

THE OVERVIEW AND SCRUTINY COMMITTEE

23 SEPTEMBER 2013

COMPLAINTS RECEIVED BY THE COUNCIL 2012/13

REPORT OF HEAD OF BUSINESS SERVICES

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RECENT REFERENCES:

OS46 - Annual Report on Complaints Received by the Council – 2011/12 – 26  
September 2012

EXECUTIVE SUMMARY:

This report summarises the various complaints received by the City Council during the year to March 2013 and the nature of those complaints. It details the complaints received from the Local Government Ombudsman, and the conclusions he reached following his investigations.

From April 2013, the Localism Act created a single Ombudsman for dealing with social housings complaints. The Housing Ombudsman will focus on supporting dispute resolution at local level, both within Landlords' internal complaints processes and by advising the newly created designated persons on good practice in complaint handling. Liaison with the Housing Ombudsman is being dealt with by Housing Department.

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 AND SCRUTINY COMMITTEE

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### COMPLAINTS RECEIVED BY THE COUNCIL 2012/13

#### REPORT OF HEAD OF BUSINESS SERVICES

#### 1 Introduction

1.1 This report looks at major complaints received against the City Council during the year ended March 2013 including a summary of complaints received 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 2012/13 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.

#### 1.3 **TABLE 1**

Division	No. of complaints			Dismissed at once or after initial inquiries			Local Settlement			Findings of Maladministration.		
	10/11	11/12	12/13	10/11	11/12	12/13	10/11	11/12	12/13	10/11	11/12	12/13
Planning	7	5	5	6	4	5	1	1				
Housing	2	2		2	2							
Revenues	2			2								
Parking												
Environment	1			1								
Other		2	4			3		2	1			
<b>Total</b>	<b>12</b>	<b>9</b>	<b>9</b>	<b>11</b>	<b>6</b>	<b>8</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>

#### 2. Ombudsman Complaints

2.1 The LGO received a total of 11 complaints during the year and two of those complaints were still open at the end of the financial year and will be included in next year's statistics for settled complaints. Further details about the individual settled complaints are set out in Appendix 1 to this report.

2.2 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. The level of settled complaints for each 12 month period has continued to show improvement in the last three years. Records show that the LGO determined an average of 21 complaints against this Council 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 Team

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 Teams 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 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 123 letters were received from MPs.

<b>Complaint by service area</b>	<b>2012/13</b>	<b>(2011/12)</b>
Building Control	0	
Access & Infrastructure	67	30
Cultural Services	4	
Customer Services	3	6
CX	21	45
Director of Operations	6	44
Environment	197	132
Estates	11	8
Financial Services	1	5
Housing Services	155	121
I M & T	3	1
Legal Services	10	8
Organisational Development	2	2
Partnerships & Communication	2	
Performance & Scrutiny	1	
Planning Control	88	89
Revenues	54	38
Strategic Planning	3	1
<b>Total</b>	<b>628</b>	<b>530</b>

The total number of complaints received by the Council compared with previous years is shown in the **Table 2** below:

<b>Year</b>	<b>Corporate Governance Group</b>	<b>Corporate Management and Transformation</b>	<b>Operations Group</b>	<b>Total</b>
<b>2006/07</b>	<b>160</b>	<b>110</b>	<b>515</b>	<b>785</b>
<b>2007/08</b>	<b>86</b>	<b>75</b>	<b>390</b>	<b>551</b>
<b>2008/09</b>	<b>62</b>	<b>107</b>	<b>436</b>	<b>605</b>
<b>2009/10</b>	<b>69</b>	<b>80</b>	<b>336</b>	<b>485</b>
<b>2010/11</b>	<b>82</b>	<b>93</b>	<b>448</b>	<b>623</b>
<b>2011/12</b>	<b>62</b>	<b>51</b>	<b>417</b>	<b>530</b>
<b>2012/13</b>	<b>79</b>	<b>37</b>	<b>512</b>	<b>628</b>

#### 4. Issues Arising

- 4.1 A total of 203 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 where appropriate, systems or procedures were reviewed and if required, amended to minimise the chance of similar problems being created.
- 4.2 The Environment department did experience a continuing rise in the number of corporate complaints which, in the main, relate to the waste collection contract. The impact of problems arising from the change to the waste collection contract has been well documented but the adoption and stricter application of the missed bin returns policy, has resulted in the continuing rise in the level of corporate complaints to the department. The policy states that any missed bin has to be reported by midday the following day or it is left until the next collection day which may be two weeks later. *Records show that there was an average of 58 missed bins per 100,000 collections per month across WCC and East Hants District Council area. 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 The Committee will note that the total number of complaints, 628, received and recorded relates to all the transactions and actions carried out by and on behalf of the Council in all its activities.

### OTHER CONSIDERATIONS:

#### 5 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

- 5.1 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.

#### 6 RESOURCE IMPLICATIONS:

- 6.1 There are no resource implications arising from this report.

#### 7 RISK MANAGEMENT ISSUES

- 7.1 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 Services 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 2013.

**Outline summary of complaints made against Winchester City Council and considered by the Local Government Ombudsman during 2012/13**

Explanation of decision categories.

- **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. Planning**

- (i) Mr & Mrs B complained that the Council acted inconsistently and unfairly in the way it determined planning applications to extend properties in their road. The complainants objected to a planning application to extend a property next to their home. The initial application was withdrawn and a revised application submitted and they were advised of those revised plans which they further commented on. The revised plans were approved under delegated powers. There had been another planning application in the village to which a Councillor had objected as a neighbour and it had been referred to committee as a matter of probity, and this application was refused. Mr & Mrs B considered that the two applications had been dealt with differently. The Ombudsman had found no evidence of fault to give grounds for him to pursue the complaint. The Council had gone beyond its statutory obligations to advertise the application. The case officer had exercised her professional judgement reasonably and the decision was sound. Officers acted prudently when taking the decision to refer the other application to committee and the decision to refuse that application was made on its individual merits and did not have a bearing on the decision to grant their neighbours application. **The Ombudsman's decision was recorded as: not to initiate an investigation.**
- (ii) Mr & Mrs F complained that the Council reached a flawed decision in respect of their Lawful Use application; took inconsistent action when considering planning enforcement and gave them poor advice. The complainants had bought two cottages and adjoining land which they claimed had been added to their garden. They built an implements shed on the land with permission for 'agricultural/horticulture' use. A neighbour complained that they had put in a window without permission and they were advised to apply for permission for the

window which they successfully did. In 2012 an enforcement officer investigated a complaint that they were living in the outbuilding which they denied. The officer recommended that they apply for a Certificate of Lawful Use (CLEUD). Mr & Mrs F then complained about other possible breaches of planning permission in the area as they thought that the Council was only investigating them. Their application was refused. The Ombudsman said that the complainants had a right of appeal to the planning inspector and that was a reasonable step for them to take. He commented on the enforcement issues and agreed that the Council was correct to investigate the potential breaches of planning control and that the Council had investigated the breaches reported by the complainants. **The Ombudsman's decision was recorded as: not to initiate an investigation.**

- (iii) Mr E complained that there were failings in the way the Council handled an application for temporary planning permission to change the use of agricultural land to a motocross site. They also complained that the Council failed to properly record complaints about noise and dust from the site. The complaint related to a temporary planning permission granted for change of use of agricultural land to a motocross site in 2004. In 2009 the developer applied for a permanent change of use and that was refused. The developer appealed to the Planning Inspector who dismissed the appeal but did not dismiss the development on the grounds of noise; she concluded that the development would not be detrimental to the living conditions of local residents by reason of noise and disturbance. After the appeal the developer submitted a further application which was approved by Committee in 2012. The Ombudsman explained that they would not normally consider complaints that a complainant had been aware of for over 12 months unless there are special reasons for justifying a departure from this rule. There was no special reason and the Ombudsman decided not to initiate an investigation. **The Ombudsman's decision was recorded as: not to initiate an investigation.**
- (iv) Mr C complained that the Council failed to properly consider a planning application. The Council had received a planning application for demolition of six dwellings and the construction of replacement dwellings for 99 students which it refused. The development was subsequently allowed on appeal to the Planning Inspectorate. The developer submitted a further application to increase student accommodation to 117 for which the complainant submitted objections and this application was approved by the Council. In a detailed report the Ombudsman discussed the role of the planning appeal and the actions of the Council in relation to that appeal which he considered to be correct. The complainant was concerned that Council officers had failed to advise the Planning Committee about a number of issues relating to the new development but the Ombudsman was satisfied that the Committee was fully aware of all the relevant facts and that they were taken into account when deciding on the outcome of the application. **The Ombudsman's decision was recorded as: to discontinue investigation.**

- (v) Mr G complained that the Council failed to properly consider a planning application for a development near his home and failed to take appropriate enforcement actions in relation to breaches of planning conditions. The complaint was for the same development as the previous complaint by Mr C and the Ombudsman took the same view about the outcome of the planning application. With regard to the enforcement action; the Council accepted that the developer had breached the pre-commencement conditions but it had considered that the matter could be resolved without the need for formal enforcement action. The Ombudsman will not question an officer's professional judgement as long as the process to arrive at that judgement is correct and decided not to investigate this complaint further. **The Ombudsman's decision was recorded as: not to initiate an investigation.**

## 2. Corporate Management

- (i) Mr D complaint says that the Council is wrong to say that he was rude to two members of Council staff. He complained that the Council unreasonably refused to accept his telephone calls and had failed to properly deal with his complaint. In 2011 the complainant received a letter in response to some queries he had raised. In that letter it said that he had been rude in his dealings with two members of staff over the telephone. It asked him to raise any future matters in writing and stated that 'unless he could reassure the Council that he would act in a more appropriate manner in future we are not prepared to accept further contact by telephone'. Mr D complained to the Council and requested an apology. His complaint was investigated but the Council remained of the view that the correct action had been taken. The Ombudsman found that although the Council had an Unreasonable Complainant Behaviour Policy, it did not cover all types of behaviour and it was not appropriate for this case. The LGO had published a guidance note and as a result of this referral, the Council did advise the LGO that it would review its complaint process to include that guidance. Part of that guidance contained a requirement to advise the complainant how long the restriction would apply and therefore the Council wrote to Mr D to advise that it had reviewed its decision in the light of the LGO guidance and that the restriction would be lifted in May 2013. The Ombudsman decided that there was not sufficient un-remedied injustice to warrant further investigation. **The Ombudsman's decision was recorded as: to discontinue investigation – injustice remedied.**

## 3. Benefits

- (i) Mrs I complained that the Council's decision to stop paying benefit payments was incorrect. The Ombudsman normally expects someone to appeal to a court or tribunal if they have a right to do so and then cannot investigate a complaint if someone has used their right of appeal. Mrs I had provided a copy of a letter to the Appeals Service and therefore the Ombudsman's discretion to investigate was removed. The complaint was outside of the Ombudsman's jurisdiction and she could not investigate. **The Ombudsman's decision was recorded as: Outside jurisdiction.**



Mrs H complained that the Council should make a payment in recognition of the distress and frustration caused her by its attempts to recover and overpayment of housing benefit. There had been fluctuation in entitlement to benefits because the complainant's work fluctuates and at times she earned too much to be entitled to benefit. The Council had decided that it should recover the overpayments. The Council did write off some of the overpayments as it had not taken account of a payslip the complainant had already submitted and had therefore made a mistake about entitlement. The Council did admit that it took too long to decide whether Mrs H was entitled to benefit over certain periods and that it did not take account of information sent in. The Ombudsman decided that the decision to write off the amounts due was a reasonable remedy of the complaint. **The Ombudsman's decision was recorded as: not to initiate an investigation.**

- (ii) Mr A complained that the Council did not advise him that it may be able to pay Housing Benefit direct to him instead of his tenants. He said that as a result the tenant left the property without paying the rent to him and he was seeking compensation. Mr A is a director of a company that rents properties. In 2008 he contacted the Council as his tenant was claiming Housing Benefit and was in rent arrears. He was not advised that it may be able to make Housing Benefit payments direct to him as the landlord. He later saw an article about another Ombudsman's decision where a Council was at fault in not advising a landlord that payments could be made to him direct. This Council's position was that it could not be held liable for his tenants rent arrears. The Ombudsman decided that as the complaint was four years old he did not consider that it would be reasonable for him to investigate it now as it was open for Mr A to have made the complaint in 2008 and as a landlord, it was reasonable to expect him to have sought independent advice on his options then. **The Ombudsman's decision was recorded as: not to initiate an investigation.**
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