

REPORT TO AUDIT & GOVERNANCE COMMITTEE

Date of Meeting: 29th November 2023

Report of: Corporate Manager (Executive Support)

Title: Local Government Ombudsman's Annual Review of Complaints 2022-23

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 2023.
- 1.2. Complaints relating to Housing Services that escalate to the Ombudsman are investigated by the Housing Ombudsman Service (HOS). Whilst these complaints are not part of the LGO legal duty to communicate with elected members, they have been included in Annex A to inform members of all ombudsman cases.

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. The Monitoring Officer is under 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 was a small compensation payment arising out of the upheld complaint.

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 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.
- 6.3. On rare occasions, the LGO can also issue a '*Formal Public Report*' 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
- 6.4. Under the provisions of The Local Government Act 1974, 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. The LGO has not issued any Formal Public Reports in relation to Exeter City Council.
- 6.5. In the unlikely event that an authority is minded not to comply with the LGO's recommendations following a finding of maladministration, he 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 investigates complaints from the public about councils and some other bodies providing public services in England. The LGO investigates 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 complaints received by the LGO about Exeter City Council, and the decisions made by the LGO on those complaints, for the year ending 31st March 2023 are set out Annex A. Members will note that:

- The Ombudsman made decisions on 12 cases
- 5 of those cases were closed after initial enquiries
- 5 cases were referred back to the council for local resolution
- 1 case was not upheld
- 1 case was upheld. A copy of the Ombudsman's Final Decision Notice for this case is included at Annex B

8.4. To assess how the council's performance compares with other councils, the Ombudsman compares three key annual statistics with similar authorities to provide an average marker of performance. This is included at Annex C but is of limited value in view of the low numbers of cases. To provide members with additional comparisons, details of the complaints received by other Devon councils and councils in Exeter's "CIPFA Nearest Neighbours Model"¹ are also included.

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 and there is no negative impact.

12. Carbon Footprint (Environmental) Implications:

12.1 Not applicable

13. Are there any other options?

13.1 Not applicable.

¹ CIPFA's Nearest Neighbours Model tool uses statistical processes but the factors upon which the classifications are based need to provide a balanced representation of the authorities' traits.

The variables employed in making the assessment are all therefore descriptive of characteristics of the area each authority administers and not of the way in which resource of services are taken into account. The output returned by these calculations is a simplistic way of presenting a fairly complex underlying idea. Broadly speaking results and common sense go hand in hand reasonably well. Nevertheless, the outcome ultimately relies on the indicators and mathematical procedures used.

Bruce Luxton
Corporate Manager (Executive Support)

Local Government (Access to Information) Act 1972 (as amended)
Background papers used in compiling this report:-

None

ANNEX A

**Summary of complaint statistics from the Local Government and Social Care Ombudsman
and the Housing Ombudsman Service for the year ending 31 March 2023**

Reference	Category	Decided	Decision	Decision Reason	Remedy	Service improvement recommendations
20014237	Housing	29/04/2022	Upheld	Fault and injustice to the complainant	Apology, financial redress: Avoidable distress/time and trouble, Procedure or policy change/review	The Council has agreed to produce a policy setting out how it will deal with inaccurately advertised properties on the housing register. This might include: a. withdrawing and readvertising the property; or b. allowing an applicant to refuse an offer of an inaccurately advertised property without penalty.
21017954	Environmental Services & Public Protection & Regulation	13/04/2022	Closed after initial enquiries	Not warranted by alleged fault	N/A	N/A
22003394	Highways & Transport	24/06/2022	Closed after initial enquiries	Not warranted by alleged injustice	N/A	N/A
22003685	Planning & Development	23/06/2022	Closed after initial enquiries	Not warranted by alleged fault	N/A	N/A
22004134	Benefits & Tax	14/02/2023	Closed after initial enquiries	Not warranted by alleged fault		
22004645	Housing	27/07/2022	Referred back for local resolution	Premature decision - referred back to council	N/A	N/A
22004986	Environmental Services & Public Protection & Regulation	24/02/2023	Not Upheld	No fault by the council	N/A	N/A
22010095	Housing	26/10/2022	Referred back for local resolution	Premature decision - advice given to the complainant	N/A	N/A

Reference	Category	Decided	Decision	Decision Reason	Remedy	Service improvement recommendations
22010493	Planning & Development	11/11/2022	Referred back for local resolution	Premature decision - advice given to the complainant	N/A	N/A
22011722	Planning & Development	03/02/2023	Closed after initial enquiries	Not warranted by alleged injustice	N/A	N/A
22015434	Housing	23/03/2023	Referred back for local resolution	Premature decision - referred back to council	N/A	N/A
22017241	Housing	17/03/2023	Referred back for local resolution	Premature decision - advice given to the complainant	N/A	N/A