

THE OVERVIEW & SCRUTINY COMMITTEE

26 SEPTEMBER 2011

COMPLAINTS RECEIVED BY THE COUNCIL 2010/11

REPORT OF HEAD OF CUSTOMER SERVICE

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RECENT REFERENCES:

PS422- Annual Report on Complaints Received by the Council – 2009/10 - 20/9/10

EXECUTIVE SUMMARY:

This report summarises the various complaints received by the City Council during the year to the end of March 2011 and the nature of those complaints. It details the complaints received from the Local Government Ombudsman, and the conclusions he reached following his investigations.

During the year the Ombudsman did find fault with the Council on one occasion with a failure to inform the complainant in a timely manner of an adopted transport policy that created a liability for a financial contribution towards transport infrastructure costs following re-submission of a planning application. The complainant had to withdraw her original application following officer advice. The Ombudsman decided that there was maladministration by the Council when it failed to inform the complainant of the policy introduced by the County Council and subsequently adopted by the City Council. The complainant questioned the lawfulness of the policy but the Ombudsman could see no grounds to challenge the Council's view that the policy satisfied national advice and was applicable to the complainant's proposed development as it would result in additional movements across the transport network and impact on infrastructure. Therefore, the Ombudsman could not recommend that there should be a refund of the transport contribution payment made. The Ombudsman's decision was that this was a 'Local Settlement' and suggested that the Council should make the complainant a payment of £350 and further apologise for the failure to inform her in a timely manner of the newly adopted policy to which the Council agreed.

**RECOMMENDATIONS:**

That the report be noted and that Members indicate whether there are any issues arising from this analysis that they wish to investigate further.

## THE OVERVIEW & SCRUTINY COMMITTEE

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### COMPLAINTS RECEIVED BY THE COUNCIL 2010/11

#### Report of Head of Customer Service

#### 1 Introduction

1.1 This report looks at major complaints received against the City Council during the year ended March 2011 including a summary of complaints dealt with by the Local Government Ombudsman during the year.

1.2 The table below shows the number of Ombudsman complaints settled during 2010/11 compared to the number settled in the two previous years. When considering these statistics, it should be noted that it reflects complaints where the Ombudsman issued a decision during the year, not simply complaints received in the year.

**TABLE 1**

Division	No. of complaints			Dismissed at once or after initial inquiries			Local Settlement			Findings of Maladministration.		
	08/09	09/10	10/11	08/09	09/10	10/11	08/09	09/10	10/11	08/09	09/10	10/11
Planning	6	5	7	3	5	6	3		1			
Housing	7	2	2	6	2	2	1					
Revenues	1	1	2	1	1	2						
Parking												
Environment	1	1	1		1	1	1					
Other	5	1		5	1							
<b>Total</b>	<b>20</b>	<b>10</b>	<b>12</b>	<b>15</b>	<b>10</b>	<b>11</b>	<b>5</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>

#### 2. Ombudsman Complaints

2.1 The Ombudsman advice team received 22 complaints during the year but 3 cases were dealt with by giving the complainant advice and a further 7 cases were treated as premature i.e. where the Council had not had the opportunity

to deal with the complaint under the corporate complaints procedure. These complaints were referred back to the Council to determine.

2.2 The Ombudsman determined a total of 12 complaints during the year. Further details about the individual complaints referred to the Ombudsman are set out in Appendix 1 to this report.

### 3. Complaints received by Division

3.1 Complaints made to the Local Government Ombudsman against the Council form a small part of the overall number of complaints dealt with by the City Council. Complaints are received directly by Divisions or by the Chief Executive's Office from the public either by letter, phone call, e-mail or through the MP's office.

3.2 The complaints management database now centrally records all complaints irrespective of whether they are received by Departments or directly by the Chief Executive's office.

3.3 Letters from the 2 Members of Parliament for the Council area are included in these complaints statistics as they are dealt with under the complaints procedures and are generally dealing with issues of concern raised by members of the public. A total of 136 letters were received from MPs and are included in the department totals but shown in brackets.

### 4. Operations Group recorded a total of 448 complaints

4.1 **Planning** recorded 160 complaints. These included issues about the way planning applications were dealt with and enforcement of alleged unauthorised development including cases where development was being built not in accordance with permissions.

4.2 **Environment** recorded 102 (8) complaints and Serco recorded 818 missed waste and recycling bin collections per 100,000 collections. The missed bin statistics are not included in the overall complaints data as they are a specific and specialised issue and are reported separately.

4.3 **Access & Infrastructure** recorded 51 (21) complaints related to Parking issues – these did not include those complaints that were referred to the Adjudication Service.

4.4 **Landlord Services** recorded 124 (20) complaints related to various issues including works and contractors.

4.5 **Building Control** received 2 (1) complaints.

4.6 **Economic & Cultural Services** received 9 (4) complaints.

5. **Corporate Governance Group** recorded a total of 82 complaints
- 5.1 **Revenues** recorded 59 (11) complaints relating to benefits received and local taxes.
- 5.2 **Democratic Services** recorded 1 complaint
- 5.3 **Financial Services** recorded 2 complaints
- 5.4 **Information & Management Technology** recorded 1 (1) complaint
- 5.5 **Legal Services** received 9 (5) complaints
- 5.6 **Estates** received 10 (2) complaints
6. **Transformation Team** received a total of 93 complaints
- 6.1 **Strategic Housing** recorded 39 (34) complaints.
- 6.2 **Partnership and Communications** received 3 complaints
- 6.3 **Corporate Management Team** dealt with 47 (29) complaints that in most cases related to policy issues.
- 6.4 **Customer Services** received 4 complaints

The total number of complaints received by the Council is shown in the Table below:

Year	Corporate Governance Group	Transformation Team	Operations Group	Total
2007/08	86	75	390	551
2008/09	62	107	436	605
2009/10	69	80	336	485
2010/11	82	93	448	623

## 7. Issues Arising

- 7.1 The content of the complaints is reviewed each year to study any trends or particular issues that require a re-assessment of policies or systems. This is in addition to action taken more immediately to improve systems and procedures in light of individual complaints received.
- 7.2 The majority of items which have been received as complaints were found to be matters where the complainant was trying to use the complaints process, either directly or via their MP, as a form of appeal to have a decision reconsidered. Such cases included fixed Penalty notices, planning objections, housing allocations and the award or refusal of benefits. In most cases, once a detailed explanation was given the matter was concluded. Many of the other complaints dealt with cases where individuals wanted more information about why decisions were taken or about the relevant policy issues and when this was provided, again the matter was resolved.
- 7.3 The analysis of the complaints does not appear to identify any major trends or issues that require specific attention or that have not already been identified and systems or procedures revised to overcome the problem.
- 7.4 The Committee will note that the total number of complaints, 623 (plus 818 missed bin complaints) received and recorded relates to all the transactions and actions carried out by and on behalf of the Council in all its activities. The new corporate complaints handling system was introduced across the Council in December 2008 and one of the areas for further development identified as part of the Customer Service Excellence accreditation programme is review of the complaints process. Complaints are a key indicator of how well our organisation is working so having a robust complaints process is essential. A review of the following aspects of the process is to take place in October :-
- How does the complaints process work for customers?
  - How does the complaints process work for staff?
  - Can we improve things and if so how?
- 7.5 The Council continued to improve the speed of dealing with Ombudsman enquiries and reduced the average response time from 27 to 20 days which was within the Ombudsman's timescale target of 28 days for response to first enquiries.

OTHER CONSIDERATIONS:

8. SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS  
(RELEVANCE TO):

8.1 The Council aims to be efficient and effective and to offer excellent customer services in its local communities. Better information on the cause of complaints will support these aims.

9. RESOURCE IMPLICATIONS:

9.1 There are no resource implications arising from this report.

10. RISK MANAGEMENT ISSUES

10.1 In reviewing the complaints received appropriate actions have been taken to amend or correct procedural or performance issues. None of these have been sufficiently significant to require review of the risk management procedures.

BACKGROUND DOCUMENTS:

Analysis of complaints from the Local Government Ombudsman is held on file in the Customer Service Department NOTE: Detailed papers are exempt as they contain personal information.

APPENDICES:

Appendix 1 – Analysis of Ombudsman complaints determined in the year ended 31 March 2011.

Outline summary of complaints made against Winchester City Council and considered by the Local Government Ombudsman during 2010/11

Explanation of decision categories

- No or insufficient evidence of maladministration.  
Decision by letter, where the Ombudsman has discontinued the investigation because he has found no or insufficient evidence of maladministration.
- Ombudsman's discretion.  
Decisions by letter discontinuing an investigation in which the Ombudsman has exercised his general discretion not to pursue a complaint. This can be for a variety of reasons, but the most common is that he has found no or insufficient injustice to warrant pursuing the matter further.
- Local Settlement  
Decisions by letter discontinuing the Ombudsman's investigation because the authority has agreed to take some action which is considered by him as a satisfactory outcome for the complainant.

**Environment**

Miss E complained that the Council failed to properly investigate her complaint about neighbours feeding birds as it unreasonably refused to view her evidence. It also failed to take action to prevent her neighbour's actions resulting in rodent infestation and caused her to take legal action personally. The Council had investigated her complaints and officers had visited the site on a number of occasions and they were satisfied that the evidence did not show any health or rodent issues arising from the feeding of birds by her neighbour. The legal action taken by her against the site owner was for failure to properly investigate the matter and not for the actions of her neighbour. The Council had advised why it cannot address the feeding of wild birds if no health hazard is apparent. Finally the neighbour in question had moved away from the area and therefore any alleged nuisance had ceased so no potential remedy was possible. The Ombudsman recorded the decision as: **No or insufficient evidence of maladministration**

**Revenues**

Mr F complained that the Council failed to advise him that he was entitled to apply for Small Business Rate Relief (SBRR) and Rural Rate Relief (RRR) and he considers he has overpaid business rates as a result. The Ombudsman decided that the Council had notified Mr F about SBRR and RRR and that given his application for SBRR in 2008, he was aware of the existence of these schemes. Even if the complainant was not aware of the schemes, the outcome would not have been different as he did not qualify for SBRR until the rateable value of his business was reduced in 2008 and for



RRR until the rateable value was reduced further in 2010. The Ombudsman recorded the decision as: **No or insufficient evidence of maladministration**

Miss G complained that the Council gave inadequate consideration to her entitlement to Housing Benefit and Council Tax Benefit and acted unreasonably by threatening her with eviction for non-payment of rent and Council Tax. There had been a fault with the computer system that led to an underpayment of housing benefit to her and during that time, housing officers had sent letters stating that the account was in arrears and referring to possible possession action. Benefit officers did act promptly when the software fault was realised and advised housing officers that no further arrears letters should be sent. The fault was not resolved until Feb. 2010 but the Council acted promptly as soon as it was fixed by correcting Miss G's housing benefit account, crediting her rent account, refunding the credit balance and confirming the account showed no arrears. The action taken was considered a fair and proportionate response to the complaint and the Ombudsman recorded the decision as: **No or insufficient evidence of maladministration**

### **Landlord Services**

Mr L complained that the Council refused to repair or replace the garden shed that was at the property when he signed a secure tenancy in 2004. Mr L became a WCC tenant at a different property in 2000 and the tenancy conditions then and in 2004 indicated that sheds could only be erected with the permission of the Council. In effect he was on notice that the sheds were a matter for the tenants to provide. A revised Tenants handbook was issued in 2009 indicating the tenant's responsibilities for maintenance of the garden and all things including sheds that have been installed or were at or on the property when they moved in. There was no evidence that the shed was ever considered part of the tenancy or that the Council owed a duty to maintain the shed and the Ombudsman recorded the decision as: **No or insufficient evidence of maladministration**

### **Strategic Housing**

Mrs K complained that the Councils (Winchester & East Hants - where East Hants were the lead authority in the Choice Based Letting Scheme) had failed to provide suitable housing for her and her adult sons. She considered that the councils had failed to assess one of the son's needs over 3 years and as a consequence had not given an appropriate priority for housing. The family had been dealt with by East Hants and the judgement was that neither council was at fault with the exception of a delay by East Hants in rebanding one of the son's application that caused them to lose a property that they would have accepted. It was noted that the family had turned down a number of suitable properties for reasons that were not valid. The Ombudsman decided that East Hants District Council should offer the family compensation, to which they agreed, but did record the decision for this council as: **No or insufficient evidence of maladministration**

## **Planning**

Mr A complained that the Council failed to publicise a planning application correctly for a new farm building and ignored planning guidance relating to siting of buildings in rural areas. The Council had confirmed that the planning agent had told them that the site notice had been displayed and there was no evidence that this was not the case. The development site was approximately 1 kilometre from the complainant's home and the Ombudsman commented that he could not recall a planning case in which consideration had been given to the impact of a building on people living this far away from a new development of this scale. The case officer had reported that the new use of the site was a better use than the existing site that was clutter of different structures and this was considered to be wholly reasonable. The Ombudsman concluded that there were no grounds for complaint and recorded the decision as: **No or insufficient evidence of maladministration.**

Mr & Mrs B complained that the Council had changed its mind as to whether their mobile home was operational development and the way it had considered the application. The Ombudsman commented that the key point in this case is the apparent change by the Council as to whether a mobile home had been positioned on the land for more than ten years. The Council had now concluded, in deciding the application for a Lawful Development Certificate (LDC), that a mobile home had not been sited on the land for more than ten years. The Ombudsman cannot say what decision is correct and the way to establish the point is for the complainant to appeal to the Planning Inspector against the refusal of the LDC. He did say that if the appeal was unsuccessful then the Ombudsman would consider a further complaint. The Ombudsman recorded the decision as: **Outside jurisdiction.**

Ms C complained that failure to inform her in a timely manner of an adopted transport policy that meant that she was liable for a financial contribution towards transport infrastructure costs following re-submission of her planning application. She had withdrawn the original application following officer advice. The Ombudsman decided that there was maladministration by the Council when it failed to inform her in a proper and timely manner of the policy introduced by the County Council and adopted by the Council. The complainant questioned the lawfulness of the policy but the Ombudsman could see no grounds to challenge the Council's view that the policy satisfied national advice and was applicable to the complainant's proposed development as it would result in additional movements across the transport network and impact on infrastructure. Therefore the Ombudsman could not recommend that there should be a refund of the transport contribution payment made. The Ombudsman suggested however that the Council should make the complainant a payment of £350 and further apologise for the failure to inform her in a timely manner of the newly adopted policy and recorded the decision as: **Local settlement.**

Mrs J complained that the Council failed to consider properly biodiversity issues when it determined applications for development at land close to her home despite evidence of protected species there. The Council had approved an application in 2006 but in 2008, when an amended application was submitted, it required a bat study following requests from local residents. It refused that application for an amended design. The applicant appealed and in 2010, the Inspector allowed the appeal and granted permission. In doing so it seems that he did not make any provision for protected species or require the applicant to submit a biodiversity study. The Ombudsman decided that it would not investigate the question of whether the Council should have required a biodiversity study in 2006 as too much time had passed to investigate the reasons for that decision. With regard to the 2008 decision, the Council had refused the application and regardless of whether the issues had been handled properly, those actions did not ultimately impact on the protected species. It was the Planning Inspector's decision to allow the appeal and grant permission that had impacted on the potential habitats and his actions are not within the Ombudsman's jurisdiction. The Ombudsman recorded the decision as: **No or insufficient evidence of maladministration.**

Mr H complained that the Council acted unlawfully when determining a planning application for development of land near his home, by not making available to the public a financial viability appraisal submitted by the applicant in support of the application. He said the appraisal was a background paper that should have been published and he was denied a full opportunity to comment on the application and influence the Council's decision-making as an interested party. The Council had given its reason why it had considered that the appraisal was exempt information and that it was non disclosable. It had responded to Mr H's questions and enquiries about the non disclosure of the document. He has an alternative statutory remedy in law for this issue through complaint to the Information Commissioner and that would be an appropriate and reasonable step to take. The Ombudsman could not find evidence of maladministration in the factors that the Council took into account when determining the planning application – Officers and Members had regard to the relevant material planning considerations when determining the application. The Ombudsman was not persuaded that any degree of injustice had been suffered by Mr H as he does not live adjacent to the site and had not demonstrated that an individual significant personal injustice had arisen from the approval of the development. The Ombudsman recorded the decision as: **No or insufficient evidence of maladministration**

Mr I complained that the Council failed to give consideration to the safety of people using an access track when granting permission for a house and has not given details of the landscaping required. The track is a private right of way and not an adopted public highway. In those circumstances it is for those who enjoy the legal benefit of that right of way to take action if they consider that contractors are obstructing their exercise of the right of way. The Council could not achieve this through the enforcement of planning conditions. The landscaping and boundary condition submissions have been made and are

under consideration by the Planning Department. The Ombudsman recorded the decision as: **No or insufficient evidence of maladministration**

Mr D complained that the Council failed to enforce a planning condition ensuring that a developer properly maintains the hedge between him and a new development in a proper condition until such time as the development work was done. The Ombudsman did not pursue enquiries at this stage but it was evident that the complainant's concerns about the hedge that separated his property from a neighbouring development have not yet been resolved. He asked the Council to keep open its file on the alleged breach of planning control, caused by the developer apparently not maintaining the hedge and to ensure compliance with the planning condition. The Ombudsman recorded the decision as: **No or insufficient evidence of maladministration**