

**Report of: Monitoring Officer, Director of Law and Governance**

<b>Meeting of:</b>	<b>Date</b>	<b>Agenda item</b>	<b>Ward(s)</b>
<b>Audit Committee</b>	<b>24 July 2018</b>		All

<b>Delete as appropriate</b>		Non-exempt
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**SUBJECT: Update on Ombudsman's decisions July 2017/June 2018****1. Synopsis**

- 1.1 This report updates the Committee on the number, nature and findings of complaints made to the Local Government and Social Care Ombudsman (LGSCO) during the period from 17<sup>th</sup> July 2017 – 30<sup>th</sup> June 2018.

**2. Recommendations**

- 2.1 To note the contents of the report.

**3. Background**

- 3.1 The Commission for Local Administration in England, commonly known as the Local Government Ombudsman, was set up following the Local Government Act 1974. In June 2017 the Local Government Ombudsman's title was changed to the Local Government and Social Care Ombudsman (LGSCO) to reflect its wider remit.

- 3.2 The main statutory functions for the LGSCO are found in the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007. Their powers include:
- a) investigating complaints against councils and some other authorities;
  - b) investigating complaints about adult social care providers from people who arrange or fund their adult social care (Health Act 2009);
  - c) providing advice and guidance on good administrative practice; and
  - d) looking at service failure in addition to maladministration (LGPIHA 2007).
- 3.3 All investigated complaints result in a decision. The LGSCO issues these decisions, either by way of a statement of reasons for the decision or a report. If the LGSCO decides that the council has done something wrong and that this fault (be that maladministration, service failure, or failure to provide a service) has caused an injustice to the complainant, the LGSCO will recommend what the council should do to put this right.
- 3.4 Additionally, where a complaint of fault is upheld and a formal report (or public interest report) is to be issued; this must be considered by the Executive (for executive functions) or Full Council or its appropriate committee (for non-executive functions).
- 3.5 In the case of complaints about the council, the outcomes of these complaints are reported to Members by way of this committee. The most recent report come before this committee on the 223rd January 2018.

## 4 **Complaints against the council**

- 4.1 During the 17<sup>th</sup> July 2017- 30<sup>th</sup> June 2018 there were 33 complaints about the Council to the LGSCO:
- 10 were upheld;
  - 5 were not upheld, and
  - 18 were closed after initial enquiries and accordingly did not reach investigation stage.

Attached as Appendix one are two tables. The first, Table one, provides a brief summary of the upheld and not upheld complaints. The second, Table two, provides a summary of the 18 complaints closed after initial enquiries.

Further, full copies of the decisions in Table one and two can be found on the LGSCO's website: <https://www.lgo.org.uk/Decisions>.

- 4.2 Since 17<sup>th</sup> July 2017, the council has only received one decision which has resulted in a formal (Public Interest) report of maladministration.

A copy of the report setting out the nature, findings and recommendations of the LGSCO and consequential action taken by the council is attached as Appendix two.

- 4.3 In April 2013, the Housing Ombudsman took over responsibility for all new complaints about social housing. This includes complaints about a local authority's (or arms-length management organisation's) relationship as landlord to its tenants or leaseholders.

The Housing Ombudsman's jurisdiction occasionally overlaps with that of the LGSCO Ombudsman. They are both able to conduct joint investigations and work under a Memorandum of Understanding. For the relevant period, four complaints have resulted in the Housing Ombudsman making a decision of maladministration. Table three provides a brief summary of these complaints and can be found at Appendix One.

- 4.4 In order to ensure that the council continually improves its performance and that lessons are learned from the Ombudsman's decisions, all reports are shared with the service area and relevant officers.

## **5 Implications**

### **5.1 Financial implications**

There are no financial implications arising directly from this report.

However, s 92 of the Local Government Act 2000 provides that the authority may, if they think appropriate, make a payment to, or provide some other benefit for, a person where:

(a) that action taken by or on behalf of the authority in the exercise of their functions amounts to, or may amount to, maladministration, and

(b) that a person has been, or may have been, adversely affected by that action,

During the period from 17<sup>th</sup> July 2017 – 30<sup>th</sup> June 2018, £9,418.33 was payable for maladministration arising out of Ombudsman decisions. Payments are met from within existing budgets.

### **5.2 Legal Implications**

In accordance with s 5A(2) of the Local Government and Housing Act 1989 the Monitoring Officer is under an obligation to prepare a report to the Executive where it appears that the authority, or any part of it, has acted or is likely to act in such a manner as to constitute maladministration, or service failure, and where the LGSCO has conducted an investigation into the matter. This obligation applies to all LGSCO decisions.

In preparing that report, the Monitoring Officer is under a duty to consult as far as practicable with the Head of Paid Service and the Chief Finance Officer (s 5A(5)(a)). As soon as practicable after the report has been prepared, the Monitoring Officer's report must be sent to each member of the authority (s 5(A)(5)(b)).

Under s 5A(6) it is the duty of the authority's Executive to consider the Monitoring Officer's report within 21 days. Under s 5A(8), as soon as practicable after the Executive has concluded its consideration of the report, the Executive must prepare a report which specifies: (a) what action (if any) the Executive has taken in response to the report of the Monitoring Officer; (b) what action (if any) the executive proposes to take in response to that report and when it proposes to take that action; and (c) the reasons for taking the action specified in the

Executive's report or, as the case may be, for taking no action. The Executive must also arrange for a copy of that report to be sent to each member of the authority and the authority's Monitoring Officer (s 5A(9)).

However, the LGSCO in their letter to this authority dated the 20<sup>th</sup> July 2017 stated:

*"..... I do not seek to impose a prescriptive approach, as long as the Parliamentary intent is fulfilled in some meaningful way and the authority's performance in relation to Ombudsman investigations is properly communicated to elected members.*

*As a general guide I would suggest:*

*Where my office has made findings of maladministration/fault in regard to routine mistakes and service failures, and the authority has agreed to remedy the complaint by implementing the recommendations made following my investigations, I feel that the 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....."*

### **5.3 Environmental Implications**

There are no environmental implications arising from this report.

### **5.4 Resident Impact Assessment**

A resident impact assessment has not been conducted, as this report provides monitoring information and a legal update for the Committee.

## **6. Conclusion and reasons for recommendations**

- 6.1 This report ensures that the statutory requirements of the Local Government Act 1974, and Local Government Housing Act 1989 are met.

### **Appendices:**

Appendix One: Table one and two of LGSCO complaints received during 17<sup>th</sup> July 2017 – 30<sup>th</sup> June 2018.

Table three of Housing Ombudsman complaints received during 17<sup>th</sup> July – 30<sup>th</sup> June 2018.

Appendix Two: Monitoring Officer report to the Executive (19.07.2018) regarding LGSCO finding of maladministration.

**Background papers:** None

Final report clearance:

**Signed by:**

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