



## ADJUDICATION & REVIEW COMMITTEE

6 August 2014

**Subject Heading:**

**LOCAL GOVERNMENT OMBUDSMAN –  
Evaluation of activity 1 April 2014 to  
date**

**CMT Lead:**

Helen Edwards, Director of Legal &  
Governance

**Report Author and contact details:**

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**Policy context:**

To review recent and current Ombudsman  
activity to ensure Council standards and  
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	<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,

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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

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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.

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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)