



ADJUDICATION & REVIEW COMMITTEE

25 August 2014

Subject Heading:

**LOCAL GOVERNMENT OMBUDSMAN –
Annual Letter, for 2014-15**

CMT Lead:

Andrew Blake Herbert – Group Director of
Communities & Resources

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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

Havering will be clean and its environment will be cared for	[X]
People will be safe, in their homes and in the community	[X]
Residents will be proud to live in Havering	[X]

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 across England and provides a breakdown of complaints referred to her throughout the year.

RECOMMENDATIONS

The Committee:

1. Notes the contents of the Ombudsman's Annual Letter.
2. Decides whether the Letter should be sent to the Chairmen of the Overview and Scrutiny Committees and their comments sought.
3. Decides whether a letter of response should be sent to the Local Government Ombudsman about this year's letter.
4. Decides whether the statistics provided by the LGO should be published on Calendar Brief along with the in-house commentary.
5. Agrees to change the best value performance indicator (BVPI) currently in use to:

"The BVPI target for any formal reports of maladministration and injury is 0 and no more than 8 instances where the Ombudsman imposes financial penalties"

REPORT DETAIL

Background:

1. The Annual Letter remains the usual method of formally communicating with councils. 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. The 2013 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. Last year there was a considerable upset because, for the first time, (when figures had been presented) there was no way for a meaningful reconciliation to be obtained.
3. This was robustly challenged and, after several exchanges of e-mails, the LGO did provide the Council with the data upon which her figures had been prepared. This Committee wrote to her urging her to reconsider the way these figures were presented and to reinstate the informal advance notification which had been available before the reduction of the Ombudsman's funding. In response, the answer was that there was nothing wrong with the data held by the LGO and that she never claimed that her figures would correlate with any

of the authorities within her jurisdiction. The advice given was that we concentrate on our data and not try to match it to hers in future as hers contained many elements which none of the authorities would be aware of (for example: all those complainants who had made an initial contact and had been given advice to contact their local authorities, but who had either not chosen to do so or had not informed the Council that they had approached the Ombudsman.

4. The Council was also informed that because the funding for the LGO had been cut, there was no possibility of reinstating any form of informal reconciliation stage – and indeed, there was not going to be an option available to seek any “in depth” enquiries about the statistics, only specific case enquiries would be considered.

The Ombudsman’s Letter and Statistics:

5. The figures appended to this report which accompanied the Annual Letter are therefore unabridged and stand-alone. An attempt has been made to “match” the results based on the in-house statistics which ought to agree (in number if not in the service to which the LGO has allocated them) and all the outcomes/decisions ought to agree. An initial analysis has been carried out for some of the data and the results are set out below.
6. The LGO has attempted to soften the new, pragmatic approach by providing two tables containing her reference numbers against which the Council’s records can be checked. There is unlikely ever to be a direct correlation simply because there is always going to be more complaints recorded by the LGO than the Council is informed of. It might, however, be possible (in retrospect) to identify overall trends by applying a simple calculation. Only time will tell whether such a course of action has any merit.
7. In basic terms, the LGO’s summary is that during the year 1 April 2014 – 31 March 2015, she has recorded 97 new complaints against the Council and has made 88 decisions. It should be noted that some of those decisions will relate to cases opened before 31 March 2014 and some of those complaints notified will still be awaiting a decision after 31st March 2015.
8. The records kept by the Council cover both the above brought-forward and carried forward positions but there are complaints which the LGO says she received which are not recorded simply because the Council is not notified about them.
9. Another skew to the figures is that the Council records each “contact” from the Ombudsman as well as the number of different complaint references. This can make the figures appear larger than the number of cases notified because there could be a record for an “Enquiry”, from which there could be a “Referral as Premature” in which case the complaint is processed through the Corporate Complaints procedure and, if the complainant remains dissatisfied and convinces the Ombudsman that there might be maladministration, there could even be an “Investigation”. Three entries for one reference. There has, on one occasion been even more than that, but the case was exceptional and, in reality, there are generally no more than two entries for most cases.

10. A full analysis of the LGO's figures compared to those held by the Council has yet to be completed, but an initial review of the Decisions made chart indicates that of the 88 decisions which the LGO says she has made through the year, 48 were "referred back for local resolution". Of these 48, nine were found to have been notified to the Council by way of an Enquiry and, in most of the nine cases, followed up by referral to the Council as Premature complaints and dealt with through the complaints system. This left 39 cases about which the Council had no knowledge whatsoever. In addition to this category, the description "Advice given" (five cases) are also unknown to the Council, which indicates that the Council should have been informed about **44** cases upon which the Ombudsman made a decision.
11. Looking at the Council's figures at the 31st March 2015, it is found that there were 59 distinct cases on file – 54 received during the year plus five cases open at the 31st March 2014. At the end of the year, nine cases which were then either being investigated or only had draft decisions – plus one Enquiry which had yet to be responded to - were brought forward into the current year. This means that from the overall figure of 54 (for the year itself), ten must be subtracted which suggests that the LGO should have made **44** decisions which were notified to the Council during the year 2014/15 and this is indeed what we find.
12. Where the Council differs from the Ombudsman is in the distribution: This is inevitable as the Council's allocation of services does not always agree with the LGO's. A case in point is the matter of Blue badges. The Council has this function allocated to Customer Services which reports to the Group Director of Communities and Resources, whilst the Ombudsman places the category in Adult Care Services. This has always been inevitable and as long as the number of cases and the decisions agree, there is no difficulty.

Investigations Carried Out:

13. This is highlighted by the Ombudsman and her table shows there were seven cases upheld and 11 not upheld. This accords with the revised end of year records which show that the Council acknowledged two findings against it which involved the payment of compensation and five findings against it where there was no additional financial penalty imposed beyond anything the Council had agreed to undertake to rectify the position. The Committee should note that the BVPI (best value performance indicators) for the Ombudsman activity is no more than 0 cases of maladministration and 7 cases where the Council was obliged to pay compensation was devised when the only reference to "maladministration" was when a formal report had to be presented to Full Council. Since the recent changes by the LGO to remove the terminology it had used for a number of years and revert to simply having "maladministration", this makes the Council's BVPI appear wrong and it is proposed that the BVPI be revised to read: *"the BVPI target for any formal reports of maladministration and injury is 0 and no more than 8 instances where the Ombudsman imposes financial penalties"*

Conclusion:

14. The Ombudsman’s Annual Letter may very well evolve over time and it may be the case that in the future more information will find its way back into it which the Authority would find specifically helpful. In the mean-time, it remains a useful vehicle for advertising the work of the LGO and keeping local authorities informed about developments – which are likely to become more radical over the next few years.
15. Further work could be undertaken on the figures provided by the Ombudsman, but from the above worked examples it is clear that once the elements which the Ombudsman has not informed the Council about have been stripped away, what remains is, by and large, an accurate statement of the build up provided to Members and officers through the year.

Ombudsman Decision Categories:

15. These were revised a year ago when local authorities were informed they had been renamed and condensed to nine. During the past year, they appear to have grown. The full list was notified through the LGO’s Link Officers update in June and is:

Decision letter to Council	Annual Letter
These types of complaint do not have a formal decision letter issued for them:	Incomplete / Invalid
	Advice Given
	Referred back for local resolution
Closed after initial enquiries – no further action	Closed after initial enquiries
Closed after initial enquiries – out of jurisdiction	
Upheld: no further action	Upheld
Upheld: maladministration and injustice	
Upheld: maladministration, no injustice	
Report Issued: Upheld, maladministration, and injustice	
Report Issued: Upheld, maladministration, no injustice	
Not upheld: no further action	Not upheld
Not upheld: no maladministration	
Report Issued: Not upheld; no maladministration	

16. 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.

17. 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

None