

THE OVERVIEW & SCRUTINY COMMITTEE

17 SEPTEMBER 2012

COMPLAINTS RECEIVED BY THE COUNCIL 2011/12

REPORT OF HEAD OF CUSTOMER SERVICE

Contact Officer: Andrew Hiney e-mail: [ahiney@winchester.gov.uk](mailto:ahiney@winchester.gov.uk)

RECENT REFERENCES:

OS16 - Annual Report on Complaints Received by the Council – 2010/11 - 26/9/11

EXECUTIVE SUMMARY:

This report summarises the various complaints received by the City Council during the year to March 2012 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 three occasions:-

1. The Council had failed to screen a planning application under Environmental Impact Assessment Regulation and so the permission was later subject to a Judicial Review application and then quashed by a High Court: it had not considered properly whether it should make a payment to the company in recognition of financial loss: it had delayed in issuing a scoping opinion and failed to deal with the matter in accordance with its complaint procedure. This resulted in a requirement by the Ombudsman to pay the complainant £1,200 in respect of the cost of resubmitting the planning application; pay the complainant's legal costs of £2,160; pay the complainant £200 in recognition of the time and trouble caused to it by the defects in the operation of the Council's complaints process and to review how it deals with complaints made to it and particularly how it refers complainants to the advanced stage of its procedure.
2. The Council had failed to deal with a complaint in accordance with its complaints procedures. The Ombudsman decided that the Council should pay the complainants £50 in compensation for the time and trouble they had experienced and frustration by not dealing with the complaint in accordance with its policy.

3. The complainant alleged that she had been unfairly treated by the Council and its leisure contractor, having been barred from attending certain classes at the leisure centre. The Ombudsman did note that the contractor had reviewed the ban and had lifted it completely and decided that it was a sufficient remedy.

**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.

PRINCIPAL SCRUTINY COMMITTEE17 SEPTEMBER 2012COMPLAINTS RECEIVED BY THE COUNCIL 2011/12REPORT OF HEAD OF CUSTOMER SERVICE1 Introduction

1.1 This report looks at major complaints received against the City Council during the year ended March 2012 including a summary of complaints dealt with by the Local Government Ombudsman (LGO) during the year.

1.2 The table below shows the number of complaints to the LGO that were settled during 2011/12 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.		
	09/10	10/11	11/12	09/10	10/11	11/12	09/10	10/11	11/12	09/10	10/11	11/12
Planning	5	7	5	5	6	4		1	1			
Housing	2	2	2	2	2	2						
Revenues	1	2		1	2							
Parking												
Environment	1	1		1	1							
Other	1		2	1					2			
<b>Total</b>	<b>10</b>	<b>12</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>6</b>	<b>0</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>

2. Ombudsman Complaints

2.1 The LGO advice team received 17 (24 in 2010/11) complaints during the year but 5 cases were dealt with by giving the complainant advice and a further 4 cases were treated as premature i.e. where the City 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 deal with under the corporate complaints procedure.

- 2.2 The LGO determined a total of 9 complaints during the year. Further details about the individual complaints referred to the Ombudsman are set out in Appendix 1 to this report.
- 2.3 Referral of complaints to the LGO can be seen as one measure of how well, or not, we are performing as a Council and of the effectiveness of our response to complaints and this has shown a significant improvement in the last three years. Records show that the LGO determined an average of 21 complaints per year from 2001 to 2009 and that was in line with numbers from similar Council areas across the UK. The number of unresolved complaints to this Council that have been referred to and determined by the LGO has reduced by over 50% since then.
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. *Complaints received in the previous year are included in brackets*
- 3.2 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 144 letters were received from MPs.
4. Operations Group recorded a total of 417 (448) complaints
- 4.1 **Planning** received 89 (153) complaints. These included issues about the way planning applications were dealt with and enforcement of development not in accordance with permissions
- 4.2 **Environment** received 132 (54) complaints. The increase in complaints being mainly due to corporate complaints about the new waste collection contract. *[Serco recorded an average monthly total of 41 missed bins per 100,000 collections until the end of their contract. Biffa recorded an average of 1394 per 100,000 collections for October and November and then an average of 264 per 100,000 for the remaining 4 months. These details are the subject of separate reporting and are not included in the overall complaints data as they are a specific and specialised issue.]*
- 4.3 **Access & Infrastructure** received 30 (28) complaints related to Parking issues – these did not include complaints that were referred to the Adjudication Service.
- 4.4 **Housing Services** received 121 (163) complaints related to various issues including works and contractors.
- 4.5 **Strategic Planning** received 1 complaint

- 4.6 **The Director of Operations Group** dealt with 44 complaints of which 37 related to planning permission for the Motocross site, Headbourne Worthy
5. **Corporate Governance Group** recorded a total of 62 (82) complaints
- 5.1 **Revenues** received 38 (53) complaints relating to benefits received and local taxes.
- 5.2 **Democratic Services** received 3 (3) complaints
- 5.3 **Financial Services** received 5 (2) complaints
- 5.4 **Legal Services** received 5 (7) complaints
- 5.5 **Estates** received 8 (1) complaint
- 5.6 **Information & Management Technology** received 1 (1) complaint
- 5.7 **The Director of Governance** dealt with 2 complaints
6. **Transformation Team** received a total of 6 complaints
- 6.1 **Customer Services** received 6 (14) complaints.
7. **Corporate Management** received a total of 45 (47) complaints relating to policy issues

The total number of complaints received by the Council is shown in the Table 2 below:

Year	Corporate Governance Group	Corporate Management and Transformation	Operations Group	Total
2006/07	160	110	515	785
2007/08	86	75	390	551
2008/09	62	107	436	605
2009/10	69	80	336	485
2010/11	82	93	448	623
2011/12	62	51	417	530

## 8. Issues Arising

- 8.1. A total of 133 complaints across the Council were upheld and in all cases an apology or an explanation was given as deemed appropriate. Where it was necessary, work to resolve the cause of the complaint was completed and in many of those cases, systems or procedures were reviewed and if required, amended to minimise the chance of similar problems being created. In many

of the cases where the complaint was not upheld it is probable that the complainants were 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.

- 8.2. The Committee will note that the total number of complaints, 530 (plus 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 and is a pleasing reduction on previous years totals.

#### OTHER CONSIDERATIONS:

9. SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

- 9.1. 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.

10. RESOURCE IMPLICATIONS:

- 10.1. There are resource implications arising from the local settlements that are detailed in Appendix 1 to this report. The total of £3,610 was met from existing budgets.

11. RISK MANAGEMENT ISSUES

- 11.1. 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 Policy Group Office. NOTE: Detailed papers are exempt as they contain personal information.

#### APPENDICES:

Appendix 1 – Analysis of Ombudsman complaints determined in the year ended 31 March 2012.

## **Analysis of Ombudsman complaints determined in the year ended 31 March 2012.**

The Ombudsman has introduced a new set of decision categories this year and the explanation of those categories is as follows:-

- **Out of jurisdiction, not to initiate or to discontinue an investigation.** (Formerly Ombudsman's discretion i.e. 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).
- **To discontinue investigation – injustice remedied** (where the authority has agreed to take some action which is considered by the Ombudsman as a satisfactory outcome for the complainant).
- **Investigation complete – satisfied with authorities actions, not appropriate to issue report**
- **Investigation complete – report issued.**

### **1. Housing Services**

(i) Mrs D complained that the Council failed to take action against a landlord who was in control of an unlicensed House of Multiple Occupation (HMO) The complainant's son lived in a shared house with other students between June 2009 and February 2010 and had contacted the Council about the condition of the property. The Council had inspected and confirmed that damage to the property was the result of a boiler leakage and had contacted the landlord and had understood that repairs had been carried out. Mrs D had since discovered that the property was an HMO and should have been registered by the Council and advised the Council. The Council sent a licensing application to the landlord and a licence was subsequently granted. The Council confirmed that it did not intend to prosecute the landlord for an unlicensed property as it was not in the public interest to do so. It had inspected the property and it was the view of the officer that the relatively poor condition of the property was the result of the actions of the tenants rather than the failure of the landlord to undertake his responsibilities. The Ombudsman recorded the decision as: **out of jurisdiction, not to initiate or to discontinue an investigation**

(ii) Mr G complained about the circumstance in which he was evicted by the Council in 2005. The Ombudsman considered that it was outside his jurisdiction to investigate on grounds of time ( as well as the knowledge that the eviction was only likely to have been obtained further to the Council having obtained the necessary Court Order and warrant) The decision was recorded as: **out of jurisdiction, not to initiate or to discontinue an investigation.**

### **2. Planning**

(i) Mr C complained that the Council, when processing his planning and listed building applications, unreasonably delayed the process, failed to take account of his

representations about the conservation aspects of the proposals and allowed prejudicial and factually inaccurate comments to affect the decision to refuse his application. The complainant's architect initially contacted the Council to request a site meeting as a potential purchaser but it was explained that it is not our policy to give pre application advice unless the applicant owned the property. An application was made approximately 4 months later and it is accepted there was an initial delay in registering the application and the Council apologised for those delays caused by stretched resources of the department. The application was determined in a little over 19 weeks and the Ombudsman commented that there was no unreasonable delay once the application was registered given the complexity of the listed building application. The original application was refused and a resubmitted application was permitted following a decision by the Planning Development Control Committee. In a detailed decision report, the Ombudsman could find no evidence of fault in the way that the conservation officer reached the views he expressed about both of the applications. It was not the Ombudsman's role to comment on the conservation officer's view as she was satisfied that it was reached after proper consideration. The complainant has alleged that the conservation officer's report to PDCC contained comments he considered factually inaccurate which unreasonably influenced the committee. The Ombudsman noted that the complainant's representative had e-mailed all members of the PDCC outlining those areas he considered to be inaccurate and had also addressed the committee. The Ombudsman therefore considered that the committee were well aware of his concerns about the accuracy of the report. The Ombudsman did not consider there were grounds to consider the complaint further and recorded the decision as: **out of jurisdiction, not to initiate or to discontinue an investigation**

(ii) Mr B complained that the Council failed to justify a departure from its local planning guidance regarding the use of a site where a supermarket is to be built; failed adequately to take into account national planning guidance; relied upon an inaccurate expert report and flawed statements by Council officers; introduced an irrelevant consideration during a planning meeting and that the minutes failed to record that a Councillor was challenged upon shutting his eyes at one point during the meeting. The Ombudsman stated that she could only uphold a complaint where two tests are met. First that the Council must have acted with administrative fault or failed to have delivered a service to the complainant; and secondly that any fault has led the complainant to suffer an injustice i.e. it has to be something more than just a sense of dissatisfaction that the Council might have handled matters better. It appeared to the Ombudsman that an investigation would have been unlikely to find either of these tests satisfied. The Ombudsman detailed the key facts why she had decided not to investigate this complaint and recorded the decision as: **out of jurisdiction, not to initiate or to discontinue an investigation**

(iii) Mr I complained that the Council reached a flawed decision to approve a supermarket in his village because it acted contrary to Council's protocol in that: Officers were not transparent in their dealings with the applicants; the chairman acted inappropriately during one of the representations in that he was talking to an officer and that he failed to reprimand another member who was sleeping during the debate and that a member who abstained was sleeping during the debate and may



have unreasonably affected the approval vote which was carried by the chairman's casting vote. The Council approved a major planning application for a supermarket at a meeting that the complainant did not attend but relied on evidence from others when making his complaint. The complainant lived about three quarters of a mile from the site. The Council had responded to the complainant that the chairman did not spend significant time in conversation as suggested and the decision process was not compromised; the issue of the member alleged to have slept had been referred to the Council's standards (assessment) sub committee and that the Secretary of State had reviewed the decision to approve and found no reason to 'call in' the application on policy or procedural grounds. The Council's standards (assessment) sub committee subsequently decided it has insufficient substantiated evidence of a breach of the code to recommend an investigation. The Ombudsman noted the strength of feeling about the matter by the complainant but did not consider that he had suffered a degree of injustice that warrants an investigation. He took account that the complainant lived three quarters of a mile from the site so his enjoyment of his home environment is unlikely to be significantly affected by the development. He noted that the member conduct matter seemed to be ongoing and it remains open for the complainant to complain about any faults in the process. The decision was recorded as: **out of jurisdiction, not to initiate or to discontinue an investigation.**

(iv) Mr H complained that the Council unreasonably made a Tree Preservation Order (TPO) on his land which it failed to properly serve in 2010; failed to respond to his complaint about this appropriately; upon revocation of the original TP, a further TPO with different definition was made which he considered unnecessary. The complainant had a pre-planning meeting with planning officer and said that a TPO was not mentioned at that meeting but was later informed that the meeting had led officers to consider that a TPO may be necessary. The complainant was living abroad at the time and he was informed about the TPO when an acquaintance saw a notice to that effect on the property. His solicitor communicated with the Council about the lack of service of the TPO and the original was subsequently revoked. A new TPO was made and properly served and this related to specific trees rather than the whole of the property being included in the scope. The Ombudsman decided that no injustice arose from the original TPO as it no longer exists. He may have investigated a remedy had a second TPO not been warranted but it would not appear that the complainants position would have been materially different without the alleged flaws since a TPO was still considered necessary. The decision was recorded as: **out of jurisdiction, not to initiate or to discontinue an investigation**

(v) Mr F complained that the Council failed to screen his planning application under Environmental Impact Assessment Regulation and so the planning permission granted was later subject to a Judicial Review application and then quashed by a High Court: had not considered properly whether it should make a payment to the company in recognition of financial loss: delayed in issuing a scoping opinion and failed to deal with the matter in accordance with its complaint procedure. In a lengthy decision the Ombudsman accepted that the Council had admitted that it failed to screen the application under regulations and despite the complexity of those regulations the Council was at fault in its responsibility to satisfy itself whether screening was required. The complainant had asked the Council to pay £72000 to

cover the financial loss but the Ombudsman decided that there was no certainty that the development would have been completed or that the company would have met the precommencement conditions or produced the expected crop and that there was insufficient basis to recommend that the Council met the costs of lost production. The complainant had asked that the council paid further costs of trials, management and administration and legal costs for resubmitted application amounting to £80000. The Ombudsman suggested that most of these costs would have been incurred in the proper submission of the scoping report and should not be borne by the Council but the costs of the resubmitted application should. The Council agreed to:

- Pay the complainant £1,200 in respect of the cost of resubmitting the planning application
- Pay the complainant's legal costs of £2,160
- Pay the complainant £200 in recognition of the time and trouble caused to it by the defects in the operation of the Council's complaints process
- Review how it deals with complaints made to it and particularly how it refers complainants to the advanced stage of its procedure.

The Ombudsman recorded the decision as: **to discontinue investigation – injustice remedied**

### 3. Estates

(i) Mr & Mrs A complained that the Council treated them unfairly, disproportionately and rudely when asking them to restrict their market pitch; made inconsistent rent charges to different traders and failed to deal with their complaint in accordance with its complaints procedures. The Ombudsman decided that the Council had apologised if the officer's behaviour had caused offence and had said that it was not his intention to have done so. There had been no witnesses so it was not possible to conclude that the officer had acted rudely or disproportionately to the complainants. The stall charges are standard but did include an element of discretion that had been applied. The Council had reviewed its policy to increase the transparency in the rents charged. Any injustice to the complainants was limited as they had been charged reduced fees. The Council had responded to the original complaint in good time but did not escalate the matter to stage two when requested to do so by the complainant as the officer had considered that he had dealt with the matter adequately. The Council acknowledged that this was not the correct procedure and would write to the complainants to apologise for this error. The Ombudsman decided that the Council should pay the complainants £50 in compensation for the time and trouble they had been put to and frustration by not dealing with the complaint in accordance with its policy and recorded his decision as: **to discontinue investigation – injustice remedied.**

### 4. Sports & Physical Activity.

(i) Ms E complained that she had been unfairly treated by the Council and its leisure contractor, having been barred from attending certain classes at the leisure centre with her daughter. She regards the incident that triggered the ban to have been provoked and exaggerated and that the ongoing ban was harmful to her health. The incident had been investigated by the leisure centre manager and the results of

that investigation is detailed in the Ombudsman's report and is not included in this report. There was conflicting accounts of what took place but the Ombudsman is not in a position to adjudicate on those reports. He did comment that he would have expected to see more in the way of contemporaneous reports of the incident and greater detail and documented evidence of what took place but he could not say that it would have resulted in any change to the action taken by the Council's contractor. He did note that the contractor had reviewed the ban and had lifted it completely and Ms E had been informed. The complainant had acknowledged that she had sworn at the member of staff and the Ombudsman was satisfied that the sanction was proportionate given this admission. The Ombudsman decided: **to discontinue investigation– injustice remedied (following internal investigation).**