



REVIEW OF OMBUDSMAN COMPLAINTS 2012/2013

1. Purpose of Report

- 1.1 To provide to the Committee an overview of the position with regard to complaints against the Authority received by the Local Government Ombudsman for the financial year 2012/2013.

2. Recommendation

- 2.1 **That the report be noted.**

3. Background

- 3.1 The Local Government Ombudsman provides a free independent impartial service which considers complaints against the administrative actions of Local Authorities. As such complaints to the Ombudsman constitute an independent source of assurance to the governance of the Authority. They are taken into account as part of the review of the Authority's internal control framework leading to the production of the Annual Governance Statement.
- 3.2 The Ombudsman's service has been reorganised in recent years and there is now a Central Advice Team based in Coventry which acts as the single point of contact for all public enquiries and new complaints made to the Local Government Ombudsman. The Ombudsman's service is flexible in accepting complaints by telephone and electronically as well as through more traditional methods. It has been progressively the experience that the Ombudsman's service has sought to resolve complaints at the first point of contact through seeking informal resolution and/or provision of the necessary service which the complainant is seeking.
- 3.3 More serious complaints and those which are not capable of informal resolution are passed to one of the three investigation teams for more detailed consideration. Complaints in relation to Barnsley are dealt with by the York office for which the Local Government Ombudsman is Mrs Anne Seex. The Assistant Chief Executive, Legal and Governance acts as the liaison officer for the Ombudsman's service and co-ordinates and considers the responses of the Authority to the Ombudsman on behalf of the Chief Executive.

4. Current Position

Attached as Appendix 1 is a copy of the Annual Letter produced by the Local Government Ombudsman's service. Contrary to previous years this is very much a summary document for 2012/13 and provides no statistical information. This is due to a change in the recording of information and transition to a new reporting system.

- 4.1 The schedule of statistics attached as Appendix 2 has however been compiled from the information held within the Council with regard to individual complaints received from the Ombudsman's service. The comparable figures for 2011/12 which were compiled from the Ombudsman's own database are attached by way of comparison. The Council received 29 new complaints in 2012/13 from the Ombudsman's service. It should also be noted that the number of complaints received by the Council compares favourably with the benchmark average number of complaints for Metropolitan Authorities.
- 4.2 It will be noted that there has been a significant reduction in the number of complaints received. This reduction follows a reasonably stable trend as can be seen from the comparable figures for complaints received since 2007/08 which is also attached which is part of the Appendix.
- 4.3 This reduction is realistically caused in part by the increasing effectiveness of the approach taken by the Ombudsman's office through the development of its Central Advice Team. The office of the Assistant Chief Executive, Legal and Governance, acting Liaison Officer, receives frequent enquiries from the initial Assessment Officers in the Advice Centre seeking information and assistance with resolving complaints as soon as practicable. This would seem to have an impact on both on the number of initial enquiries which need in due course formally to be recorded as complaints to the Ombudsman and also a significant reduction in the number of premature complaints where complainants have not initially made use of the Council's own internal complaints procedure.
- 4.4 However it may be reasonable to conclude that such reduction in complaints is also some evidence of increasing effectiveness and awareness of the Council's own internal complaints procedure.
- 4.5 But it would be also realistic to take the view that reductions in capacity within the Local Ombudsman's service, reflecting reductions in the available resources to them to run the service which are top sliced from Local Authority budgets, require more selective judgment as to those cases which are to be forwarded to the Investigation Team for detailed consideration.
- 4.6 Where complaints were forwarded for detailed investigation all responses were made within the Ombudsman's office target response time of 28 days.

- 4.7 None of the complaints received which were subject to a detailed investigation revealed any significant concerns with the regard to matters relating to internal control or effective operation of core systems and processes.
- 4.8 Details of the 3 local settlements, which are cases where the Ombudsman has in principle indicated that the Council was at fault, are contained in the Appendix. The settlement figures are modest in nature and essentially by way of compensation represent the time and trouble of the complainant in needing to bring the complaint rather than any substantial reimbursement of loss or injustice incurred.
- 4.9 There were no formal findings of maladministration for the relevant financial year.

5. **Contact Officer**

- 5.1 A C Frosdick – Ext 3001

16 July 2013

By email

Ms Diana Terris
Chief Executive
Barnsley Metropolitan Borough Council

Dear Ms Terris

Annual Review Letter

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 2013. This year we have only presented the total number of complaints received and will not be providing the more detailed information that we have offered in previous years.

The reason for this is that we changed our business processes during the course of 2012/13 and therefore would not be able to provide you with a consistent set of data for the entire year.

In 2012/13 we received 29 complaints about your local authority. This compares to the following average number (recognising considerable population variations between authorities of a similar type):

District/Borough Councils-	10 complaints
Unitary Authorities-	36 complaints
Metropolitan Councils-	49 complaints
County Councils-	54 complaints
London Boroughs-	79 complaints

Future development of annual review letters

We remain committed to sharing information about your council's performance and will be providing more detailed information in next year's letters. We want to ensure that the data we provide is relevant and helps local authorities to continuously improve the way they handle complaints from the public and have today launched a consultation on the future format of our annual letters.

I encourage you to respond and highlight how you think our data can best support local accountability and service improvements. The consultation can be found by going to www.surveymonkey.com/s/annualletters

LGO governance arrangements

As part of the work to prepare LGO for the challenges of the future we have refreshed our governance arrangements and have a new executive team structure made up of Heather Lees, the Commission Operating Officer, and our two Executive Directors Nigel Ellis and Michael King. The Executive team are responsible for the day to day management of LGO.

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Since November 2012 Anne Seex, my fellow Local Government Ombudsman, has been on sick leave. We have quickly adapted to working with a single Ombudsman and we have formally taken the view that this is the appropriate structure with which to operate in the future. Our sponsor department is conducting a review to enable us to develop our future governance arrangements. Our delegations have been amended so that investigators are able to make decisions on my behalf on all local authority and adult social care complaints in England.

Publishing decisions

Last year we wrote to explain that we would be publishing the final decision on all complaints on our website. We consider this to be an important step in increasing our transparency and accountability and we are the first public sector ombudsman to do this. Publication will apply to all complaints received after the 1 April 2013 with the first decisions appearing on our website over the coming weeks. I hope that your authority will also find this development to be useful and use the decisions on complaints about all local authorities as a tool to identify potential improvement to your own service.

Assessment Code

Earlier in the year we introduced an assessment code that helps us to determine the circumstances where we will investigate a complaint. We apply this code during our initial assessment of all new complaints. Details of the code can be found at:

www.lgo.org.uk/making-a-complaint/how-we-will-deal-with-your-complaint/assessment-code

Annual Report and Accounts

Today we have also published *Raising the Standards*, our Annual Report and Accounts for 2012/13. It details what we have done over the last 12 months to improve our own performance, to drive up standards in the complaints system and to improve the performance of public services. The report can be found on our website at www.lgo.org.uk

Yours sincerely

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style with a horizontal line underneath the name.

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

Local Government OMBUDSMAN

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Assessment Code

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Introduction

While we aim to help people where we can, and it is appropriate to do so, the LGO scheme cannot investigate every complaint it receives. The law places restrictions on our work and we operate with limited resources. That means we only look at the most significant and serious complaints.

To decide which complaints the Ombudsman can look at, we carry out an initial assessment of every complaint using this 'Assessment Code'.

We apply the code in the same way to all complaints, regardless of how we receive them or what they are about. This includes complaints passed to us by an MP or a councillor, and complaints that involve other ombudsman schemes.

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How we apply the Assessment Code

Skilled staff apply the Assessment Code fairly and consistently to assess complaints.

Every complaint is individually considered on its own merits. There are no simple rules, monetary limits, or blanket exclusions that determine the types of complaints we investigate. We decide each case based on its own unique circumstances.

We will publish all our assessment decisions to demonstrate how we apply this code in practice.

Assessment decisions are based on the facts presented to us by both the complainant and the service provider. Where needed, we also make brief factual enquiries to ensure we have the information we need to make a fair and balanced assessment. However we do not carry out an investigation at this stage.

We generally expect the complainant to make clear to us:

- what they believe the service provider has done wrong
- the injustice they claim to have suffered as a direct result, and
- what they are looking for to put the matter right.

We then apply the Assessment Code in two stages:

- **Stage one: 'The jurisdictional stage'**

This looks at the legal restrictions on what we can do – that is, what the law does not allow us to look into.

- **Stage two: ‘The discretionary stage’**

This deals with the choices we make about which complaints to investigate – that is, the options we have when the law allows us to look into a complaint. We explain these stages in more detail below.

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STAGE ONE: The jurisdictional stage

The Local Government Act 1974 sets out what complaints the law allows the Ombudsman to consider.

The LGO cannot consider complaints about:

- a matter that is going to court
- criminal matters
- some commercial matters
- employment issues, and
- some educational matters.

Neither can we consider a complaint where someone has already appealed to a tribunal or a Minister, or gone to court.

Where none of the legal restrictions above apply, there are a number of things we must consider before deciding whether or not to investigate a complaint. Broadly speaking, there are four conditions a complaint must fulfil before we will investigate it:

- **The complaint is made by a member of the public or by a suitable representative on their behalf** – The Ombudsman cannot consider complaints made by councillors about their role as members of a council. Neither can the LGO consider complaints made by council employees about their employment. Complaints can be made “on behalf of” someone by a wide range of people or organisations, but only with that person’s consent. Where someone is unable to complain in their own right, the Ombudsman must consider whether their representative can represent their best interests.
- **Local complaints procedures should be exhausted** – Most local authorities and service providers have a two or three stage complaints procedure. These are designed to put things right for people quickly and efficiently when things go wrong. We would normally expect someone to be able to show they had exhausted such procedures before using the LGO service. Even where the complainant urgently needs services, their needs will in most instances be met more quickly by approaching the service provider rather than the Ombudsman.
- **The complaint should be made in time** – The Ombudsman would normally expect a complaint to be made to her within a year of the events complained of, unless there were exceptional reasons for the delay.
- **Where someone could get a resolution of their complaint from another body, the Ombudsman expects people to use that route** – There are a wide range of different ways people can appeal against certain decisions they feel are unfair. For example – motorists may appeal against parking tickets, and home owners who want to extend their homes can appeal against refusal of planning permission. Where alternative rights of redress exist, we usually expect people to use them.

If a complaint does not pass 'the jurisdiction stage' of the assessment, it will be closed at this point and the 'discretionary' tests will not be considered.

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STAGE TWO: The discretionary stage

The discretionary stage uses four inter-related tests:

- **The Injustice Test** – This assesses the level of personal injustice the complainant claims to have been caused as a direct result of the actions or inactions of the service provider.
- **The Fault Test** – This assesses the scale and nature of the fault, that the complainant alleges has occurred and whether it is directly linked to the injustice claimed.
- **The Remedy Test** – This assesses how likely it is we will be able to achieve a meaningful outcome to the complaint.
- **The Public Interest Test** – This assesses the level of wider public interest arising from the individual case.

In some cases we will consider the combined impact of all four tests when deciding whether we will investigate. In other situations the significance of one particular test may be enough to determine what action is appropriate.

Our staff will use their experience and judgement to carry out this balancing exercise to apply these tests to the unique facts of each case. Complaints are not scored, weighted or rated according to any numerical formula.

The LGO service is a public authority for the purposes of the Human Rights Act 1998. We apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act. All those who work in public authorities must act in a way that is compatible with the Human Rights Act 1988. The Act is all about treating individuals fairly, with dignity and respect – while still safeguarding the rights of the wider community. We assess local authorities' actions against the principles contained in the Act when deciding whether or not to investigate a particular complaint.

The Injustice Test

The Injustice test is the most important factor in our assessment decision.

We will not normally investigate a complaint unless there is good reason to believe that the complainant has suffered significant personal injustice as a direct result of the actions or inactions of the service provider.

This means that we will normally only investigate a complaint where:

- the complainant has suffered serious loss, harm, or distress as a direct result of faults or failures by the service provider, or
- there are continuous and ongoing instances of a lower level injustice that remain unresolved over a long period of time.

We will not normally investigate a complaint where:

- The alleged loss or injustice is not a serious or significant matter.
- Where the complainant is using their enquiry as a way of raising a wider political or community campaign. In these cases their concerns may be better addressed to their local councillor rather than the Ombudsman.

- Where the complainant is not the person primarily affected and is complaining about a secondary impact on them, rather than acting on behalf of the person directly affected.
- Where the complainant has suffered significant personal injustice, distress and loss, but those events cannot be shown to be directly the result of the actions or omissions of the service provider.

The Fault Test

Fault is a broad concept and covers a wide range of action or inaction by a public body or a care provider.

We will be more likely to investigate a complaint where:

- The type and scale of the fault amounts to a particularly serious failure to meet normally expected standards of public service.
- There is ongoing systemic failure in a service provider's policies or procedures where our intervention may result in a wider public benefit.
- The service provider is directly responsible for the action that has caused the alleged fault.

We will be less likely to investigate a complaint where:

- There is not enough evidence of fault.
- The complaint is simply an expression of discontent about an unpopular or contentious decision which has been made without fault.
- It would be more appropriate for another body to consider the complaint. For example, an allegation of repeated failures in care standards in a residential care home could be referred to the Care Quality Commission.
- The link between the claimed injustice and the actions or omissions of the body complained about is weak or unclear.
- The service provider only has a secondary role in the relationship between the complainant and another party, such as where a person is unhappy with work done by a builder and so complains about their council's building control department.
- It would not be appropriate to investigate most of the complaint, and only smaller, marginal issues remain. So, for example, we will not usually investigate a failure by a council to adhere to its complaints procedure if the complaint itself is not a matter we can consider (ie it does not pass the 'jurisdictional' stage).

The Remedy Test

We will be less likely to investigate a complaint where:

- In our view the service provider's response to the complaint already represents a reasonable and proportionate outcome.
- We are unlikely to achieve a significantly different result.
- There is no achievable or realistic remedy, or no prospect that we will achieve the result that the complainant seeks.
- There is no practical prospect that we would be able to investigate the allegations. (For example, where the complaint depends on the uncorroborated word of one person against another.)
- The claimed loss is disproportionate to the reasonable expectations of what the service provider could be held accountable for. (For example, consequential losses from a missed journey as a result of a temporary bus stop closure).

- The claimed loss is large and would be more appropriately addressed through action in the civil courts. (For example, large commercial or business losses arising from an alleged failure by a public body).

The Public Interest Test

We are more likely to investigate a complaint where:

- It relates to an issue of significant public interest or to an issue of current concern to the Ombudsman.
- It relates to the abuse of power by a public body against a person. This may arise, for example, where a council behaves in an arbitrary and unreasonable manner over the sale of land. In these situations we have an important role in addressing the unequal balance of power between the person and the state, and in highlighting the higher standards expected of public bodies when exercising their administrative or commercial powers.
- Where the 'vulnerability' or particular circumstances of the complainant indicate the Ombudsman's intervention would be merited.

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Date Updated: 20/03/13



Local Authority Report – Barnsley MBC for the period – 01/04/2012 to 31/03/2013
 Local Government Ombudsman

Enquiries and complaints received	Adult Care Services	Benefits & Taxation	Corporate and Other Services	Education & Children's Services	Environmental Services & Public Protection & Regulation	Highways & Transport	Housing	Planning & Development	Total
Advice given	0	0	1	2	1	0	0	2	6
Premature Complaints	0	1	1	2	0	0	1	0	5
Forwarded to Investigative team (resubmitted)	0	0	0	0	0	0	1	1	3 (Local Settlements)
Forwarded to Investigative team (new)	0	0	0	4	0	0	6	0	10 (To discontinue investigation) Total 12
Not investigated	1	1	1	1	1	0	0	1	6
TOTAL	1	2	3	9	2	0	8	4	29

BARNSELY METROPOLITAN BOROUGH COUNCIL

OMBUDSMAN COMPLAINTS - LOCAL SETTLEMENTS

APRIL 2012 - MARCH 2013

<u>Brief Description of Complaint</u>		<u>Service</u>	<u>Settlement</u>
Not administered assessments and complaint correctly and insufficient support provided to give a fair quality of life	2215	Adults & Communities	Settlement of £500 (22/11/12)
Charges incurred for not clearing garden structures and waste from the garden after vacating property	2265	Berneslai Homes	Berneslai Homes will erase the recharge of £800 (10/12/12)
Remains dissatisfied with the Council's Stage 3 response regarding properly maintaining records	2276	Children, Young People & Families	Settlement of £125 (22/03/13)

Local authority report - Barnsley MBC

for the period - 01/04/2011 to 31/03/2012

LGO advice team

Enquiries and complaints received	Adult Care Services	Benefits & Tax	Corporate & Other Services	Education & Childrens Services	Environmental Services & Public Protection & Regulation	Highways & Transport	Housing	Planning & Development	Total
Advice given	2	0	1	1	2	1	4	4	15
Premature complaints	1	4	2	2	3	1	10	2	25
Forwarded to Investigative team (resubmitted)	1	1	0	0	0	0	1	4	7
Forwarded to Investigative team (new)	5	2	5	4	2	1	9	5	33
Total	9	7	8	7	7	3	24	15	80

Number of Enquires and Complaints received by the Ombudsman

