombudsman involvement in local administration in future.

The first issue arose because the Ombudsman had made a partial change in February, but had not informed anyone that she had done so. Previously, any changes had been announced ahead of their implementation and that implementation usually coincided with the commencement of the new civic year – 1 April.

A second phase of change did indeed commence on 1 April and now the categories – whilst rationalised – had risen to nine, six of which referred to “maladministration” with or without “injustice” and whether or not there was a formal Report. Members could see that whereas the previous decisions had referred to “fault”, “local settlement” and the “Ombudsman’s discretion”, the terminology was now whether or not the local authority was guilty of “maladministration” or not – a term which had, hitherto, been reserved for formal Reports alone.

Members were concerned that the LGO had failed to notify authorities about the February changes and considered that a letter expressing that concern should be sent on their behalf.

The Committee **noted** the report and **authorised** the Clerk to write to the Local Government Ombudsman on their behalf to register that concern – as well as draw to her attention the potentially negative effect the new reasons might have in the mind of the general public as they would be part of the Annual Letter and be published on the LGO’s website.

40 **UPDATE ON LGO ACTIVITY FOR THE YEAR 1 APRIL 2013 - 31 MARCH 2014**

The Committee was presented with a series of tables showing in various formats how Ombudsman activity had impacted the Council’s services over the previous 12 months.

The report summarised the effects which the changes to the funding of the Ombudsman had had to the way in which she was able to deploy and use

her resources. The most significant change was the fall-off in the number of referrals (Premature complaints) down from 49 in 2012/13 to 10 in the year just ended. Another area of significant change was in the fall in the number of complaints actually investigated and the rise in formal Enquiries which were followed by Decisions with no further reference to the Council. This latter, it was argued, was in part responsible for escalation in the number of requests for Stage Three Member Reviews.

Members noted that the Council had only been obliged to pay a total of £205.00 in compensation (over two cases) which had been the lowest amount of penalty awarded against it for several years.

The Committee **noted** the report and the accompanying statistics.

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**Chairman**

# **Quarter 4 Overview - Corporate Complaints and Members/MP Enquiries**

**Claire Thompson**  
**Corporate Policy & Community Manager**  
**March 2014**

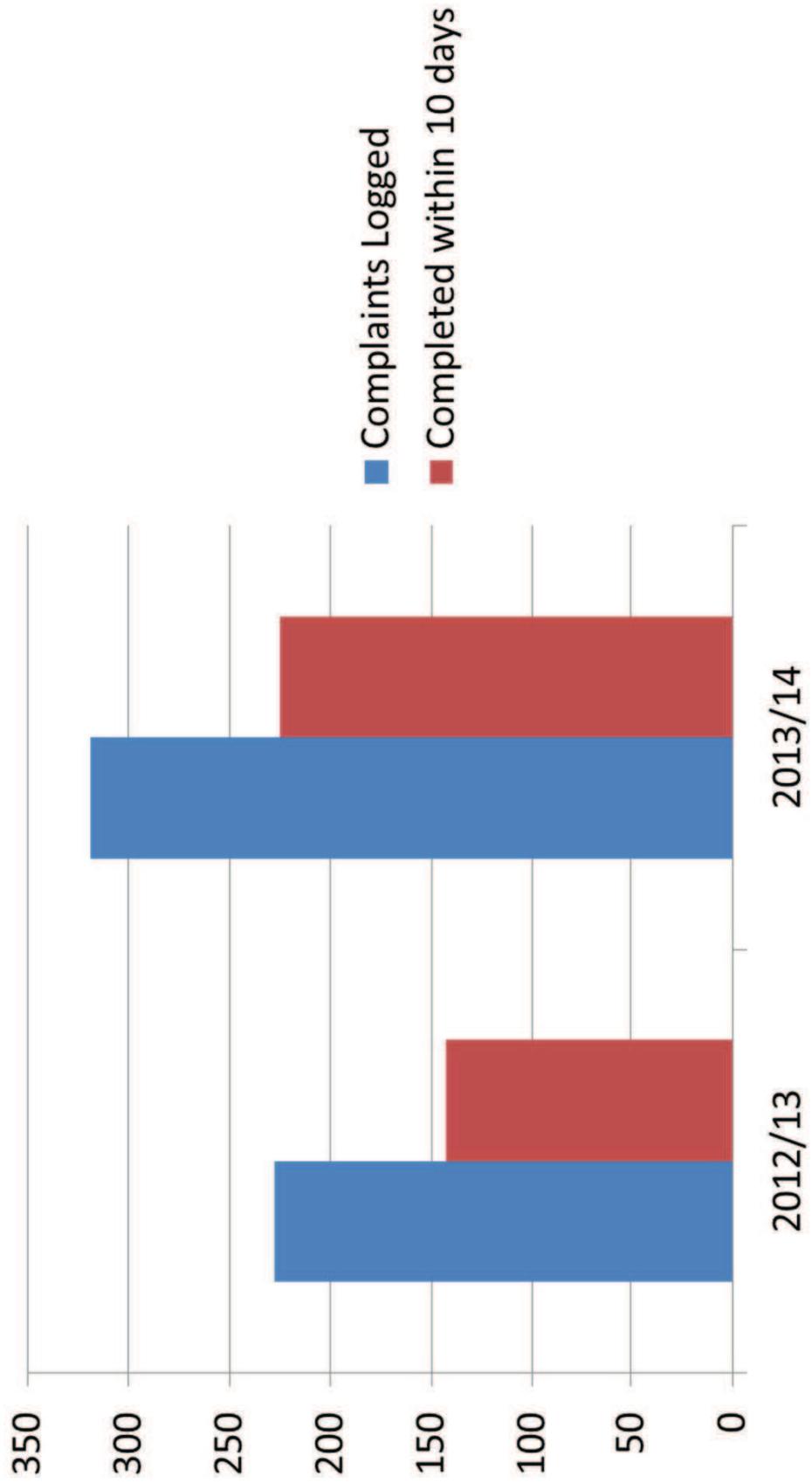
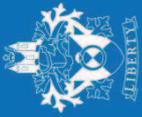
# **Corporate Complaints**

## **January – March 2014**

## How many Complaints have we received?

From 1<sup>st</sup> January to 31<sup>st</sup> March 2014:  
**325** complaints were logged  
**228** were completed in 10 working days

From 1<sup>st</sup> January to 31<sup>st</sup> March 2013:  
**228** complaints were logged  
**143** were completed in 10 working days



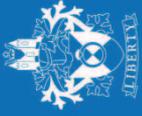
## Service Breakdown – January to March 2014

Service Area	Number of Complaints logged	Completed within 10 days	Not Completed within 10 days	Still Outstanding when reports ran	% completed in 10 days
Adults & Health	3	2	1		67%
Asset Management	3	2		1	67%
Children's Services	4	2		2	50%
Communications					
Culture & Leisure	7	7			100%
Customer Services & Policy	13	12		1	92%
Exchequer Services	36	34	1	1	97%
Finance / Internal Audit					
Homes & Housing	101	36	21	44	34%
Learning & Achievement	5	5			100%
Legal & Democratic	1			1	0%
Policy & Community	1	1			0%
Regulatory Services	19	18	1		94%
StreetCare	131	109	15	7	86%
ISS	1			1	100%
<b>Totals</b>	<b>325</b>	<b>228</b>	<b>39</b>	<b>58</b>	
	<b>100%</b>	<b>70%</b>	<b>12%</b>	<b>18%</b>	<b>100%</b>

## Complaints escalated to Stage 2 between January and March 2014

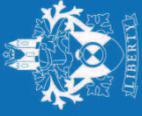
6% of complaints were escalated to Stage 2. The Corporate Performance target is not to exceed 10%.

	Total complaints logged	Total Stage 1 complaints logged	Total Stage 2 complaints logged
Jan - 14	119	115	4
Feb - 14	93	83	10
Mar - 14	113	107	6
<b>Totals</b>	<b>325</b>	<b>305</b>	<b>20</b>
<b>% moved to Stage 2</b>		<b>94%</b>	<b>6%</b>



## What does this information tell us?

- Most corporate complaints logged were from:
  - Streetcare (121)
  - Homes & Housing (97)
- Most complaints (93%) are resolved at Stage 1; only 7% escalating to Stage 2.
- Total number of complaints logged on CRM have increased from 244 in 2012, 228 in 2013 to 325 2014 (January – March)
- Performance in complaint handling has improved compared to same time last year.



**Havering**  
LONDON BOROUGH

[www.havering.gov.uk](http://www.havering.gov.uk)

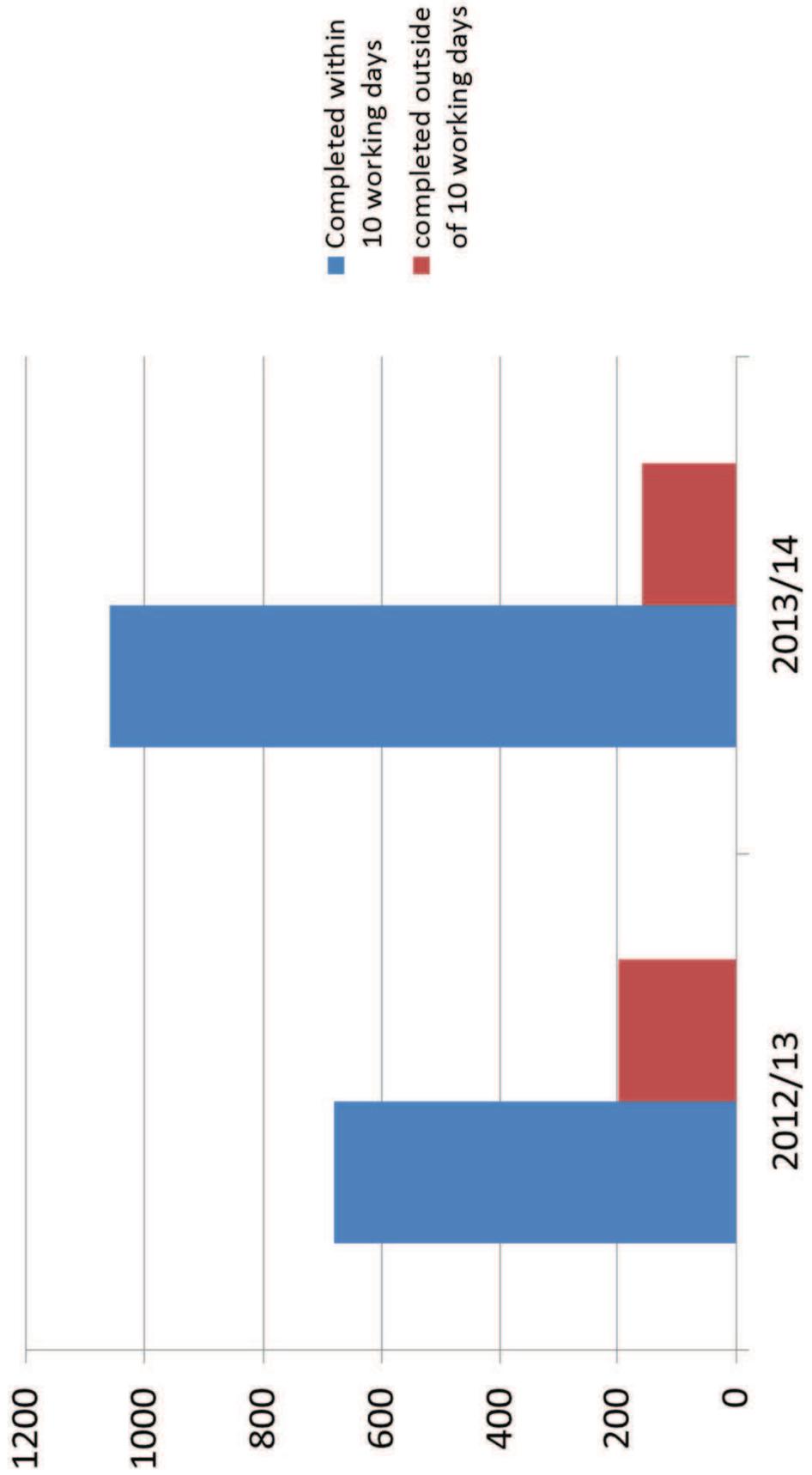
# **Members / MP Enquiries**

## **January - March 2014**

## How many enquiries have we received?

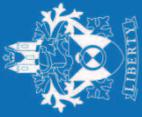
**From 1<sup>st</sup> January to 31<sup>st</sup> March 2014:**  
**1217** Member / MP Enquiries were received,  
Of these, **1059** enquiries were completed within 10  
working days.

**From 1<sup>st</sup> January to 31<sup>st</sup> March 2013:**  
**878** Members / MP Enquiries were logged,  
Of these, **680** were completed within 10 working  
days.

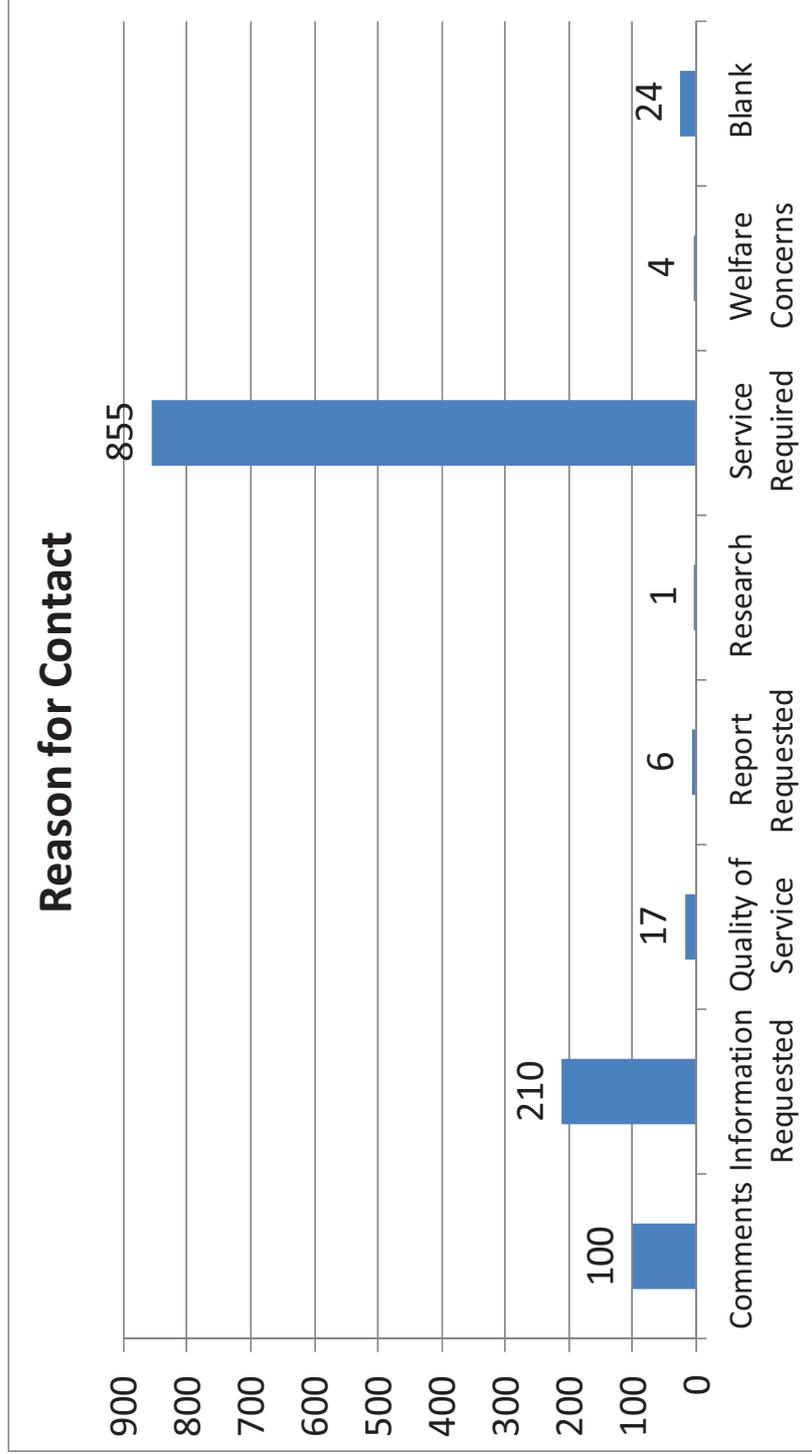


## Number of Enquiries Logged per Service (January – March 2014)

Service Area	Number of Enquiries logged	Completed within 10 days	Not completed within 10 days	% completed within 10 days
Adults Services	30	20	10	67%
Children's Services	9	5	4	56%
Communications	2	2		100%
Culture & Leisure	35	35		100%
Exchequer Services	7	6	1	86%
Homes & Housing	186	144	42	77%
Learning & Achievement	7	6	1	86%
People & Change	1	1		100%
Policy & Community	2	2		100%
Regulatory Services	48	46	2	96%
Streetcare	883	785	98	89%
Legal	1	1		100%
Regeneration	1	1		100%
Customer Services	5	5		100%
<b>Total</b>	<b>1217</b>	<b>1059</b>		<b>87%</b>



## Why do Members / MPs contact us?



## Summary

- Streetcare receives majority of the Members / MP Enquiries (883)
- Key reason for enquiries from Members / MPs is a request for service or information
- Number of enquiries logged on CRM has increased from 878 in 2012/13 to 1217 in 2013/14 for the same period
- Performance has improved compared to same time last year. 87% of enquiries were completed within 10 days, compared to 77% last year.

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## ADJUDICATION & REVIEW COMMITTEE

6 August 2014

**Subject Heading:**

**LOCAL GOVERNMENT OMBUDSMAN –  
Annual Letter, for 2013-14**

**CMT Lead:**

Helen Edwards, Director Legal &  
Governance

**Report Author and contact details:**

Grant Soderberg, Committee Officer  
01708 433091  
[grant.soderberg@onesource](mailto:grant.soderberg@onesource)

**Policy context:**

Ombudsman commentary on complaints  
presented to her over the previous year to  
assist the Council to ensure good practice  
is maintained

**Financial summary:**

None directly associated with this report

**Has an Equality Impact Assessment  
(EIA) been carried out?**

Not required.

**The subject matter of this report deals with the following Council Objectives**

- Clean, safe and green borough
- Excellence in education and learning
- Opportunities for all through economic, social and cultural activity
- Value and enhance the life of every individual
- High customer satisfaction and a stable council tax

### SUMMARY

The Annual Letter from the Local Government Ombudsman (LGO) was received in July. The Annual Letter is the LGO's principle means of communicating a summary of its activity with every authority (361- not just local councils these days) across England and provides a break-down of complaints referred to her throughout the year.

## RECOMMENDATIONS

1. That the Committee note the contents of the Ombudsman's Annual Letter.
2. That the Committee decide whether the Letter should be sent to the Chairmen of the Overview and Scrutiny Committees and their comments sought.
3. The Committee decide whether a letter of response should be sent to the Local Government Ombudsman about this year's letter.
4. The Committee decide whether the statistics provided by the LGO should be published on Calendar Brief along with the in-house commentary.

## REPORT DETAIL

### Background:

1. The Annual Letter has become the usual method of formally communicating with councils over the past few years. In previous years the Letter contained information to the Chief Executive and Council which was pertinent to Havering – including comments on some “significant” cases as well as an evaluation of trends, both in the borough and across the country.
2. Last year's Letter was bereft of detail because the LGO had changed its software and as this was implemented part-way through the year, the Ombudsman had two sets of data and argued that she was unable to amalgamate them into a coherent entity.
3. As this year's letter states, *“This is the first full year of recording complaints under our new business model so the figures will not be directly comparable to previous years”*.
4. The figure for complaints received provided within this is: **119** and the number of decisions is **121**. In previous years the LGO had provided a detailed summary of cases she considered had been dealt with and it had been possible to analyse them and reconcile the LGO's figures with the Council's. Clearly that was not possible for 2012-13, but, having contacted the LGO's office when this year's figures were made available, the Council has been provided with a set answer that “it is unable to provide more detailed analysis as this would detract from the Ombudsman's core objectives” and so it has not been possible to agree the Ombudsman's figures.
5. A detailed review of the statistics collected through the year show that there were only **72** complaints (the number of unique Ombudsman references used) which resulted in a total of 102 distinct contacts from the LGO in the form of enquiries (33), premature complaints referred to the Council for resolution

through its complaints procedure (11) and “investigations”. These were either an investigation – where the Council was asked to provide answers to questions (21) or Ombudsman decisions – where the Council was informed that the Ombudsman was not going to undertake an investigation, usually because the matter was outside her jurisdiction (37).

6. To illustrate the difference in perception which this year’s figures have produced, attention is drawn to the penultimate column in the “Decisions made” summary: “Referred back for local resolution” which is shown as being 60. The actual recorded figure for “referrals” (using the Ombudsman’s own terminology) is 11.
7. As reported to the Committee on previous occasions, some of these cases appeared in more than one form; indeed during 2013/14, there was one instance of a complaint starting as an enquiry, being referred back to the Council as “premature” and then appearing again as a further enquiry and ending as a decision. The majority of cases recorded during the year were single contacts (51 in total – though three individual complainants were involved in one complaint). The remainder (23 cases) involved two points of contact; mostly in the form of an enquiry followed by either a referral (premature) or a decision not to investigate or an investigation.
8. Last year, the Council had been informed that no statistics would be provided because the LGO had changed their business management software part-way through the period and meaningful data would not be possible. This year, the expectation was high that the information provided would be of a high quality and that the new software would make reconciliation easier than previously was the case.
9. Unfortunately, this has not been the case. The Council has been in contact with the Ombudsman and has been provided with a copy of her base statistics. These have been scrutinised and have confirmed that there are indeed issues which need to be addressed. For example: The LGO total of 119 contacts appears to have been understated by ten cases (in our records but not on the Ombudsman’s database).
10. In another example, two of the contacts recorded during 2013/14 by the Ombudsman do not appear in the Council’s figures as they were not notified of them until May/June 2014, well into the year after the Ombudsman’s stats. This sort of statistical recording – especially when the results are published without the Council having had an opportunity to question, challenge or correct, the data, is worrying and could have negative public relations impact.
11. Appended to this report is a copy of the LGO’s Annual Letter and a copy of the end summary provided to Members and Senior Management once final figures had been checked for the year 1 April 2013 to 31 March 2014.
12. Please note: the figures for each of the categories in “complaints and enquiries received” are not accurate. On their own they appear to be correct, but when compared to the base data, the following totals are found:

• Adult Care Services:	should be	10
• Benefits & Tax	should be	23
• Corporate & Others	should be	5
	but there are	4 “null” entries as well
not accounted for		
• Education & Children	OK at	5
• Environment & Public Protection:	should be	6
• Highways & Transport:	should be	18
• Housing	should be	31 and
• Planning	should be	17
	Total:	<b>119</b>

13. The net effect of these discrepancies weakens the value of the provision of these figures as they not only show authorities that they are only being provided with a proportion of the number of approaches made to the Ombudsman, but even the classification of those complaints are not accurate.
14. The Ombudsman accepts that this year there may have been unexpected issues and has invited comment and suggestions to improve the Annual Letter for future years. The Council will be accepting this invitation to do so.

#### **The Future:**

15. The difficulty faced by the Local Government Ombudsman this year continues to be in part caused by heavy cuts to her funding which have resulted in the number of Ombudsmen dealing with local government across England being reduced from three to one (currently Dr Jane Martin – reiterated in her letter this year), the reduction to its staffing levels, the departure from its headquarters at Millbank Tower to more modest accommodation in London – and with most of its activity now being concentrated in Coventry – and changes to its technology which appears to have led to the lack of supporting analysis continuing to be provided to councils.
16. As stated above, it was hoped (in last year’s report) that by the close of 2013/14 the reorganisation among the Ombudsman’s personnel and to its technological infrastructure would have led to more detailed data being once more becoming available to councils in order that proper comparisons can be made. This has clearly not been the case this year.
17. At the time this report was being written, the LGO contacted the Council and the Deputy Ombudsman’s office spent time in discussing some of the various issues this year’s Annual Letter had thrown-up. In particular the LGO will take Havering’s statistics and use them to conduct an audit of its own system. It will also consider how best it could – in future – express its findings in a way which is more “user-friendly”. It will see whether it is going to be possible to return to consulting with individual authorities ahead of making the figures public and it will also consider whether the Annual Letters can once again be more specific to individual authorities. It would seem that some good may yet emerge from this year’s problems.

## **Ombudsman Decision Categories**

18. The current year has seen a major change in the way the Ombudsman records her decisions. This has caused something of a reaction among councils across the country because of the wider application of the term “maladministration” a term which (though undefined in law, has a specific set of prescribed actions which councils are obliged to take) was hitherto used sparingly and usually in conjunction with a formal Report. In the new terminology that remains reserved for the “maladministration with injury” for which a report has been issued, but the term “maladministration” now appears in six of the nine categories and it will be interesting to see how this increased use will be perceived by the public especially during a period – unprecedented in the past – where authorities everywhere are having to reduce, cut or put out to sub-contractor, the services it has come to identify with “normal” provision.
19. Because the Ombudsman has changed her terminology, it is inevitable that there will be some change in the terminology used in the reports produced in house and provided to staff and Members. It is hoped that – as far as possible – those changes will ensure that they remain easy to understand whilst reflecting a congruency with the Ombudsman’s language.
20. Whilst this restrained climate continues and if funding levels remain depressed, it is probable that councils – including Havering – will continue to receive a steady stream of enquiries followed either by referrals or Ombudsman decisions not to investigate.

## **IMPLICATIONS AND RISKS**

### **Financial implications and risks:**

There have been financial implications during the year 2012-13 because of Ombudsman activity. Any penalties and compensation is met from within existing budgets of the services affected.

**Legal implications and risks:** There are no direct legal implications arising from this report.

**Human Resources implications and risks:** There are none associated with this report.

**Equalities implications and risks:** There are none associated with this report

## **BACKGROUND PAPERS**

Electronic records of the complaints  
LGO Annual Letter & Local Authority Report (attached)

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7 July 2014

*By email*

Ms Cheryl Coppell  
Chief Executive  
Havering London Borough Council

Dear Ms Cheryl Coppell

### **Annual Review Letter 2014**

I am writing with our annual summary of statistics on the complaints made to the Local Government Ombudsman (LGO) about your authority for the year ended 31 March 2014. This is the first full year of recording complaints under our new business model so the figures will not be directly comparable to previous years. This year's statistics can be found in the table attached.

A summary of complaint statistics for every local authority in England will also be included in a new yearly report on local government complaint handling. This will be published alongside our annual review letters on 15 July. This approach is in response to feedback from councils who told us that they want to be able to compare their performance on complaints against their peers.

For the first time this year we are also sending a copy of each annual review letter to the leader of the council as well as to the chief executive. We hope this will help to support greater democratic scrutiny of local complaint handling and ensure effective local accountability of public services. In the future we will also send a copy of any published Ombudsman report to the leader of the council as well as the chief executive.

### ***Developments at the Local Government Ombudsman***

At the end of March Anne Seex retired as my fellow Local Government Ombudsman. Following an independent review of the governance of the LGO last year the Government has committed to formalising a single ombudsman structure at LGO, and to strengthen our governance, when parliamentary time allows. I welcome these changes and have begun the process of strengthening our governance by inviting the independent Chairs of our Audit and Remuneration Committees to join our board, the Commission for Administration in England. We have also recruited a further independent advisory member.

### ***Future for local accountability***

There has been much discussion in Parliament and elsewhere about the effectiveness of complaints handling in the public sector and the role of ombudsmen. I have supported the creation of a single ombudsman for all public services in England. I consider this is the best way to deliver a system of redress that is accessible for users; provides an effective and comprehensive service; and ensures that services are accountable locally.

To contribute to that debate we held a roundtable discussion with senior leaders from across the local government landscape including the Local Government Association, Care Quality Commission and SOLACE. The purpose of this forum was to discuss the challenges and opportunities that exist to strengthen local accountability of public services, particularly in an environment where those services are delivered by many different providers.

Over the summer we will be developing our corporate strategy for the next three years and considering how we can best play our part in enhancing the local accountability of public services. We will be listening to the views of a wide range of stakeholders from across local government and social care and would be pleased to hear your comments.

Yours sincerely

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style with a long horizontal flourish at the end.

Dr Jane Martin  
Local Government Ombudsman  
Chair, Commission for Local Administration in England

## Local authority report – London Borough of Havering

For the period ending – 31/03/2014

For further information on interpretation of statistics click on this link to go to <http://www.lgo.org.uk/publications/annual-report/note-interpretation-statistics/>

### Complaints and enquiries received

Local authority	Adult care services	Benefits and tax	Corporate and other services	Education and children's services	Environmental services and public protection and regulation	Highways and transport	Housing	Planning and development	Total
Havering LB	12	22	9	5	4	16	32	19	119

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### Decisions made

Local authority	<u>Detailed investigations carried out</u>		Advice given	Closed after initial enquiries	Incomplete/Invalid	Referred back for local resolution	Total
	Upheld	Not upheld					
Havering LB	11	10	6	30	4	60	121

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**ADJUDICATION & REVIEW  
COMMITTEE  
6 August 2014**

<b>Subject Heading:</b>	<b>LOCAL GOVERNMENT OMBUDSMAN – Evaluation of activity 1 April 2014 to date</b>
<b>CMT Lead:</b>	Helen Edwards, Director of Legal & Governance
<b>Report Author and contact details:</b>	Grant Soderberg, Committee Officer 01708 433091 <a href="mailto:grant.soderberg@onesource.co.uk">grant.soderberg@onesource.co.uk</a>
<b>Policy context:</b>	To review recent and current Ombudsman activity to ensure Council standards and good practice is maintained
<b>Financial summary:</b>	None directly associated with this report
<b>Has an Equality Impact Assessment (EIA) been carried out?</b>	Not required.

**The subject matter of this report deals with the following Council Objectives**

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

**SUMMARY**

The Committee last convened in April 2014. Since then the local elections have produced a new Administration with a different complexion to the last and this has meant changes to the membership of all committees. In order to ensure the new Committee understands the role of the Local Government Ombudsman with whom the Council regularly deals with, this report seeks to provide a context and a background to the data which Members (and officers) have available to them in order that they are kept informed of changes and that they can consider policies and strategies to ensure borough-wide equitability in service provision and objective complaint resolution.

To illustrate these changes, a set of statistics – covering the period from 1 April to 31 July - have been appended.

**RECOMMENDATIONS**

1. That the Committee note the report.
2. That the Committee decide whether any recommendations should be made to the Council's senior management.

**REPORT DETAIL**

**Background and context:**

1. Since April 2012 the LGO (along with many other public bodies) found herself working with far less resources at her disposal and yet with pressure to ensure high quality outcomes for those complaints which she deemed appropriate to investigate.
2. In previous years, Havering had a steady flow of communication from the LGO with a good percentage of premature complaints being referred back to the Council for it to attempt to resolve within its complaints process, but also a continuous stream of live investigations. Uniquely, the Council started April 2013 with no on-going complaints brought forward. All outstanding complaints were closed before 31 March.
3. During the year 2013/14, the Council noted a lessening of "live" investigations coming from the LGO and a corresponding number of formal enquiries (most of which translated into LGO "Decisions" – and most of those were either "out of jurisdiction" or "not pursued" or findings of "no fault" by the Council. The number of "premature" complaints likewise dropped-off and at the same time, the Ombudsman dropped her monitoring of those complaints, leaving things pretty much to the discretion of individual councils about how they were dealt with.

**Current Position:**

4. At the beginning of April this year, the Council – along with all other local authorities across the country – received a notification from the LGO confirming changes in terminology which she said had taken effect during February and which were fully implemented from 1 April. This was made available to Members and officers via *Calendar Brief* and (from information received through the *Public Service Complaints Network* it appears that a great deal of alarm has been caused by the Ombudsman's broader application of the term "maladministration".
5. Whilst the term itself was left undefined in the 1972 (??) Local Government Act, a finding of "maladministration with (or even without) injustice" if formally reported,

requires a local authority to act in a particular way and also had a significance which had an impact not only for Members and officers, but also to the local community. With the term being applied more widely, a number of authorities questioned whether the significance of the term would become “watered down” or, conversely – and in these days, more significantly – whether the public would consider local government across the country was becoming more lax and generally failing.

6. During the year to date, the Council has seen a significant change in the way in which the Ombudsman handles complaints referred to her. At the time this report was written (28 July) Havering had received 19 contacts from the LGO in respect of 16 separate complaints (the difference being due to the rise of “enquiries” by the LGO to determine whether an investigation should be undertaken or not). Because there is no way of knowing whether an enquiry will result in an investigation, it is recorded as a distinct contact – as it will always result in the Council having to do some work in providing a response (perhaps with material information) to the LGO in order that she had sufficient data on which to make a decision.
7. If an investigation ensued, it is recorded as a distinct entity because investigations used to form the basis of the Ombudsman’s Annual Letter and on which she reports on how each authority is managing concerns from individuals and where that organisation sits in comparison with its neighbours and in the overall picture for England.
8. In order to ensure that Members and senior management receive the most relevant information, some changes have been made to the way in which information is recorded and displayed. The principal method of keeping Members informed of Ombudsman activity remains via a monthly “snapshot” with a brief summary in Calendar Brief. Unless the Committee considers this practice should change, or has any suggestions for enhancing the information provided, it is proposed to continue with the current format.
9. Since last year, CMT along with a number of Heads of Service and other officers have received a full set of statistics displayed in various ways in order to show the material from different perspectives. Appended to this report is a copy of the statistics e-mailed to CMT for Ombudsman (and Stage Three) activity up to 31 July.
10. Until recently, the Committee had only really been presented with this level of detail when it convened, but since May this year, a full set of statistics has been sent electronically to each member of the Committee. Queries arising from that data are always welcome and should be addressed to the report writer and every effort will be made to ensure a full and accurate response is speedily provided.
11. The most significant development which can be now considered to be a “trend” is the notification of a final decision by the Ombudsman without the Council being asked to provide any information. Whilst these were not unknown before the start of the current year, they now account for around 50% of all LGO “decisions” – and a good many of those are on the grounds of being outside the Ombudsman’s jurisdiction.
12. There has also been a rise in the number of cases where the LGO has notified the Council of her “Provisional View” and invites the Council to comment if it wishes to. Whether the service involved takes advantage of this or not, a final decision usually

follows around three weeks later. The number of actual investigations has, as a consequence of these changes in the way in which the Ombudsman works, decreased markedly – as the appendix clearly shows.

13. In the area of “premature complaints” there appears to be an ambivalence being displayed by the LGO. The Ombudsman stated – back in 2012/13 - that these would all but disappear because they would be deflected informally at the reception end of the process and complainants informed that if they had not used the council’s complaints process, they needed to do that before approaching the Ombudsman. In reality, some complainants get through this pre-selection and an Investigator (at the Assessment phase) decides that the issue ought to be considered by the authority involved before the LGO’s resources were used and so refers the complaint back to the council.
14. Whilst there are a few referrals, there are far fewer than in previous years. Since then, apart from the dramatic drop in referrals the Ombudsman now no longer monitors those cases so referred – though it has recently come to light (Annual Letter 2013/14) that a great many more contacts have been recorded as “Referred back for local resolution” than the Council is actually aware of (A total of 60 separate complaints of which the Council only had 11 “referred back” to it for “local resolution”. It appears that this catch-all phrase covers the advice given to complainants that they should seek redress through their local authority’s complaints process, whilst not considering that that authority should be alerted to this. This was criticised as providing a vague and unhelpful category which was unhelpful and is to be hoped that when the LGO comes to review the impact of her 2014 Annual Letter, changes will be made to distinguish between cases actually referred back to the Council and those where complainants were simply advised to pursue their complaint through the Council’s complaints process.

**Data:**

15. In September 2013, a new graphic was added to those charts already available. This matrix shows, at a glance, the relationship between enquiries, referrals (prematures) and investigations. Where an enquiry is linked to a referral or investigation, they are shown linked. Other “stand alone” contacts are shown as such.

**The Future:**

16. The recent appearance on the scene of the Housing Ombudsman Service (HOS) cannot be ignored. At the time of this report, Havering has had only a limited contact from his office and it is clear that he has quite a different methodology which it is going to be interesting to see how it works out.
17. Initially informed that the practice was “broadly similar” to that of the LGO, it transpires that it is anything but. The HOS’s approach is to work along-side the parties as they move through the complaints process – the “critical friend” approach. This has the effect of adding another level of intrusion for the service involved in the complaint as it must balance its resources against the “advice” from the HOS and what the complainant wants the Council to do to address their complaint to their satisfaction.

18. Whilst this is pure speculation at this point in time (and on such a limited base), the impact of the HOS needs to be carefully monitored as it is likely that, as his service becomes better known, the HOS will begin to increase in prominence – in much the same way as the LGO did a decade or so ago.
19. As far as can be seen at this point in the year, the number of actual contacts from the Ombudsman looks as though they may be decreasing. Last year, the estimate was about 100+ (it was 102), but this year, to the end of the first quarter, there has been 19 which suggests an annual total of (perhaps) between 80 and 90). This could prove to be an understatement of course, but whether the figure is at that level or not, the experience of receiving the 2013/14 statistics indicate that whatever the Council is sent, it will be far fewer than what the Ombudsman receives.
20. In conclusion, it is reasonable enough to expect the actions of the various Ombudsmen (and we cannot omit mention of the Parliamentary and Health Service Ombudsman [PHSO] from the list) to continue to feature as a real factor in the scrutiny of the Council's management of the complaints of the residents (or otherwise) of Havering and so it is important that the Committee continues to involve itself in, monitor and direct the oversight of this important element of the Council's corporate activity.

## **IMPLICATIONS AND RISKS**

### **Financial implications and risks:**

None directly associated with this report, but timely reminders could avoid unnecessary cost to the Council in having to pay compensation and making good what should have been done first time.

**Legal implications and risks:** There are no direct legal implications from this report.

**Human Resources implications and risks:** There are none associated with this report.

**Equalities implications and risks:** There are none associated with this report

## **BACKGROUND PAPERS**

Electronic records of the complaints (to follow)

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**ADJUDICATION & REVIEW  
COMMITTEE  
6 August 2014**

<b>Subject Heading:</b>	<b>STAGE THREE ACTIVITY – 1 April – 31 July 2014</b>
<b>CMT Lead:</b>	Helen Edwards, Director of Legal & Governance
<b>Report Author and contact details:</b>	Grant Soderberg, Committee Officer 01708 433091 <a href="mailto:grant.soderberg@onesource.co.uk">grant.soderberg@onesource.co.uk</a>
<b>Policy context:</b>	Summary of complaints escalated to Stage Three of the Council’s complaints procedure for Member review to assist the Council ensure good practice is maintained
<b>Financial summary:</b>	None directly associated with this report
<b>Has an Equality Impact Assessment (EIA) been carried out?</b>	Not required.

**The subject matter of this report deals with the following Council Objectives**

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

**SUMMARY**

The summary of Stage Three complaints considered by Members since 1 April 2014 is provided in order that the Committee as a whole has an appreciation of the subject matter and the decisions made.

## RECOMMENDATIONS

That:

1. The Committee note the Report.
2. The Committee decide whether it wishes to receive this sort of report in future and whether it is content with the current format or would prefer information to be presented differently.

## REPORT DETAIL

### **Background:**

1. The Adjudication and Review Committee has oversight of the Council's Corporate Complaints process and Members of the Council have, historically, maintained their right to be included in the complaints process as a final review of issues which officers have not been able to resolve.
2. Since 2010 the complaints process itself has evolved considerably. At first, the change was from an adversarial hearing to an inquisitorial style which allowed Members to engage directly with the parties and drive the process through their own enquiries. This had a twofold effect: it speeded up the process and allowed members to use their own skills and knowledge to ask pertinent questions and so arrive at better quality decisions.
3. It was still a cumbersome process however as any complainant could request a Stage Three hearing and there was nothing to filter those complaints which were of a vexatious nature or simply an expression of the complainant's frustration. In addition, the Local Government Ombudsman put in place a "Council First" initiative which meant that more complainants were directed back to their home council's complaints process before the LGO would look at the matter.
4. At that time, the only informal check on the wholesale escalation of complaints to formal hearings was being made by staff in Democratic Services. During 2012 the Committee agreed to some further refinement of the process when it agreed to the introduction of Initial Assessment Panels (IAPs) initially with two Members, but now with three, which would sit in private and determine whether a hearing request should be allowed or whether it had sufficient information to determine the matter. The precedence for these panels was the Standards Committee procedure.

**The Current Position:**

5. IAPs are now scheduled monthly and a resolution is achieved with most cases, thereby ensuring complainants receive a councillor review without the Council incurring the cost of a formal hearing – though where Members consider that the issues are not clear, hearings are recommended and heard before a different panel and with an Independent Person on the Panel.

**Statistics - 1 April 2014 to date:**

6. At 1 April, there were six open complaints waiting for members to review (and during the year 2013-14, a total of 24 complainants had asked for a Member Review). Since then another six complaints have been referred and there have been four IAP meetings: 24 April (Two cases – both adjourned), 15 May (the two adjourned cases considered), 3 July (One case – considered) and 24 July (One case – adjourned).
7. The six cases brought forward related to traffic and parking issues, housing needs, housing maintenance, neighbour nuisance, benefits and a review by a panel of Independent Persons under the Children Act legislation. Out of this six, four cases have been resolved. Three were determined at IAP meetings and the Children Act case was a formal hearing. The three corporate complaints determined by IAPs were all not upheld and the Children Act case was partially upheld.
8. Although not upheld, in one case involving housing, the Panel was minded to award £200 compensation to the complainant because of the delays and length of time the complaint had taken to get to Stage Three.
9. Of the remaining two brought forward cases, one was adjourned because the housing service had received notice that changes in government legislation meant the complainant's case might be resolved once the new procedures had come into force and in respect of the other case, attempts to contact the complainant had proved ineffective and at the IAP held on 24 July, the Panel agreed that it should be discontinued.
10. In two of the six new cases, one complainant (planning issues) withdrew as did the other (traffic and parking) saying that the matter would be referred to the LGO. Nothing has yet materialised from that direction.
11. Of the remaining four, one (concerning benefits) was not upheld at IAP, one case is for an Independent Persons Panel as it falls under the Children Act legislation (a form was sent a while ago and no response has yet been received so that may fail as the Children Act has strict time-scales in which a hearing needs to take place) and with the other two, one form was not returned in time (traffic and parking issues) and the IAP of 24 July agreed that it should be closed, whilst in the final case (housing maintenance), the complainant returned her form in time and it is currently with housing services.

**Incidence of Stage Three decisions being referred to the LGO:**

12. There have been some complainants who, unable to obtain the result they wanted from the complaints process (and in this the social care statutory process has been included), refer their complaint to the LGO. The view commonly held in the Council is that the Corporate Complaints process and Ombudsman investigations are completely distinct. Reality suggests that this is not strictly true. Whilst the Ombudsman allows the Council to pursue a complaint locally until the process is complete, if the complainant remains dissatisfied s/he can return to the LGO and ask for her to look at the matter. Invariably an enquiry from an LGO Investigator will include a request for copies of the complaint responses (including any Stage Three decision) and most often the LGO will tell the complainant that she will not investigate the matter further nor can she change a decision properly taken by the Council.
13. Though this suggests that the Ombudsman keeps clear of the complaints process, it does not mean that the process itself (or its application) is immune from investigation and, if the LGO considers that it there has been maladministration (thereby causing a complainant injustice) a finding (and a possible financial penalty) could follow – even if the Council’s final decision was reasonable.
14. There is no “normal” pathway linking the LGO and the Council’s complaints process as each case considered differs from another in some way. For example: in one case the complainant approached the Ombudsman and his case was referred back to the Council (premature) and from there it progressed to Stage Three and once the complainant had been given his decision he returned to the LGO and was informed that the matter would not be investigated.
15. In another case a complainant took her complaint through the three stages of the Corporate Complaints process and *then* approached the Ombudsman and was informed the matter would not be investigated; whilst in another case, the complainant - having initially approached the Ombudsman and been told to pursue the matter through the complaints process, which she did - once her Stage Three decision had been given (Members finding the service had done nothing wrong in the way it had acted) she returned to the LGO who decided to initiate an investigation. This is quite unusual as, in this particular case, the Investigator not only wished to have the whole matter presented to him, but also wanted to evaluate the Council’s complaints process to see how robust it was and how it was applied in this particular case. The final decision, when it came, did little more than the IAP had originally decided.
16. The reality is that whilst in theory Member Reviews and the Ombudsman have equal (Stage Three) status in the overall complaints process, the Ombudsman can be used as a Stage Four process review.

**Future Developments and Refining the Process:**

17. The Corporate Complaints process is not set in stone and is designed to evolve in response to changing circumstances. Since the introduction of the IAP, the Council has saved a good deal of unnecessary expense (by not holding formal hearings so often) and members of the public continue to have their complaints considered by their elected representatives within a timely manner.
18. Members have now accepted the principle of considering complaints without the formality of an open hearing and the role of the IAP (from its original conception of being a “filtering mechanism”) has developed a professional methodology of its own and can really be considered to be the principal Stage Three forum.
19. If the Committee considers it appropriate, it may be time to revise its designation from “Initial Assessment Panel” to “Member Review Panel” – though the option for a MRP to refer a complaint to a formal hearing panel would be retained as not every case is likely to be able to be determined without reference to the complainant and/or the service. Such a change would require ratification by the Governance Committee and some changes to the Constitution but if the Committee is so minded, a start could be made (by changing the Panel’s name) and a further report would be presented for approval at the next meeting.
20. In conclusion, it remains true to say that since the introduction of IAPs, the Stage Three process of reviewing complaints has been far more efficient and cost effective and has resulted in considerable savings in officer and Member time as well as in the overall reduction of administrative costs whilst still giving residents access to Councillors and to their decision-making which benefits from being totally independent of the Council’s service perspectives.

**IMPLICATIONS AND RISKS**

**Financial implications and risks:**

There have been financial implications during the year 2012-13 because of Ombudsman activity. Any penalties and compensation is met from within existing budgets of the services affected.

**Legal implications and risks:**

There are no direct legal implications from this report

**Human Resources implications and risks:**

There are none associated with this report.

**Equalities implications and risks:**

There are none associated with this report

**BACKGROUND PAPERS**

Electronic records of the complaints

## REPORT OF THE GOVERNANCE COMMITTEE

### MEMBERS' CODE OF CONDUCT

- 1 The regime for regulating Members' standards of conduct introduced by the Local Government Act 2000 will be abolished (apart from any outstanding matters then current) with effect from 1 July 2012 and a new, less prescriptive, regime implemented.
- 2 Local authorities are required "to promote and maintain high standards of conduct by Members" and must adopt a Members' Code of Conduct (referred to in this report as "the Code"), and to deal with any alleged breaches themselves.
- 3 The Act requires that the Code should reflect the Nolan Principles of Conduct in Public life, which are:
  - SELFLESSNESS:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
  - INTEGRITY:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
  - OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
  - ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
  - OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
  - HONESTY:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
  - LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example.
- 4 The Code must also provide for registration of interests, both pecuniary and non-pecuniary (the current division of interests into "personal" and "prejudicial" is repealed). This is one area where detailed provisions are expected, but the relevant statutory instruments have not yet been finalised by the government.

- 5 Allegations of breaches of the Code must be investigated and adjudicated upon. If, following investigation, a Member is found to have breached the terms of the Code, he or she may be subjected to “sanctions”, although the new legislation does not specify what such sanctions might be, other than that suspension or disqualification will not be available as sanctions.

Code of conduct

- 6 The Council’s current Code of Conduct, which was based on a national model produced by the Standards Board for the purposes of the current regime, is more complex than is required to comply with the new regime. The Governance Committee has considered model Codes produced by both the Local Government Association (LGA) and the Department for Communities & Local Government (DCLG); a draft Code for Havering, which is an amalgam of the LGA and DCLG models, is now proposed for adoption and is set out in the Appendix.
- 7 The draft Code is greatly simplified, which should make it easier for Members to comply with it. However, such simplification could result in the scope of the Code actually being wider than the current detail/prescriptive Code.
- 8 In accordance with decisions already made by the Council, complaints about standards matters are to be within the purview of the Governance Committee and individual cases dealt with through the Adjudication & Review Sub-Committee. The Committee has agreed a procedure to be followed for handling complaints.

Registration and disclosure of interests

- 9 There continues to be need for a register of Members’ interests, which the Act requires the Monitoring Officer to establish and maintain. The register applies to both elected Members and co-optees.
- 10 The prescriptive requirements of the register that apply in the current regime have been repealed and the Council has some leeway as to what needs to be registered. There are a few statutory requirements but it is for the Council to decide whether to go beyond them. The obligation to register a Member’s interests ceases when he or she no longer has the particular interest or ceases to be a Member (unless re-elected or re-appointed). The register must be open to public inspection and published on the Council’s website.
- 11 The requirements of the register are that:
- (a) Within 28 days of election (or appointment, if co-opted) a Member must notify the Monitoring Officer of any disclosable pecuniary interest (other than any interest already disclosed by a re-elected or re-appointed Member)
  - (b) The Secretary of State will by regulation determine what interests are disclosable. Any such interest must be disclosed if it is an interest:
    - (i) of a Member or
    - (ii) of a Member’s spouse, civil partner or a person with whom the Member lives as if they were spouses or civil partners, and the Member is aware of that interest

- (c) The Monitoring Officer must register any interest disclosed, whether or not it is in fact an interest that must be disclosed.
- 12 A Member (elected or co-opted) who has a pecuniary interest in a matter that is being considered at a meeting of the Council, of the Cabinet or of a Committee or Sub-Committee is present at that meeting then he or she must disclose that interest, whether or not it is registered. An interest disclosed at a meeting must be registered within 28 days of that meeting.
- 13 A Member who has disclosed an interest at a meeting must not participate in any discussion of the matter at the meeting, nor vote upon it. Where a decision is to be taken by an individual Cabinet Member, that Member may not take a decision in relation to any matter in which he or she has a pecuniary interest. It is for the Council to decide whether any Member who has made a disclosure should withdraw from the meeting as well as not participate in discussing or voting upon it.
- 14 In certain circumstances, where a Member (or a person connected with that Member) could be subjected to violence or intimidation, such an interest must not be on the public part of the register nor need details of it be disclosed at a meeting.
- 15 The Council may (by decision at a meeting of the full Council) grant a dispensation from the obligation to make a disclosure where
- (a) So many Members would be prohibited from participating that the transaction of business would be impeded; or
  - (b) Without a dispensation the balance of the representation of different political groups would be so upset as to impede the truncation of business; or
  - (c) It is in the interests of persons living within the area that a dispensation be granted; or
  - (d) Without the dispensation, each Member of the Cabinet would be prohibited from participating or
  - (e) It is otherwise appropriate to grant a dispensation.
- 16 Once granted a dispensation applies for a maximum of four years.
- 17 Failure to register or to disclose a disclosable interest, without reasonable excuse, is an offence, as is participating or voting on a matter in which a Member has a disclosable interest. It is also an offence knowingly to make a misleading, reckless or untrue disclosure. Conviction for such an offence, in addition to a heavy fine, could result in up to five years' disqualification. A prosecution for these offences may be instigated only by, or on behalf of, the Director of Public Prosecutions.

The Governance Committee **RECOMMENDS** that the Council adopt the draft Code of Conduct set out in the Appendix, noting that the Monitoring Officer will amend the section of the Code that deals with interests if necessary to comply with any subsequent secondary legislation on interests.

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**Procedure for investigating and deciding allegations of breaches of the Members' Code of Conduct**

- 1 All allegations that a Member (including a co-opted Member) has breached the Council's Members' Code of Conduct shall be referred in the first instance to the Monitoring Officer, who shall provide a copy of the allegation to:
  - The Member against whom it is made and
  - The Independent Person.
- 2 The Independent Person shall take such steps as he/she deems necessary to carry out the functions assigned to him/her by section 28 of the Localism Act 2011.
- 3 The Monitoring Officer shall consider the allegation initially to establish whether there is *prima facie* evidence of the alleged breach. The Monitoring Officer may make enquiries of the person submitting the allegations in order to clarify any point or reference within the allegation.
- 4 Upon conclusion of the initial consideration, the Monitoring Officer shall refer the allegation to an Initial Assessment Panel of three Members of the Adjudication & Review Sub-Committee. The Panel shall consider the report and any recommendation of the Monitoring Officer and may:
  - (i) Require the Monitoring Officer to seek (further) clarification of the person making the allegation and adjourn to reconvene when that clarification is to hand;
  - (ii) Dismiss the allegation as showing no, or insufficient, evidence of a breach warranting further investigation or
  - (iii) Require the Monitoring Officer formally to investigate the allegation and, upon completion of the investigation, to report thereon to a Hearings Panel.
- 5 A Hearings Panel (of three Members of the Adjudication & Review Sub-Committee, other than those who formed the Initial Assessment Panel) dealing with an allegation in accordance with paragraph 4(iii) shall consider the report of the Monitoring Officer and any recommendation made by him at a hearing, which shall take place in public unless the Panel decides that it should be heard, wholly or in part, in private if the nature of the information that might be disclosed is such as to warrant being treated as exempt in accordance with Schedule 12A of the Local Government Act 1972.
- 6 When considering the report, the Hearings Panel shall do so in an inquisitorial style. Those having a right to be heard shall be:
  - (i) The person making the allegation
  - (ii) The Member against whom the allegation is made
  - (iii) The Monitoring Officer
  - (iv) The Independent Person
  - (v) Any person named by the person making the allegation, the Member against whom the allegation is made or the Monitoring Officer as a material witness to the matter (provided that a witness may be invited to attend but shall be under no compulsion to do so)

- 7 Having heard all relevant evidence, the Hearings Panel shall retire to consider its decision in private. Once a decision has been reached, it shall be announced in public and a record of the proceedings published on the Council's website.
- 8 The Hearings Panel may decide:
- (i) That the allegation is proven, wholly or in part, and uphold it, wholly or in part
  - (ii) That the allegation is not proven, and dismiss it
- 9 Where the Hearings Panel decides that the allegation is proven and upheld, it shall decide what recommendation to make to the Council about the matter.
- 10 The sanctions that may be imposed upon a Member found to have breached the Code of Conduct include (but are not limited to):
- Censuring or reprimanding the Member in question
  - Where the Member is within a recognised Group, recommending to the relevant Group Leader that the Member be removed from any or all Committees or Sub-Committees of the Council
  - Where the Member is a Cabinet Member, recommending to the Leader of the Council that the Member be removed from the Cabinet, or relieved of particular portfolio responsibilities
  - Instructing the Monitoring Officer to arrange appropriate training for the Member
  - Removing any or all appointments to outside bodies held by that Member
  - Withdrawing facilities provided by the Council, such as computer facilities or equipment, website access and email
  - Excluding the Member from access to Council offices or premises, except so far as necessary for that Member to attend meetings of the Council, Cabinet and any Committee or Sub-Committee of which he or she is a Member.

## 16 MEMBERS' CODE OF CONDUCT

The Mayor had agreed pursuant to s.100B(4) of the Local Government Act 1972 that the report referred to in this minute should be considered as a late item. The Governance Committee meeting at which it was considered had taken place after the publication of the final agenda for this meeting but a decision on the matter was required before 1 July.

The Governance Committee reported that, in accordance with the Localism Act 2011, the Council was obliged to adopt a new Members' Code of Conduct, to be effective from 1 July 2012. The Committee now recommended the adoption of a new Code, based on model codes suggested by the Department of Communities & Local Government and by the Local Government Association, together with a procedure for dealing with allegations of breaches of the Code.

The Code and Procedure are set out as **Appendices 2A and 2B** to these minutes respectively.

### **Amendment by the Independent Residents' Group**

Both the Members Code of Conduct and the Procedure for dealing with allegations need to be withdrawn and re-written, because:

- The Members Code of Conduct reads like an Employee Code of conduct. For example: the sentence 'Members will be expected to comply with the Council's policies on Equality in Employment, Equality in Service Provision and Harassment and Bullying at Work' should not be in a Members Code of Conduct. This is because Members are elected Representatives of the People, not employees of the Council and should not be expected to comply with the Council's policies.
- The Procedure for dealing with allegations should include an appeals procedure.

Following debate, the amendment by Independent Residents' Group was **LOST** by 38 votes to 4 (see division 2). The Governance Committee's recommendations were then **AGREED** as the substantive motion by 40 votes to 4 (see division 2) and it was **RESOLVED:**

**That the Council adopt the draft Code of Conduct set out in Appendix 2A and the procedure for dealing with complaints set out in Appendix 2B, noting that the Monitoring Officer will amend the section of the Code that deals with interests if necessary to comply with any subsequent secondary legislation**

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