

Audit and Governance Committee Report



Report of: Chief Executive

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To: Audit and Governance Committee

Date: 23 September 2013

Review of complaints received during 2012/13

Purpose of report

1. The purpose of this report is to provide the committee with information and statistics about the complaints received during 2012/13.

Corporate objectives

2. By analysing complaints we can identify any trends and introduce service improvements, where necessary, thereby supporting the corporate objective to put residents at the heart of service delivery and seek to provide an excellent customer experience.

Background

THE COMPLAINTS PROCEDURE

3. The main benefits of having a council-wide procedure for dealing with complaints are that:
 - members of the public know what to do if they have a complaint and how we will deal with it
 - staff can be confident about what to do when they get a complaint
 - everyone is treated fairly and equally
 - by analysing complaints we can improve our services.
4. A good complaints procedure gives us the opportunity to show that we want to be open and honest; that we care about providing a good service and that we value feedback on problems that need attention. Our procedure has three stages:

Stage one

The head of service responds, or arranges for a member of their team to respond on their behalf, within 15 working days of receipt of the complaint. All complaints are logged on our complaints database, which generates daily automatic reminder emails from two working days prior to the target date and continues to do so until details of the response have been entered.

Stage two

The relevant strategic director responds within 15 working days of receipt of the request to escalate the complaint to stage two. Again, the complaints database generates daily automatic reminder emails from two working days prior to the target date.

Stage three

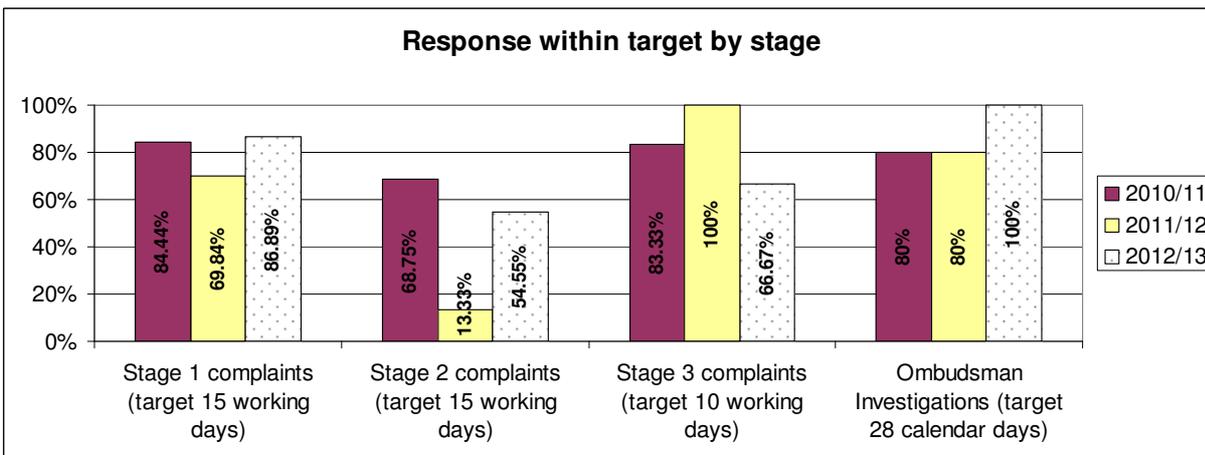
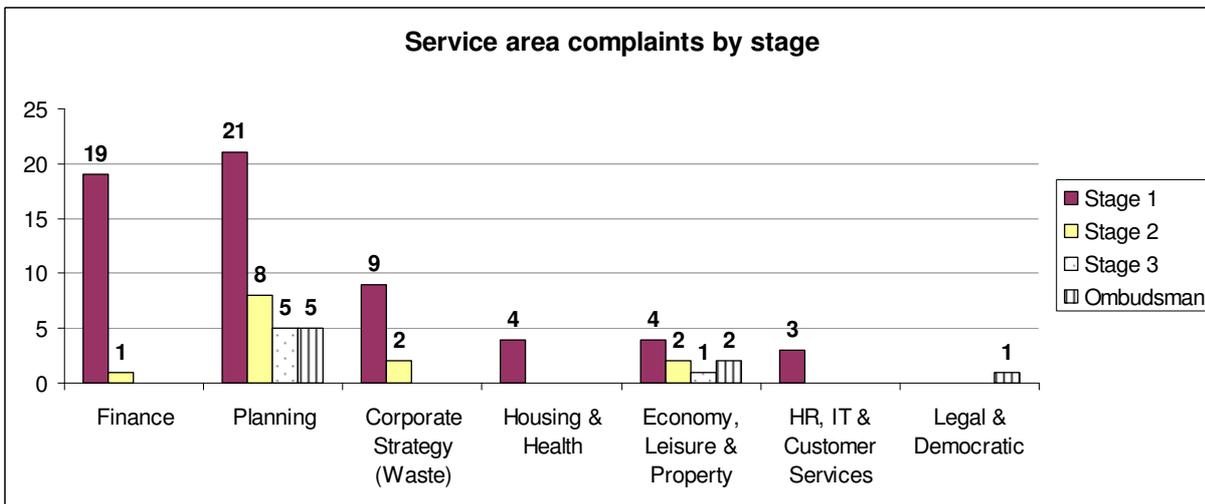
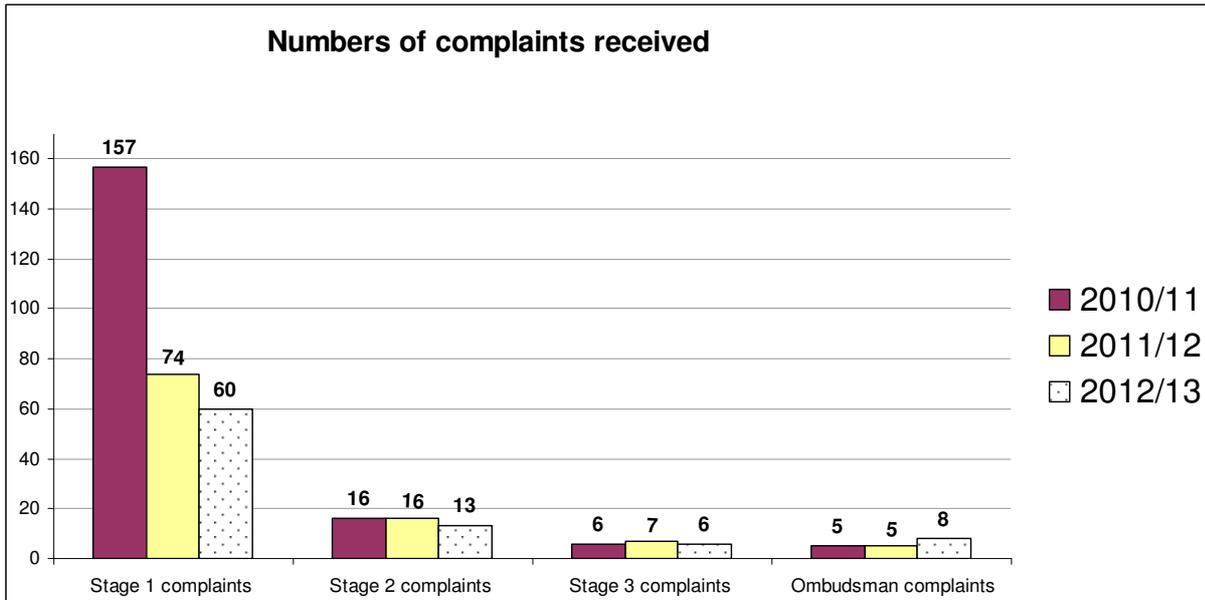
The complainant can either write to the chief executive, within six weeks of the strategic director's response, asking for district councillors to consider their complaint or, if they prefer, they can bypass this stage and take their complaint to the Local Government Ombudsman (LGO). If s/he writes to the chief executive, he will decide whether or not there is merit in referring the complaint to a panel of councillors. Our procedure does not specify a response time; however, the chief executive aims to advise the complainant of his decision in accordance with our published service standards, i.e. within ten working days of receipt of the request. The chief executive consults the leader of the council and the leader of the opposition and if, in their view, there is merit in referring the complaint to councillors, we will convene a special complaints panel.

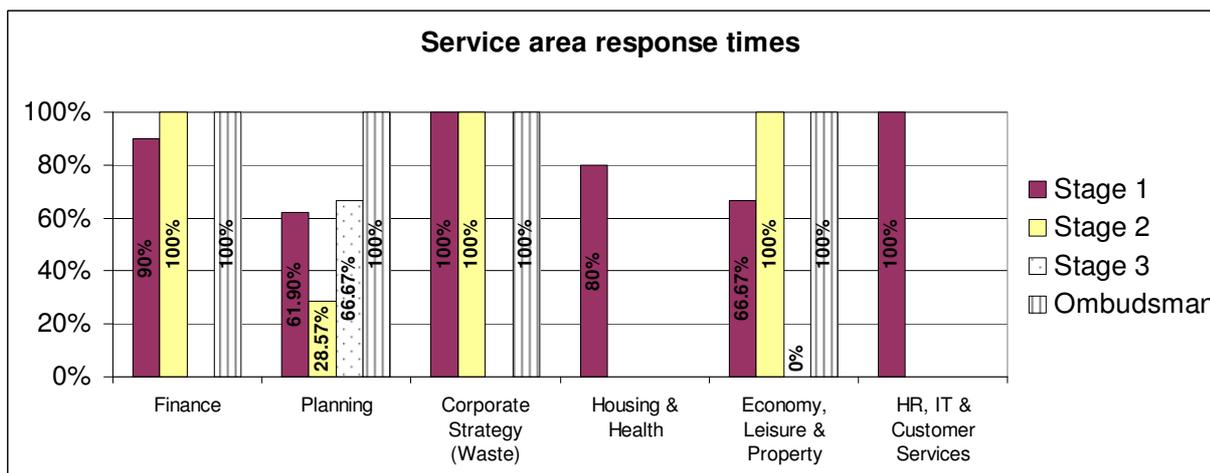
5. If, having followed these three stages, the complainant remains dissatisfied; s/he has the right to ask the LGO to investigate their complaint.

COMPLAINTS STATISTICS

6. Complaint statistics are reported monthly in the Board Report, which is available to councillors via a web link in the Councillors' Information Sheet. The Board Report is also available to the public on our website.

Statistics





Summary of complaint details

7. The numbers of stage one complaints received has reduced from 74 last year to 60 this year. Complaints about finance have reduced from 32 to 19 whilst complaints about planning have reduced from 27 to 21. Complaints about the waste service have increased from four to nine; still a very low number.
8. Planning and finance received the highest number of complaints:

Planning: 21 stage one complaints received compared to 27 last year; mainly about lack of enforcement action and neighbours concerned that their objections had not been taken into account.

As a result of two of these complaints, the head of service was able to identify the following areas for improvement:

- A parish council was not notified of the receipt of a planning application because not all the registration staff were aware that the relevant field on the new computer screen required manual input. The head of service arranged for the process to be automated to ensure this would not happen again.
- A resident carried out an on-line search of the planning history of a property and claimed that not all planning applications were revealed. The head of service established that, whilst all such information was provided, it was not easily identifiable. He therefore arranged for the IT team to add the application description to the search results table to make it easier for customers to identify relevant applications.

Finance: 19 stage one complaints received compared to 32 last year; mainly about the receipt of summonses and bailiff action. No changes in practice were required as a result of these complaints.

9. The percentage of stage one and stage two complaints dealt with within target has improved significantly compared to last year. However, the response time for stage two complaints about the planning service remains very low and the chief executive is addressing this.

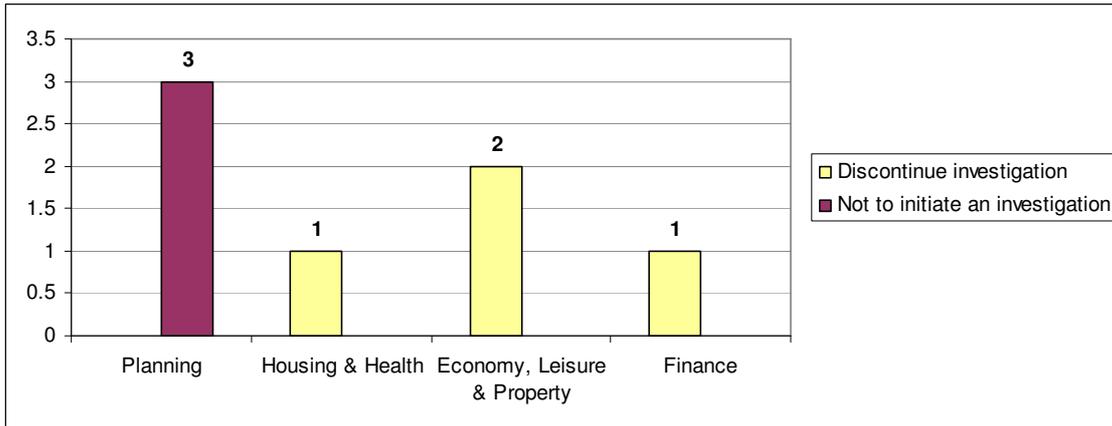
10. Six of the eight stage three complaints were dealt with well within target. The delays in dealing with the other two were because one was received during the period leading up to the PCC elections (the chief executive was heavily involved in this work) and one was sent to a strategic director the day before the Christmas break; as a consequence, the chief executive did not receive it until the second week of the New Year.

LGO investigations

11. The LGO changed its business processes during the course of 2012/13 and was therefore not able to provide a consistent set of data for the entire year. As it has been unable to provide the detailed information received in previous years, we have taken the data below from our own records.

12. We responded to investigations within an average of 21.4 days, which is higher than last year's average of 18.2, but still well below the target of 28 calendar days set by the LGO.

13. During 2012/13 the LGO determined seven complaints; the same as during the previous year. The following table provides details by service area of those complaints.



14. A summary of these complaints is attached at appendix one.

Categories of Ombudsman Complaints

15. The LGO categories are:

Not to initiate an investigation:

Where the LGO has decided not to investigate for one of the following reasons:

No power to investigate – complaints that the law does not allow the LGO to investigate

No reason to use exceptional power to investigate – complaints that the law says the LGOs should generally not investigate but gives an exceptional power to do so

Investigation not justified and other – complaints where the LGO has used her general power and not pursued the complaint. This can be for a variety of reasons, including that the injustice claimed does not warrant the public expense of the LGO's involvement or that another organisation could deal with the matter better.

Discontinue Investigation:

Where the LGO has discontinued an investigation for one of the following reasons:

Not enough evidence of fault – decisions where the LGO found insufficient evidence that the council was at fault.

Injustice remedied during enquiries – decisions where the council remedied or agreed to remedy any injustice to the LGO's satisfaction during the investigation.

No or minor injustice and other – decisions where we have used the LGO's general power to discontinue the investigation. This can be for a variety of reasons, but the most common is that any injustice caused does not justify the public expense of pursuing the matter further.

16. No maladministration has ever been found against this council.

Financial implications

17. There are no financial implications arising directly from this report.

Legal implications

18. There are no legal implications arising from this report.

Risks

19. Having a formal complaints procedure allows us to analyse complaints and improve services where necessary; it also gives members of the public clarity about what to do if they have a complaint, and how we will deal with it. If we did not have a formal procedure, we would be unable to carry out such analysis, with the risk that we would fail to make service improvements.

Other implications

20. There are no human resources, sustainability, equality or diversity implications arising directly from this report.

Conclusion

21. This report sets out the statistical data for complaints and received during 2012/13.

Background papers

22. None.

OMBUDSMAN DECISIONS – 1 APRIL 2012 TO 31 MARCH 2013**1. Ombudsman decision – discontinue investigation****Decision date – 28 June 2012****Ombudsman main subject area – highways and transport****Complaint**

That the council's publicity when introducing two hours free parking did not advise that car park users had to obtain and display a ticket. As a result Ms A incurred an excess charge notice (ECN) as she did not display a ticket.

Background

The complainant parked in a council owned car park. Although she was aware that we had recently introduced free parking for two hours as it had been widely publicised, she claimed that the publicity did not state that users had to obtain tickets for free parking. The complainant further stated that a council officer had advised her of the introduction of free parking but had not informed her of the need to obtain a ticket.

Ombudsman's conclusions

The ombudsman's investigator concluded that, although the publicity did not explain that users had to obtain a ticket, there were a number of signs located around the car park which notified users that they must display a ticket, including during the free two hours parking. The investigator considered that these were sufficient to notify the Ms A that she had to obtain a ticket and added that the onus was on the user to ensure they knew the terms of the parking scheme before leaving their car.

2. Ombudsman decision – discontinue investigation**Decision date – 29 January 2012****Ombudsman main subject area – highways and transport****Complaint**

That Ms B was not notified of recovery action and subsequent bailiff action to recover an unpaid ECN.

Background

Ms B received an ECN on 24 February 2012 for failing to display a valid car parking ticket. Her appeal against the ECN failed and the head of service advised that he would extend the period for paying the reduced fine for a further ten days but that, if she chose not to pay, he would refer the matter to our legal team. He added that, if a summons was issued, Ms B would have the chance to make her case in court.

An officer subsequently wrote to Ms B on 4 May to advise that the ECN was still outstanding and wrote again on 18 May; neither letter was returned by the post office. On 15 June officers sent a formal S112 notice, by recorded delivery, asking Ms B to

provide information about the driver of the vehicle and the ECN; she returned the completed form on 27 June.

Officers then applied to the court for a summons and sent this to Ms B on 7 September by first class post; it was not returned.

To summarise, officers sent all correspondence to Ms B to the same address and the formal S112 notice was received, completed and returned by her. The assumption is that she also received the summons, as it was sent to the same address and was not returned, and this assumption was accepted by the court.

There was a hearing on 19 October and Ms B was fined £100, with costs of £100 and victim surcharge of £15; the court notified her of the outcome.

Ms B claimed that, as she was unaware of the summons, it was possible for her to file a statutory declaration to that effect to the court. The court could then set aside the conviction and sentence, officers could reissue the papers and the matter could proceed in the normal way.

Ombudsman's conclusions

The ombudsman's investigator said that it was unfortunate Ms B did not receive the summons, but she could not say it was not sent. The investigator added that Ms B could file a statutory declaration with the court and the court could then consider whether the sentence could be set aside; she concluded that it was reasonable for Ms B to do this. The investigator added that, even if this were not the case, she could not say there had been administrative fault by the council.

3. Ombudsman decision – discontinue investigation

Decision date – 30 April 2012

Ombudsman main subject area – environmental services and public protection and regulation

Complaint

That the council failed to take adequate action in relation to noise nuisance caused by dogs barking and chickens.

Background

Ms C first wrote to us in October 2008 to complain about dogs barking at a neighbouring property. Officers wrote to the dog owner asking her to make every effort to reduce the barking to acceptable levels. They also wrote to Ms C asking her to complete a diary of the nuisance if the barking did not improve.

Ms C returned completed diary sheets in November 2008 and advised the situation had not improved. An officer spoke to her in December 2008 when she confirmed there were no longer any significant problems with the dogs and the case was therefore closed.

In December 2008 Ms C wrote to complain about the noise from chickens at another neighbouring property. Officers wrote to the owner of the chickens asking her to make

every effort to reduce the noise to acceptable levels. They also wrote to Ms C asking her to complete a diary of the nuisance if the noise from the chickens did not improve.

An officer visited the owner of the chickens in January 2009 to see the conditions in which the chickens were kept. The officer noted the chickens were quiet during that visit. As Ms C had not returned any diary sheets, or made any further complaints, the case was closed on 29 February 2009.

On 17 April 2009 Ms C made a further complaint about noise from the chickens and a cockerel; another neighbour made a similar complaint. Officers again wrote to the owner of the chickens asking her to take action to reduce any noise. In addition, officers installed noise recording equipment at Ms C's property for a week; there was no evidence of nuisance on the recordings.

In May 2009 the owner of the chickens advised officers that she no longer had the cockerel and the complaint was closed in June 2009.

Ms C contacted us again in July 2009. She completed diary sheets showing regular noise from the chickens lasting between five and 30 minutes at a time. Officers installed noise recording equipment in her home for a week, but no evidence of noise was recorded; they therefore closed the complaint.

Ms C wrote again in January 2010 to complain about dogs barking and the noise from chickens. Officers again installed noise recording equipment and chickens and some distant barking could be heard on the records. The recordings did not, however suggest the existence of a nuisance. Only limited distant barking was recorded and the chickens did not seem intrusive inside Ms C's property. Officers could also hear Ms C's window being opened and the microphone apparently being pushed through the open window. Officers advise all complainants not to move the recording equipment as they need to witness noise levels inside the property. Officers consider these actions invalidated the recordings and were unable to use them as evidence.

Ms C contacted officers again about dogs barking and noise from chickens in March and April 2010. She did not provide any diary sheets or make any further complaints and the complaints were therefore closed in June 2010. Later that month she complained again about dogs barking.

Officers did not contact the dog owner at this stage as she had advised officers she no longer had dogs at her property. Officers installed recording equipment again in September 2010 but the recordings did not suggest a nuisance as there was very little dog barking recorded and only one example of chickens, which did not seem intrusive. Officers suggest the recording equipment was moved again to record the noise from chickens through an open window. Officers wrote to Ms C on 30 September 2010 to advise there was no evidence of nuisance and there was no further action they could take.

Ms C contacted officers again in July 2011 to complain about dogs barking at her neighbour's property. She did not return any diary sheets detailing the nuisance but an officer visited the property in July 2011. His notes record that he heard nothing during his visit and officers again closed the complaint.

Ms C made a formal complaint in October 2011 and subsequently reported that the situation had deteriorated significantly. Rather than install recording equipment again, officers visited the site on five separate occasions to assess the noise. They made

observations from Ms C's rear garden and inside her property and from the street outside both her property and the dog owner's properties. No evidence of nuisance was discovered.

Officers concluded that the noise Ms C was experiencing did not meet the statutory nuisance criteria and were therefore unable to take any further action. They suggested Ms C consider a private action to the magistrates' court under the Environmental Protection Act 1990.

Ombudsman's conclusion

The ombudsman's investigator concluded that officers had investigated the complaints in accordance with council policy. They had installed noise monitoring equipment on four occasions and visited the property but had decided that neither the dogs barking, nor the noise from chickens, amounted to a statutory nuisance. The investigator said that this was a matter for the officers' professional judgement and the ombudsman does not question the professional judgement of council officers unless she believes it is utterly unreasonable, which was not the case here.

4. Ombudsman decision – discontinue investigation

Decision date – 20 April 2012

Ombudsman main subject area – benefits and tax

Complaint

That the council failed to process Ms D's council tax benefit and housing benefit claims properly during 2011.

Background

Ms D was in receipt of council tax and housing benefit. An officer visited her in May 2011 to obtain details of increases to her state pension in April 2011, her private pension in April and again in May 2012 and a change in the amount of rent she had to pay. In addition, Ms D turned 65 in May 2011, which had an impact on her benefit entitlements.

Officers re-assessed her claim and considered her entitlement had reduced, resulting in overpaid benefit of £107.20 between April and June 2011. However, in reaching that view officers had failed to take account of the increase in rent and the change to Ms D's entitlement when she was 65 years of age.

Ms D contacted officers to advise that the increase in rent had not been taken into account and the subsequent amendment in July 2011 was backdated to May 2010 rather than the correct date of May 2011. This led to officers believing they had underpaid benefit of £221.25 since May 2010. After taking account of the £107.20 overpayment, officers refunded £116.20 to Ms D.

Ms D contacted officers again on 20 July 2011 because she did not think they had taken account of the changes to her pension from the correct dates. She felt that the effect of the increased income should be applied from the date it was actually paid rather than the beginning of the month to which it applied. When officers reviewed the claims and properly took account of her rent they recognised they had overpaid benefit by £191.36. When they applied the change to her benefit entitlement caused by her birthday, it

created an underpayment of £106.80. The two together meant benefit had been overpaid by £84.57. Officers duly notified Ms D of the overpayment and she submitted an appeal.

Following discussions with Ms D officers agreed to take account of her revised private pension income from 18 April 2011 (April's payment) and 16 May 2011 (May's payment). This was a concession as officers believed they had interpreted the rules correctly and their original action complied with them. Officers recognised that her new state pension took account from 11 April 2011 but confirmed that the rules clearly stated that annual increases to state pensions should be taken into account from the first day of April. They were therefore correct to apply the changes to her state pension from 1 April 2011.

Officers looked again at the overpayment in November 2011, in response to Ms D's complaint and decided to waive it.

Officers confirmed that they assess the quality of the work carried out by our contractor and were satisfied with the overall quality. They also confirmed they had appropriate procedures in place for staff to follow when reaching decisions. They agreed that council officers did make errors in this case and had reiterated correct practice to staff to try and prevent errors happening again.

In this particular case, officers had waived the overpayment of £191.36, which had been caused by our error.

Ombudsman's conclusions

The ombudsman's investigator concluded officers had made some clear errors in Ms D's case but had acknowledged these and explained the actions they had taken to try to ensure errors like these were not repeated. She considered that the decision to waive the overpaid benefit of £191.36 was a reasonable way to acknowledge these errors.

On the basis that officers had taken steps to address the errors, and had provided a reasonable remedy to the complaint, the investigator discontinued her investigation.

5. Ombudsman decision – not to initiate an investigation

Decision date – 21 August 2012

Ombudsman main subject area – corporate and other services

Complaint

That the council failed to refer a complaint about a councillor to an assessment panel of the standards committee.

Background

Mr E submitted a planning application and a councillor asked for that application to go before the planning committee if it was approved. Mr E claimed that this showed bias and a lack of impartiality. The law and the council's constitution recognise that a ward councillor may hold opinions in respect of matters within their ward and that they may express these opinions. The constitution permits ward councillors to attend and address planning committee on applications within their ward.

A constitutional change came into force on 1 January 2012 that allowed councillors only 28 days to call applications to committee; prior to that councillors could call applications to committee right up to the day before an officer determined an application. In this case, the councillor made her request two weeks after the deadline and officers accept that they should have advised the councillor that her request had been received too late. However, by the time the request was received, the case officer had already carried out a preliminary assessment against our policies and concluded that refusal was the correct course of action.

The application was subsequently refused under officer delegated powers.

Mr E requested that his complaint about the councillor be referred to an assessment panel of our Standards Committee. The panel met on 28 June 2012 and decided that no action should be taken on the complaint.

Ombudsman's conclusions

The ombudsman's investigator said that the crux of this matter was that Mr E considered the councillor acted improperly. She added that this fell to be considered by the assessment panel, that this had happened and a decision had been made. The investigator did not consider there was any administrative fault in how the assessment panel reached that decision.

Mr E considered that officers were obstructive or that there was unreasonable delay in referring the matter to the assessment panel. The investigator responded that officers had provided reasonable explanations for the approach they had taken.

The investigator concluded that she did not consider she could not achieve any meaningful outcome for Mr E and could not therefore justify investigating the complaint.

6. Ombudsman decision – not to initiate an investigation

Decision date – 14 December 2012

Ombudsman main subject area – planning and development

Complaint

That the council failed to properly deal with a planning application. In particular it delayed determining the application, unreasonably accepted further evidence from the applicant which changed the application; misled Mr and Mrs F about when the application would be returned to committee and based its 2010 decision on a flawed understanding of planning policy. The council also failed to properly deal with Mr and Mrs F's complaints.

Background

Mr and Mrs F share an access with another site for which a planning application was submitted in July 2007. Committee considered that application in August 2010 and delegated power to the head of planning subject to the completion of a Section 106 agreement. Lengthy discussions with the applicant then followed, including the submission of revised details. Mr and Mrs F submitted a formal complaint on 11 November 2010 about those delays and their concerns about the information on which the decision was based. In his response of 11 April 2011, the head of planning responded apologised for the delay in responding and said that officers would consider

the points Mr and Mrs F had raised before permission was granted. Mr and Mrs F were dissatisfied with that response and submitted a state two compliant on 6 May 2011. The strategic director responded on 6 September 2011 apologising for the delay and advising that the applicant had submitted further information to address Mr and Mrs F's concerns and that the planning committee would consider the application again in November 2011.

Mr and Mrs F wrote again on 21 September 2011 to express dissatisfaction with the strategic director's response. She responded on 8 November saying that it was clear that Mr and Mrs F and the development management manager in planning were interpreting the same policy guidance very differently. She further advised that the planning committee was the final arbiter on such cases and were likely to consider the planning application at its December meeting.

Ombudsman's conclusions

The ombudsman's investigator said that she understood Mr and Mrs F's concerns that the application had not been formally determined more than five years after it was submitted. However, whilst she understood that Mr and Mrs F believed that officers should have acted at an earlier stage to have the application withdrawn, rather than keep consulting on it, she could not see that Mr and Mrs F would have been in a different position had officers done so.

The investigator added that there did appear to be an element of fault in how officers had handled the application. In particular, it seemed to her that officers had agreed for the application to be returned to committee on the basis of the arguments Mr and Mrs F had put forward. It therefore appeared to the investigator that there may have been some merit in Mr and Mrs F's allegation that the report to planning committee in August 2010 was inaccurate. However, the investigator could only say this resulted in significant injustice if planning permission had been granted based on improper consideration; as it was clear this had not happened she saw no reason to pursue that point further.

The investigator said that it was clear there had been significant delays in dealing with Mr and Mrs F's complaints. She added that officers did not appear to have acted in accordance with the council's complaints procedure in that Mr and Mrs F's letter of 21 September had been treated as follow-up to the stage two complaint, rather than a request for consideration at stage three. The investigator considered the strategic director should have advised Mr and Mrs F of their right to request their complaint to be escalated to stage three. She did not, however, consider that this point warranted an ombudsman's investigation, particularly given that officers had already apologised for the delay in dealing with the complaint.

In light of the above, the investigator closed the complaint.

7. Ombudsman decision – not to initiate an investigation

Decision date – 21 June 2012

Ombudsman main subject area – planning and development

Complaint

That the council failed to:

- adequately assess the impact of an extension on the neighbouring property, in particular the loss of sunlight and daylight
- handle a complaint properly.

Background

An application was submitted for an extension and pitched roof to a garage for the property next to Ms G's home, a bungalow. The plans showed the height of the garage would increase in height by approximately one metre to the ridge. The garage was on the boundary and Ms G's flank wall is 1.5 metres from her boundary.

The case officer visited the site and prepared a report. The officer considered that, as the extended garage was located to the north west of Ms G's window and was modest in height the additional impact was not so harmful as to justify refusal of the application.

Mr H objected on Ms G's behalf and said that officers had failed to adequately assess daylight and sunlight loss to the side facing window of a habitable room in Ms G's property. Ms G employed a sunlight and daylight expert who wrote to the council to explain that the development would fall below the acceptable standards for daylight described in available guidance.

Planning committee determined the application on 9 November 2011. Mr H spoke at that meeting and the minutes show that the issues of daylight and sunlight were specifically discussed and that councillors saw photographs taken by officers showing the relationship between the site and Ms G's property, together with her expert's letter. On balance, councillors did not consider the proposal would cause such loss of light to Ms G's window to justify refusing permission; they approved the application voting 11 to two in favour with one abstention.

Mr H complained that the case officer had not assessed the daylight issue and had no training to do so and said the officer's report confused sunlight and daylight. He added that councillors had been advised at the meeting that the design submitted was the only one that could be considered, which was wrong as he had suggested an alternative. He asked for the decision to be revoked, Ms G to be paid compensation, officers to receive appropriate training and various senior officers to be dismissed.

Officers advised that councillors had to consider the application as made and not express a preference for alternatives. Councillors had to judge whether the impact of the proposal on the neighbouring property was acceptable or not. Officers had no reason in this case to require sunlight or daylight assessments as the council's policies do not require this.

Ombudsman's conclusions

The investigator closed the complaint because:

- there was no evidence of administrative fault in the decision making process
- the ombudsman could not achieve a meaningful remedy for Ms G in view of the remedy he had sought.