

## ADJUDICATION & REVIEW COMMITTEE

21 April 2015

Subject Heading:

### UPDATE ON LGO ACTIVITY FOR THE YEAR 2014-15

CMT Lead:

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Policy context:

The Council's relationship with the  
Ombudsmen

Financial summary:

None directly associated with this report

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

Havering will be clean and its environment will be cared for

☐

People will be safe, in their homes and in the community

☐

Residents will be proud to live in Havering

☐

### SUMMARY

To provide the Committee with a brief overview of the Local Government Ombudsman activity during the year 1 April 2014 to 31 March 2015 to augment the statistical data already provided.

To outline some possible future developments affecting the various Ombudsmen and assess the likely implications for the Council in the short and medium term.

### 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.

<b>REPORT DETAIL</b>
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**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. Records since 2004/05 showed an initial steady increase in the amount of Ombudsman activity rising from 69 in that year to 79 (2005/06), 86 (2007/08), 91 (2008/09 & 2009/10), 99 (2011/12) and 102 (2012/13). The exception to this steady climb was 2006/07 which saw an unusual “spike” (112) which was due to the issues surrounding the failure to licence Langtons Registry Office.
3. During the year 2013/14, the Council noted a lessening of “live” investigations coming from the LGO (dropping to 72) and a corresponding rise in the 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.
4. This trend continued through 2014/15 when the Council was notified about only 54 new cases – the majority of which did not require the Council to provide formal answers to questions put by an Investigator (though in several instances minor pieces of information/clarification may have been sought – mainly to reassure the LGO that a correct decision was being given).

**Current Position:**

5. During the course of 2014/15 the “trend” which appeared during 2013/14 in response to the reduced funding of the LGO, appeared to be changing again, with more cases once again being referred back to the Council for consideration through the Corporate Complaints process with twice as many in the second half of the year (eight) as in the first six months (and only four referrals were received in the half-year before that).
6. Right at the end of the year (March) saw the highest number of complaint elements from the LGO in a long time (16), though this figure hides the fact that four elements related to one LGO case reference and a further case had two elements (an enquiry and a referral). It still marked a significant change in the through-put from the LGO’s office – though it could equally be the case that this was an end of year “clear out” as the LGO has a time constraint (20 working days) to decide what to do with a complaint once it has been received. Since the beginning of April, there has been one new case (arriving as a draft decision) and a draft decision on an enquiry which was responded to back in November 2014. Neither case had required the Council to provide a formal response and this appears to be a format which currently predominates.

**Relationship between Corporate Complaints and the LGO:**

7. During the year a request from the Chief Executive's office to provide information concerning any correlation between Ombudsman activity and complainants who had taken their complaint to Stage Three was received. This exercise produced a result which showed that of the 25 Corporate Complaints (including the six brought forward from 2012/13) and three Children Act complaints, 11 had Ombudsman references – either having had an enquiry, been referred by the LGO back to the Council at Stage Two or having had an LGO investigation. It would appear that an increasing number of complainants who are dissatisfied with the Stage Three decision will refer their complaint to the LGO.
8. What is not known (and not likely to be known as the LGO is unlikely to release its own database to the Council as happened last year when the Ombudsman's figures were challenged), is how many complainants had approached the Ombudsman and been "referred back to the Council" but had not thought it relevant to inform the Council of the LGO reference they would have been given. If this sort of information were to be considered useful, perhaps the corporate complaint form could have a space for a complainant to enter the LGO's reference so that this could be cross-reference at a lower level. Currently it is only possible at Stage Three (or those "premature" complaints which the Council processes at Stage Two).

**Current & Future Practice:**

9. Over the past year, members of the Adjudication & Review Committee and senior management have received the most relevant information on a regular monthly basis. It is proposed to keep this in place and to extend the integration between Complaints and the Ombudsman activity further during the course of the coming year in order that these two elements inform Members and officers in a more seamless manner.

**Data:**

10. Whilst most of the graphics used to display the data captured have not changed dramatically over the past few years, the system is regularly "tweaked" either as a direct result from a request to either present existing information in a different manner, or to extend the range of data recorded. This is likely to continue, particularly as the Ombudsman changes terminology (the term "Provisional View" has been dropped and has been replaced with "Draft Decision" for example), but the range of "decisions" used by the LGO appears to be more fluid than some years ago and these need to be accommodated – which can give the impression that there are more than is the case in reality, simply that as names change, the new sits beside the old until the change at the year end.
11. This is similarly the case with changes in the Council's internal arrangements which last year changed significantly with the retirement of the Group Director Culture, Community and Economic Development and the down-sizing of CMT to two directorates plus oneSource and the movement from one directorate to another of some of the service areas. Further changes are more than likely, for example, with the restructuring of Housing, the "Homes" element has been dropped from the name and

the changeover at the year-end was an opportunity to remove redundant terms and start the new year “clean”.

### **The Future:**

12. The Housing Ombudsman Service (HOS) continues to have only a marginal impact on the complaints scene. Depending on how the Council develops its housing stock that could change over time either increasing or staying about where it is. At present the relationship between the LGO, HOS and Parliamentary & Health Service Ombudsman (P&HSO) is continuing to evolve. The Parliamentary study and report from 2013 has been taken forward and, at a recent LGO Seminar in London, it was confirmed that whilst there were significant practical difficulties in setting up a single Ombudsman service to replace all the various ombudsmen, the prospect of the three ombudsmen bodies mentioned above becoming more closely integrated, is a real possibility. What that implies for the future cannot as yet be clearly envisioned, but it is a stated objective that it should provide a single point of contact for the complainant and that no matter what services local authorities outsource, if they are statutorily required to provide or deliver them, they will be held accountable, not their agents – and whilst that is a development which the Council is familiar with (in the case of Homes in Havering, the Arms’ Length Management Organisation), it will mean that local authorities will have to pay close attention to the governance arrangements in place between themselves and their preferred service providers, whether private sector, charitable or not-for profit organisations. If they fail, the Council will be responsible.
13. At the Link Officer’s Seminar on 23 March this year, a number of issues were raised and discussed. These are summarised in the appendix to this report. A number of elements could form the basis of discussion topics whilst others are purely “housekeeping” and some are more speculative, but what they do show is that the role of the ombudsmen is having to evolve as much as that of the local authorities they monitor. The question is whether the relationship developed over the past two decades continues to be positive or not as the public sector continues to change.

## **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**

None

Link Officer Seminar 23 March 2015. Some observations.

1. The Council cannot avoid LGO interest in outsourced service delivery - however it is delivered. The LGO holds the view that if the service is one an authority could have or ought to be delivering, then whoever delivers it is doing so on the Council's behalf so the Council remains the "Body in Jurisdiction".
2. Bodies including the Health & Wellbeing Board fall within the LGO's jurisdiction.
3. Children & Adult safeguarding are now both under the LGO.
4. The 12 month "delay – exclusion" rule used by the LGO is **not** binding on local authorities so there is nothing to prevent local authorities considering complaints several years old – unless their complaints procedures specifically restrict that (and even then the LGO **could** consider that the local authority had "fettered its discretion" depending on the sort of complaint being raised).
5. Local authorities were reminded that they **must** signpost complainants to the LGO (and other ombudsmen as appropriate) on **all** their complaints correspondence and that only the Coventry contact details should be shown on those documents, complaints forms and the Council's website.
6. There was a need to check a European Alternative Dispute Resolution directive (relating to any commercial transaction) as this will have an impact on such areas as Care Homes. This was for information only at present as the LGO will still have overall jurisdiction – but caution needs to be exercised.
7. The LGO was to begin monitoring all remedies proposed. This appeared to be part of the LGO's Annual Letter and could include a return – at some point in the future – to the use of "local settlement" where a remedy had been applied without the need for LGO intervention.
8. The LGO was setting up a combined team with the P&HSO in order to improve information sharing and enhancing the process. It appeared that local authorities **can** refer matters to the Ombudsman – if only to verify the body which would oversee it. The LGO welcomed enquiries from local authorities and considered that this enhanced the profile of both it and the local authority.
9. Building on this, the direction of travel was for the various ombudsmen to work closer together. It had been mooted that after the General Election, this could accelerate and even if there was no "pan" ombudsmen body, some sort of closely networked body is more likely than not to emerge so that there was one point of contact for members of the public in future.
10. The LGO had a directory of 275 decision descriptions. It only used 13 of these and, for its Annual Letter and public record, used only six.
11. A great deal of concern was expressed about the LGO decision to return to a basic "Maladministration/no maladministration" stance (as contained within the 1974 Act). The explanation was that any other interpretation could not be supported and so the "soft" "non-report" terminology had to be removed. There was no distinction

between “maladministration with injury” in a formal report to “mal and inj” where there was no report. The difference lay in degree. The former had public interest, the latter did not. (The distinction was that a Report was under paragraph 30(1) of the Act which required the Report to be laid before Council and published. The others did not need to go before councillors – so what Havering has been doing was considered good practice).

12. The LGO confirmed that the annual stats would never match the local authority stats again. They were never intended to and now, with reduced funding, there was no likelihood of the Council being informed of every contact the LGO received against it other than those the Ombudsman chose to communicate. In future, the Council’s figures would have to (more-or-less) stand alone. There would be some agreement (the number of decisions given by the LGO *ought* to agree in number if not in kind, but overall numbers would bear no relation to anything the LGO appended to her annual letters.
13. There was a good deal of interest in vexatious complaints/complainants and the LGO urged local authorities **to download the LGO’s policy from its website and (ideally) use it as a model for its own**. The LGO was quite honest about the difficulty this area was causing and that the problem was growing. The LGO itself was not immune to vexatious complainants but it was adamant that local authorities need to be very careful how they applied vexatious status. **It must be the COMPLAINT which is vexatious (the same thing over and over again) NOT the complainant** – they still had rights and local authorities still had an obligation to consider what they were saying (even if it had put in place a way to channel that). It was, however, acceptable to state that a repeated complaint would not be reinvestigated and an Australian model was cited for local authorities to consider.
14. Complaints were increasingly appearing on social media and local authorities needed to be aware of this and were warned about engaging in it. Guidance may soon be produced to protect local authorities against this development.
15. Due to internal management changes, the old area teams of investigators were being broadened. They did (notionally) exist, headed-up by an Assistant Ombudsman) but increasingly complaints would be investigated by anyone who happened to have capacity, so familiar names may not appear so frequently and new names appear.
16. Local authorities should be aware that the LGO works to strict deadlines. The Assessment Teams had 20 working days in which to collect information from local authorities and decide whether to pass the matter to an Investigator or return it to the local authority for its own complaints procedure. Local authorities were urged to get responses back as quickly as possible. Local authorities would still (generally) receive 20 working days to respond to an investigation, but again were urged to get responses back quickly. This applied equally to responses to draft decisions. There were (usually) 15 working days for both the local authority and the complainant to respond. It helped the investigator if local authorities could respond sooner rather than leave it to the last minute as this could (if the complainant also responded quickly) formally close the complaint and issue the Final Decision. Local authorities were reminded that no action (apology letters, payment of compensation etc.) should be taken until the Final Decision had been issued.

17. Extensive discussion around the subject of the disclosure of material which local authorities considered should not be seen by the complainant. Current letters from the LGO stated quite clearly that: *“In the interest of fairness we will send X a copy of your comments and any evidence that we rely on in reaching a decision, unless it contains personal data about other people”*. To that could be added material which was “privileged” – either legal or commercial. This seemed to throw in doubt whether local authorities could submit anything of a private or restricted nature, but the LGO suggested Section 32.3 of the 1974 Local Government Act which said:

*“3) A Minister of the Crown or any of the authorities to which this Part of this Act applies may give notice in writing to a Local Commissioner with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister, or as the case may be of the authority, the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest; and where such a notice is given nothing in this Part of this Act shall be construed as authorising or requiring [the Local Commissioner or any person discharging or assisting in the discharge of a function of a Local Commissioner to communicate to any other person, or for any purpose, any document or information specified in the notice, or any document or information of a class so specified: “*

Though it was more complicated than that and if a Freedom of Information request was made, the Ombudsman might have to reveal the information anyway. We were told that the LGO would not “spare the local authority’s blushes” – so caution might need to be exercised about what the Council tells the Ombudsman in future.

18. A question was raised about redacted material and the LGO’s response was **“don’t do it”** – which we know. There was a suggestion that in certain cases - and provided the full text was sent along with the proposed redacted version (so that the LGO could see exactly what was being redacted) - that might be acceptable if the document would otherwise prove difficult to use, or in case, as a result of an Fol or Judicial Review, it had to be produced.
19. The LGO’s e-mail inbox size had now been increased to 20 Mb (from 10Mb).
20. It was confirmed that the best time to raise queries about anything in the Ombudsman’s decision was when the Draft Decision had been issued. With only an average of 15 working days, there wasn’t a great deal of time, but changes proposed at this stage were far more preferable to challenging an LGO Final Decision – which would involve an internal review. If the Final Decision challenged was a public Report, the only way that could be done would be by judicial review.
21. There appeared to be a move by the LGO (and some of the delegates) to get LGO decisions in front of Scrutiny as the LGO considered that it was important for Members to be involved and informed about complaints within their authorities. If this was considered here (in Havering), once a Final Decision had been received it could be referred to either the appropriate Sub-Committee or the Board (or even be sent to both so that the OSC Board as a whole – as representing the whole Council – was aware of what a particular Sub-Committee was looking at.