

REPORT TO AUDIT & GOVERNANCE COMMITTEE

Date of Meeting: 10 March 2021

Report of: Corporate Manager (Executive Support)

Title: Local Government Ombudsman's Annual Review of Complaints 2019-2020

Is this a Key Decision?

No

Is this an Executive or Council Function?

No

1. What is the report about?

- 1.1. The report explains the role of the Local Government & Social Care Ombudsman (LGO) in investigating and remedying complaints about councils. It also presents the LGO's annual review of complaints about Exeter City Council for the year ending 31 March 2020.

2. Recommendations:

- 2.1. That members note the report and highlight any issues with the complaints referred to in the LGO's annual review.

3. Reasons for the recommendation:

- 3.1. There is a legal duty to communicate to elected members the council's performance in relation to LGO investigations.

4. What are the resource implications including non-financial resources.

- 4.1. There are no resource implications.

5. Section 151 Officer comments:

- 5.1. There are no financial implications arising out of the report.

6. What are the legal aspects?

- 6.1. There is a duty under section 5(2) of the Local Government and Housing Act 1989 for the council's Monitoring Officer to prepare a formal report to the council (Audit and Governance Committee) on all Ombudsman complaint decisions.
- 6.2. The LGO considers that this duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the council summarising the findings on all upheld complaints over a specific period. This may be adequately addressed through an annual report on complaints to members. Hence this report.

Formal Public Reports issued by the LGO

- 6.3. If a local authority, or any part of it

- has acted or is likely to act in such a manner as to constitute maladministration or service failure perhaps because of the scale of the fault or injustice, or the number of people affected
- and where the LGO has conducted an investigation in relation to the matter

the LGO would expect the Monitoring Officer to consider whether the implications of that investigation should be individually reported to members.

- 6.4. The duties set out above in relation to the Local Government and Housing Act 1989 are in addition to, not instead of, the pre-existing duties placed on all authorities in relation to Ombudsman reports under The Local Government Act 1974. Under those provisions, whenever the LGO issues a Formal Public Report the council is obliged to lay that report before the council for consideration and respond within three months setting out the action taken, or proposed to be taken, in response to the report.
- 6.5. In the unlikely event that an authority is minded not to comply with the LGO's recommendations following a finding of maladministration, she would always expect the Monitoring Officer to report this to members under section five of the Act. This is an exceptional and unusual course of action for any authority to take and should be considered at the highest tier of the authority.

7. Monitoring Officer's comments:

- 7.1. Please see the Monitoring Officers' duty set out in paragraph 6 above.

8. Report details:

- 8.1. The LGO is a service that investigates complaints from the public about councils and some other bodies providing public services in England. The LGO investigate alleged or apparent maladministration or service failure that have caused injustice to the complainant. Most council services can be investigated including planning, council tax and housing benefit and some areas of housing. Maladministration in broad terms might include:
- flaws in policies or decision making
 - poor administrative practice
 - failure to adhere to or consider properly statutory guidelines
 - failing to consider properly the exceptional circumstances of an individual or a situation
 - not properly considering statutory powers or duties
 - failing to give an adequate service
- 8.2. The LGO will usually only become involved after a council's complaints procedure has been exhausted. If the LGO finds the council acted with fault, which caused the person an injustice, it will recommend a remedy to put things right. The LGO's remedies are aimed at putting the person back in the position they would have been were it not for the fault. Where appropriate it also recommends action to avoid similar issues affecting other people - such as reviewing practice and procedure - and can recommend remedies for other persons affected by faults found in an individual complaint.
- 8.3. Details of the Exeter City Council complaints received and decisions made by the LGO for the year ending 31st March 2020 are set out below. This report was published on 22

July 2020, but due to the impact of Covid-19 the report was not submitted to the usual Audit and Governance Committee in the autumn.

8.4. The LGO has not issued any Formal Public Reports, as referred to in paragraphs 6.3 and 6.4 above.

Reference	Category	Decision Date	Decision	Decision Reason	LGO Remedy
18015151	Planning & Development	06/08/2019	Upheld	Maladministration no injustice	None
18017483	Environmental Services & Public Protection & Regulation	29/07/2019	Upheld	Maladministration and injustice	Apology (Issued 29 July 2019)
18018549	Corporate & Other Services	26/04/2019	Closed after initial enquiries	Other agency better placed to deal with	None
19010968	Highways & Transport	24/02/2020	Closed after initial enquiries	26(6)(c) court remedy	None
19000691	Environmental Services & Public Protection & Regulation	02/05/2019	Closed after initial enquiries	Sch 5.1 court proceedings	None
19002974	Environmental Services & Public Protection & Regulation	14/10/2019	Referred back for local resolution	Premature decision - advice given	None
19003965	Environmental Services & Public Protection & Regulation	21/08/2019	Closed after initial enquiries	Not warranted by alleged maladministration/ service failure	None
19006804	Planning & Development	04/10/2019	Closed after initial enquiries	Not warranted by alleged injustice	None
19013309	Benefits & Tax	07/11/2019	Referred back for local resolution	Premature decision - advice given	None
19019456	Housing	22/02/2020	Closed after initial enquiries	Sch 5.5A/5.5B Social housing landlord	None

8.5. Details of the LGO's findings on the two cases that were upheld are attached at Annex A.

Case 18015151 – In summary Mrs X complained about the Council's decision to approve a neighbour's application for development. The LGO found fault in the way the Council recorded its reasons for granting planning permission for the neighbour's development. But this fault did not cause Mrs X an injustice, so the LGO completed their investigation.

Case 18017483 - Ms X complained about the Council's investigation of her reports of noise and vibration. There was no fault in its investigation and how it made its decision to close the case. The LGO found that the Council should have summarised the outcome

of its investigation into her allegation about a member of staff. The council apologised to Ms X for this fault.

8.6. The LGO did not find fault in the substantive matters that were complained of in both cases.

9. How does the decision contribute to the Council's Corporate Plan?

9.1. Effective handling of complaints and following due process are facets of a well-run council.

10. What risks are there and how can they be reduced?

10.1. No risks identified.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs;
- and foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact has been identified on people with protected characteristics as determined by the Act because:

11.4.1 The report does not set policy.

12. Carbon Footprint (Environmental) Implications:

12.1 No direct carbon/environmental impacts arising for the recommendations

13. Are there any other options?

13.1 Not applicable.

Bruce Luxton

Corporate Manager (Executive Support)

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:- None