

## London Borough of Enfield

### General Purposes Committee

14 October 2021

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**Subject:** Annual Report from Local Government Ombudsman

**Cabinet Member:** Cllr Nesil Caliskan

**Key Decision:** N/A

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#### **Purpose of Report**

1. The purpose of report is to identify key performance messages from the 2020-21 Annual Report received from the Local Government and Social Care Ombudsman (LGSCO).

#### **Proposal(s)**

2. Proposed that Committee note the report, the previous year's performance, and the implemented lessons learned improvements.

#### **Relevance to the Council's Corporate Plan**

3. The LGSCO processes complaints in relation to the Council's services and can therefore act as an indication of success in achieving the aims of the Corporate Plan; as regards the Council's duties, the LGSCO can issue penalties in regard to failure to deliver those duties.

#### **Background**

4. The LGSCO supplies an annual report to local authorities detailing the complaints raised with them, investigated, and the associated outcomes. The Council has a statutory duty to comply with LGSCO investigations and enquiries and must abide by the determinations and recommended actions of the Ombudsman's final decision on any complaint.
5. This report does not consider complaints raised to the Housing Ombudsman within 2020-21. The Housing Ombudsman does not provide such a report, meaning that comparison of performance with other authorities for learning is not possible.
6. Directors and Heads of Service review complaints and the ombudsman's findings and take action to improve services.

#### Overview of LGSCO process

7. There are three broad stages to LGSCO enquiries; preliminary, investigation, and decision.

8. At the preliminary stage, the LGSCO will generally enquire as to the status of the Council's internal complaint on the matter at hand, and request copies of complaint documentation. Occasionally, other evidence may also be requested to assist their assessment, or the stage may be bypassed altogether if the complainant has already provided the required complaints documents, or due to urgency. At the end of preliminary stage, the complaint may be dismissed, or it may proceed to investigation.
9. At the investigation stage, an allocated investigator will consider the case, and will request required information to do so from the Council. The Council must comply with these requests and associated deadlines, and the LGSCO may issue a witness summons if the Council fails to do so.
10. The investigation will then lead to a decision. The investigator will indicate whether they find the Council at fault, and in the event that fault is identified, what if any remedy is required. The Council has opportunity to comment on a draft decision prior to the final decision.

## Main Considerations for the Council

### Summary

11. The following table summarises the data available on Enfield's LGSCO complaints received and decided in 2020-21.

	Received	Decided	Upheld	Compliance
Enfield	106	102	17	100%
London average	87	88	16	99%
National average	33	33	6	99.5%

12. Enfield receives a high rate of LGSCO enquiries compared to both national and London averages. However, its upheld complaints are close to average for a London borough. While it is desirable to work to reduce upheld complaints, the most immediate benefit for Enfield would be in attempting to reduce complaints prematurely referred to the Ombudsman.

13. The 17 upheld complaints cost Enfield a combined £10,150.00 in compensation and resulted in one public report published by the Ombudsman.

### Complaints received by LGSCO

14. The LGSCO reports 106 received complaints received on Enfield in 2020-21, as follows:

Directorate	Area	Complaints	Percentage
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CEX	Corporate Services	7	6.6%
People	Adult Care Services	11	18.9%
	Education & Children's Services	9	
Place	Highways & Transport	14	59.4%
	Environmental Services	13	
	Housing*	27	
	Planning & Development	9	
Resources	Benefits & Tax	10	9.4%
Unknown – listed null or other		6	5.6%
<b>TOTAL</b>		106	
*Relates to Temporary Accommodation, Housing Allocations and Private Sector Housing. Tenancy related complaints within remit of Housing Ombudsman.			

15. This mix by directorate has continued thus far in the current year, with the majority of cases falling within the Place directorate. However, the divide between areas has been less marked, with a more even distribution of complaints across departmental areas.
16. For context, the Council received 1777 complaints via its internal process in 2020-21. While the two figures (internal and LGSCO referrals) will not align exactly due to timing differences, a reasonable estimate could be inferred of around 6% of total complaints being referred to the LGSCO (this does not, however, take account of complaints referred to the Housing Ombudsman).
17. The LGSCO itself records 11,830 local government complaints received across 355 authorities. At an average of 33 complaints per authority, Enfield is therefore above average by some distance, and Enfield's total of 106 received complaints is the 17<sup>th</sup> highest total nationally.
18. As a unitary authority with a wider range of operations than many Councils, Enfield may be expected to be above average to at least a certain extent. This is borne out by the substantially higher average of 87 received complaints among unitary London boroughs.
19. In addition, among London boroughs, Enfield has the fifth highest population, which will also increase complaints received and referred to the Ombudsman. Enfield's total received complaints of 106 is the seventh highest among London boroughs, meaning that compared to similar Councils, Enfield is slightly below where it should be according to population. Nationally, Enfield's position of 17<sup>th</sup> is slightly above where it should be at 25<sup>th</sup>.

20. The final factor significantly influencing complaints received is local demand. This is more difficult to obtain reliable statistical information on, particularly in national comparisons, as nationally demand will be affected not merely by average income but also cost of living however a general trend can be observed among London boroughs, wherein wealthier areas do appear to experience less complaints than less wealthy areas. However, this is difficult to assess in a systematic way.

#### Complaints decided by LGSCO

21. The following complaints were decided by the LGSCO within 2020-21:

Decision	Number	Reason	Number
Advice Given	9	Signposted to complaints handling	9
Closed following preliminary enquiries	35	Other appeal body available/outside remit	11
		Court remedy	3
		Outside 12 months	3
		Complainant's request	2
		Not suitable person	2
		Not warranted, unlikely to find fault	14
Incomplete/Invalid	7	Insufficient information	7
Not Upheld	3	No maladministration	2
		Other agency matter	1
Referred back to LBE	31	Premature, not completed complaints process	31
Upheld	17	Maladministration & injustice	12
		Maladministration but no injustice	2
		Injustice remedied during LGSCO investigation	3
<b>TOTAL</b>			<b>102</b>

22. This means that of the 102 complaints decided, only 16.7% were upheld. However, this could be misleading in terms of implications for the Council. Based on the above figures, only 20 of the 102 cases were fully investigated by the LGSCO, the other 82 having been closed early for other reasons (such as the complainant not completing the Council's internal complaints process before appealing to the LGSCO for support).
23. Based on actual investigations, the vast majority of complaints were upheld; only 2 were rejected due to no fault by the Council, and 17, or 85%, were upheld, with the Council having been found at, or pre-emptively conceded, fault in some respect. Therefore, while a low percentage of overall complaints are upheld, a very high percentage of investigated complaints against the Council are upheld.
24. For context, the national upheld rate reported by the Ombudsman was 67%, with 6 average upheld complaints per borough. The average for London Boroughs was 74%, placing Enfield above average, and again the 7<sup>th</sup> highest London borough by upheld complaint percentage. However, taken by total number of upheld complaints, at 17, Enfield placed equal 15<sup>th</sup> among London boroughs; significantly lower than its population suggests it should be. The average actual number of upheld complaints among London boroughs was 16, placing Enfield only slightly above average, and again substantially lower than its population ranking.
25. This suggests that in part, Enfield's high upheld percentage is due to it having less overall investigated complaints per capita than other boroughs; an interpretation supported by Enfield having the 7<sup>th</sup> highest number of complaints closed before investigation among London boroughs.
26. It should be noted that 14 complaints dismissed at preliminary stage were due to the Ombudsman's determination that an investigation would be unlikely to find fault by the Council. The Ombudsman's assessment of upheld complaints does not take account of this. If these are included along with those cases actually investigated, the percentage of upheld complaints would be 50% (17 of 34).
27. This table further identifies that the largest single reason for refusal was complaints referred back to Enfield as premature, i.e. the LBE process had not been completed, representing almost a third of complaints decided. This has continued to be a feature of complaints from both LGSCO and the Housing Ombudsman in the current year. In particular, a number of complaints have been referred back due to the complainant approaching the Ombudsman after completing the First Stage of the Council's process. Therefore, it is possible that the volume of total LGSCO complaints (and thereby resources used to address them) may be reduced with better communication of the Council's process, especially the complainant's right to request Final Review. The Complaints team is working on processes to try and avoid this occurring in future.

#### Upheld complaints

28. Upheld complaints occurred in the following areas:

Directorate	Department	Upheld	Not upheld	Percentage	National percentage
CEX	Corporate Services*	1	0	100%	62%
People	Adult Care Services	5	1	83%	72%
Place	Highways & Transport	2	0	100%	58%
	Planning & Development	3	0	100%	45%
	Housing	6	2	75%	71%
*The upheld complaint related to online surveys					
Enfield had no upheld complaints relating to Benefits and Tax (National 70%), Education & Children's Services (77%) and Environmental Services (58%)					

29. Of the 17 upheld complaints, additional remedy beyond any already offered by the Council was recommended in 12 cases. The total cost of these decisions to the Council was £10,150.00 in compensation paid.

### Lessons Learned

30. Appendix B presents a summary of upheld complaints, including themes arising from LGSCO's decision reports. In response to this, officers have implemented a number of improvements as follows:

Dept	Issue	Actions
Complaints	Delays in responses to LGSCO	Dedicated resource allocated to manage inbox and monitor complaints.  Regular open case reports now circulated to Directors  Enhanced case tracking and monitoring
	Complaints handling	Extra resource to manage Place complaints
Place	Appropriate Records	Undertook audits of record keeping which identified actions for improvement, currently underway
	Delays	Regular case reports now circulated to directors for management

	Handling of Housing Complaints	Training and changes to housing complaint handling procedures including earlier escalation
Adult Social Care	Failure to conduct a carer's assessment	Enhanced staff training to improve identification of need for carer's assessment
	Failure to produce a care and support plan and keep it updated	Produce care and support plan for case concerned  Assessed outstanding reviews/outdated support plans across service
	Care assessment had probably contained inaccurate information	Assessed to be a one-off error – remedied for this case.

### Resolution Compliance and Performance

31. The LGSCO reports that satisfactory remedy has now been made in all 12 cases where actions were recommended.
32. In regard to performance in meeting LGSCO deadlines, the report received from LGSCO does not provide definitive figures, although the Ombudsman's letter indicates concerns with the Council's performance in providing information promptly, noting 13 cases where 'significant delay' was experienced in receiving the Council's information.
33. In particular, the Ombudsman comments that a witness summons was threatened on three occasions during the year, in relation to four specific cases, as follows:
- a. 20<sup>th</sup> October 2020 – in relation to cases 19004042 and 20003708
  - b. 3<sup>rd</sup> November 2020 in relation to case 18001106 – this was in fact an error by LGSCO, the information having been supplied by the Council on 26<sup>th</sup> October 2020.
  - c. 8<sup>th</sup> March 2021 – in relation to case 20002195.
34. In 2021-22, a further threat of witness summons was received on 29<sup>th</sup> April 2021, in relation to case 20001040. No further summons threats have been sent by the Ombudsman since this date.
35. Effective from 1<sup>st</sup> April 2021, a system is now in place to track all incoming LGSCO enquiries and monitor performance in response times and to ensure the LGSCO does not resort to witness summons to obtain information from the Council. This information will also be circulated on a fortnightly basis to all executive directors and directors from 2<sup>nd</sup> August 2021 onwards.

## 2021-22 deadline performance

36. In the absence of deadline performance for 2020-21, and to provide some level of assurance, this section provides the LGSCO deadline performance for deadlines due in 2021-22, as at the time of reporting.

At preliminary stage:

<b>By deadline</b>	<b>Within 3 working days</b>	<b>Over 3 working days</b>
22	8	4
65%	23%	12%

At investigation stage:

<b>By 1<sup>st</sup> deadline</b>	<b>By extension deadline*</b>	<b>Over extension deadline</b>
8	7	1
50%	44%	6%

\*Where the Council has requested an extension.

At decision stage:

<b>By 1<sup>st</sup> deadline</b>	<b>By extension deadline*</b>	<b>Over extension deadline</b>
9	4	1
64%	29%	7%

\*Where the Council has requested an extension.

## Notable cases

37. One Public Report was issued by the LGSCO during the year. Public Reports detail particular maladministration which the Ombudsman determines it is in the public interest for residents to know. The Council is required to publish these reports.

38. The case concerned was a Housing matter in which the Ombudsman found the Council at fault for inadequate assessment of a homelessness application, and for delays in its processes, and for subsequently failing to move the family from unsuitable accommodation.

39. In its letter to the Council, the Ombudsman identified that it was also aware of a complaint in which the Council allegedly offered a remedy to the complainant directly, on the condition they withdraw their Ombudsman complaint. The case in question was not identified, nor was it clear how the

Ombudsman had obtained this view. Officers requested clarification from the Council's contact at the LGSCO to facilitate any further investigation. Further information having been received, the matter has been referred to the Monitoring Officer for consideration.

### **Safeguarding Implications**

40. There are no safeguarding implications.

### **Public Health Implications**

41. There are no Public Health implications.

### **Equalities Impact of the Proposal**

42. Following the completion of the Corporate Equalities Impact Assessment initial screening, this report does not have an Equalities impact.

### **Environmental and Climate Change Considerations**

43. There are no implications to the proposal.

### **Risks that may arise if the proposed decision and related work is not taken**

44. While there are no risks to the specific proposal, failure to comply with LGSCO investigations carries the risk of fines, reputational damage, and legal risk of the Council being summonsed should it fail to provide information in a timely manner to the LGSCO.

45. LGSCO investigations themselves can also issue the Council with orders to pay compensation and make other service improvements, and reports may be published if the Ombudsman determines there is public interest in doing so.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

46. While the Council must and should comply with LGSCO requirements as part of effective governance, LGSCO investigations themselves carry risk in terms of the Ombudsman's power to issue the Council with orders to pay compensation and make other service improvements, and reputational risk should reports be published, which they may be if the Ombudsman determines there is public interest in doing so.

### **Financial Implications**

47. There are no direct implications from the decision. In general, the LGSCO retains the power to recommend compensation in its action. In 2020-21, the Council accepted recommendations from the LGSCO totalling £10,150.00.

### **Legal Implications**

48. The LGSCO has the power to investigate the matters set out in Section 26(1) of the Local Government Act 1974 ("the Act"). If a matter is investigated, a report must be prepared unless the LGSCO is satisfied with any action an authority has taken or proposes to take.
49. A report may make recommendations with respect to action(s) which, in the opinion of the LGSCO, an authority should take to remedy any injustice suffered and to prevent injustice being caused in the future.
50. Although the Act refers to "recommendations", if an authority does not accept or agree with any recommendations, its only recourse is to challenge a report by issuing judicial review proceedings. Further, if an authority does not comply with the recommendations, Section 31(2D) gives the LGSCO the power to require the authority to arrange for a statement consisting of the matters set out in subsection (2E) to be published in two editions of a newspapers circulating in the area of the authority.
51. Paragraph 45 above sets out the risks to the Council.
52. The proposals in this report will assist the Council to focus on specific service areas requiring improvement.
53. Regarding paragraph 38 above, Section 25A (6) and (7) grants the LGSCO the power to continue or discontinue an investigation in its own discretion if satisfied with action an authority has taken. The Act does not preclude an authority from remedying injustices even where a complaint has been made to the LGSCO already. The LGSCO annual review letter dated 21 July 2021 specifically states that it encourages the early resolution of complaints and credits authorities that accept fault and find appropriate ways to put things right.

### **Workforce Implications**

54. There are no workforce implications.

### **Property Implications**

55. There are no property implications.

### **Other Implications**

56. There are no other implications.

### **Options Considered**

57. There are no other options to consider. The Council is required by legislation to co-operate with and support investigations of the Ombudsman.

### **Conclusions**

58. Enfield does receive a relatively high volume of Ombudsman complaints, in line with its wide remit and large population, and its performance in responding to LGSCO enquiries can be improved; new processes will assist

in achieving this. Potential actions to limit the number of premature Ombudsman referrals should also be considered.

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**Appendices**

Appendix A – Ombudsman letter 2020-21

Appendix B – Summary of upheld complaints 2020-21

**Background Papers**

The following documents have been relied on in the preparation of this report: