

## Slough Borough Council

<b>Report To:</b>	Audit and Corporate Governance Committee
<b>Date:</b>	13 <sup>th</sup> September 2023
<b>Subject:</b>	Local Government & Social Care Ombudsman (LGSCO) upheld complaints. Statutory & corporate complaints summary of 2022-2023
<b>Chief Officer:</b>	Sarah Hayward, - ED Strategy & Improvement Stephen Taylor - Monitoring Officer
<b>Contact Officer:</b>	Finbar McSweeney - Complaints, Casework & FOI Lead
<b>Ward(s):</b>	All
<b>Exempt:</b>	NO
<b>Appendices:</b>	Appendix A- Summary of upheld LGSCO complaints received 1 April 2022- 31 March 2023 Appendix B – LGSCO Annual Review Letter July 2023 Appendix C- Statutory and Corporate Complaints report 2022-23

### 1. Summary and Recommendations

1.1 This report sets out a summary of the upheld complaints determined by the LGSCO in 2022-23 and a summary of statutory & corporate complaints during 2022-23.

#### Recommendations:

Committee is recommended to:

- (a) Note the summary of upheld decisions by the Local Government and Social Care Ombudsman during 1st April 2022 - 31 March 2023 (Appendix A).
- (b) Note the summary of statutory and corporate complaints during 1st April 2022 – 31 March 2023.
- (c) Note the themes identified and the actions being taken to respond to these themes.

#### Reason:

1.1 Where complaints are upheld by the LGSCO, they recommend ways for authorities to put things right when faults have caused injustice. Their recommendations try to put individuals back in the position they were in before the fault. The LGSCO also monitor authorities to ensure compliance with their recommendations. Appendix A includes LGSCO recommendations for each upheld complaint.

1.2 Based on a total of 4 compliance outcomes for the period between 1 April 2022 to 31 March 2023 the LGSCO was satisfied that the council had successfully implemented agreed recommendations.

1.3 During the reporting period 2022-23, the LGSCO issued its first public report against the Council about delays to its Disabled Facilities Grant (DFG) process. Their investigation found the Council was operating a waiting list to submit applications for DFGs, which was at odds with Government guidance and a form of gatekeeping. They asked the Council to apologise to the complainant and make payments for the distress and difficulties they had experienced and their avoidable time and trouble. They also asked the Council to immediately end the waiting list, process the applications received and review its DFG policy and arrangements with local housing associations. The Council reported this matter to Cabinet last year and action has been taken in response.

## **Commissioner Review**

The council is working to improve the way it responds to complaints. Members and officers are aware that many services are not meeting the standards that they would wish. In these circumstances complaints should be handled particularly well with a marked willingness to apologise. It should be rare that a valid complaint should make its way through to and be upheld by the LGO. The complaint should be acknowledged and remedied within the authorities own processes. It is very rare for a **public report** to be issued against an authority. That this happened in relation to Disabled Facilities Grants is a cause of significant concern. That the authority then tried to reduce the compensation that it was to pay in those cases is particularly worrying. Members will wish to keep a close eye on any continuing attempts to avoid legitimate blame or appropriate remedies.

## **2. Report**

2.1 Complaints are a free and valuable source of information and insight to enable the Council to focus on improvements to our processes and service delivery. This reports provides the Committee with information on complaints received in the past year

### **Options considered**

2.2 The council could report individual findings of maladministration on a case by case basis. This is not recommended as it does not provide an opportunity to identify themes and learn from complaints, even when they are not upheld by the LGSCO.

2.3 By publicly reporting on complaints data and learning, the Committee has an opportunity to scrutinise how this data is used to inform the Council's risk management procedures and to ensure continuous improvement. This option is recommended as it allows the council to learn from complaints to continuously improve its services and increase resident satisfaction.

## **Background**

### **LGSCO data**

3.1 From the 14<sup>th</sup> August 2023, the Council has implemented a new two stage corporate complaints process. Before that the Council operated a three-stage corporate complaints procedure which this report relates to;

- At Stage 1 the departmental manager deals with the complaint with the aim of resolving the complaint.
- At Stage 2 complaints which are not resolved at Stage 1 are reviewed by the relevant Head of Service or above.

- At Stage 3 complaints which are not resolved at Stage 2 are reviewed by the chief executive. This is the final stage of the corporate complaints process.

3.2 If the complainant remains dissatisfied after going through the Council's corporate complaints procedure, they may escalate the matter to the Local Government and Social Care Ombudsman (LGSCO). Where the matter relates to complaints about social housing then it falls under the jurisdiction of the Housing Ombudsman rather than LGSCO.

3.3 There are separate statutory processes in relation to social care complaints for Adult's and Children's services (termed 'statutory social care complaints'). Once the statutory procedure is exhausted the complainant has the right of recourse to the LGSCO.

3.4 The LGSCO reserves the right to accept and investigate a complaint even if it has not been through either our corporate or the statutory complaints procedures. This can occur when there are urgent issues (such as imminent homelessness), vulnerability, or if the complainant shows that they have complained to the council but have not received a response. However, in general the LGSCO expects complainants to utilise the internal complaints process first to give local authorities the opportunity to resolve the matter directly.

3.5 This report covers the reporting period:

- 1 April 2022 - 31 March 2023

3.6 Every July the LGSCO writes an annual review letter to every local authority which outlines the complaints and enquiries they have dealt with during the previous financial year. The annual letter received by Slough Borough Council for 2022-23 can be found in Appendix B.

3.7 Officers have reviewed the annual letters from the LGSCO and noted that;

- In 2022-23, 11 of 13 investigations conducted by the LGSCO were upheld. Their average uphold rate for all investigations has increased this year and the LGSCO explained that we may find that our organisation's uphold rate is higher than previous years. This means that comparing uphold rates with previous years carries a note of caution. Therefore, they recommend comparing this statistic with that of similar organisations, rather than previous years, to better understand our organisation's performance. The council's figure of 85% against the average figure of 72% (see appendix B) for similar authorities, highlights why learning has been essential.

- Based on a total of 4 compliance outcomes for the period between 1 April 2022 to 31 March 2023 the LGSCO was satisfied that the council had successfully implemented agreed recommendations. With the public report the LGSCO advised that the Council initially sought to reduce the payments they had recommended but were pleased to note it then accepted and implemented most of our recommendations. Unfortunately, there was a lengthy delay in the Council completing the review of its arrangements with housing associations. Consequently, they have not yet been able to confirm satisfaction with the Council's actions in response to the report. The Council are therefore in continued communication with the LGSCO to supply the required evidence of the outstanding actions without further delay.

- The Ombudsman have been working to develop a new programme of work that will utilise complaints to drive improvements in both local complaints systems and services. This is something Slough Borough Council has concentrated on starting with a review of the complaint process and changing to a 2 stage corporate complaint process as well as improving the internal reporting to CLT to ensure corporate leadership of complaints. This was informed by elected members in a Scrutiny task and finish group.

3.8 The table below shows the full breakdown of the outcomes of LGSCO complaints decided over the last 3 years and highlights a reduction in the total number of LGSCO complaints reports year on year of %. Note: this includes cases where the LGSCO determined there was no further action and they chose not to progress the complaint to an investigation as, for example, the complaint has not been through the corporate or statutory process, or the matter is outside the jurisdiction of the LGSCO.

LGSCO decision	Number of Complaints (% of total)							
	2020-21		2021-22		2022-23			
Investigated -Upheld	1	4%		4	8%		11	15%
Investigated –Not upheld	1	4%		1	2%		2	3%
No further action	25	92%		46	90%		59	82%
<b>Total number of LGSCO complaints decided</b>	<b>27</b>	<b>100%</b>		<b>51</b>	<b>100%</b>		<b>72</b>	<b>100%</b>

3.9 There was a significant increase in the number of Ombudsman cases decided in 2022-23 compared to 2021-22. Notably 36%/4 consisted of Adult Social Care complaints.

Of the remaining upheld complaints received by the LGSCO in 2022-23, two -Benefits, one - Council Tax, two – Environmental, one - Home to School transport, one SEND. Further detail is provided in Appendix A.

3.10 This trend appears in-line with the national picture; the LGSCO’s Review of Local Government Complaints 2022-23 [Annual review of Local Government Complaints - 2022-23](#) where their largest percentage of upheld complaints were for Education & Children services, Adult Social Care, Benefits & Tax and Environmental. They published 38 public interest reports, with Education and Children’s Services, Adult Care Services and Housing the subject matter in most cases.

### Internal complaints data

3.11 In the period 1st April 2022- 31st March 2023 the council received and investigated 839 complaints at stage 1, 77 at stage 2 and 5 at stage 3. Of the stage 1 complaints received 42 were investigated under the statutory adult social care complaints process. The table below shows a breakdown of the number of complaints received by stages over the last 3 financial years. (Please refer to Appendix C for a detailed analysis of the Council’s Statutory and Corporate Complaints 2022-23).

	2020/21	2021/22	2022/23
Stage 1	701	898	839
Stage 2	62	74	77
Stage 3	7	3	5
Total Complaints handled	770	975	921

3.12 41% or 345 of the complaints received in the period 1<sup>st</sup> April 2022- 31<sup>st</sup> March 2023 were relating to Housing Repairs and remains the highest complained about area. 11% were for Revenues and Benefits, 8% Environmental, 6% each for Housing Neighbourhood services and Housing services and 5%/ each for Adult Social Care and Customer services, the remaining were widely varied.

3.13 The main root causes for complaints were largely related to capacity and broadly centred on;

- Delays & Timeliness- Most complaints relating to timeliness have been Upheld. This category relates to the time taken to carry out a service. The Council always seeks to avoid delays in service delivery however as many of the services we undertake are demand led, this is not always possible. Although each service would seek to prioritise more urgent areas or ensure the most urgent cases and people with the highest levels of need are prioritised, this can understandably still be dissatisfying for members of the public whose concerns are not prioritised.
- Communication- A high number of complaints due to lack of communication have been Upheld or Partially Upheld. These are generally between officers, teams or departments within the Council. Where it is established, the council accepts fault and both acknowledge and apologise for any inconvenience caused.
- Quality- These complaints relate to services provided directly by Council staff or relate to the quality or conduct of staff employed by service partners. Quality issues within any area services are addressed through the relevant line managements. Quality issues with provider services are addressed through the Council's contract management procedures.

3.14 A total of 69% of the complaints received was partially/fully upheld and is below the uphold rate of 74% reported by the Local Government and Social Care Ombudsman for the same period. The Ombudsman's yearly report also confirms that this is an increase in their uphold rate for complaints investigated by them of 7 percentage points.

3.15 Some of the learnings we derived from complaints resulted in; changes to processes and procedures, additional training where a need was identified, feedback to staff individually and in team meetings, reminders to staff and partners (Enforcement agents, Osbornes, e.g.) of Standard Operation Procedures, adjustments to working practices, improvements to contract management, and more transparency and management of customer expectations around service delivery and capacity. The Implementation of transitional arrangements when changes were made as well as an implementation of systems for formal review.

## **Learning and improvements**

Complaints have used a 3 stage corporate complaint until 14<sup>th</sup> August 2023 when it was reduced to 2 stage.

LGSCO complaints highlighted the need for quality of complaints instead of time being spent on various stages. Officers therefore liaised with scrutiny members in October 2022 and set up a task & finish group to look at best practice guidance and the LGSCO's training

programme to enable recommendations to be made to cabinet on improving the complaints process.

A focus over the last year has been with embedding the concept of learning into the investigation and responses to complaints, with the implementation quarterly quality assurance checks to discuss with those who process complaints.

Whilst data has been reported previously, this has sometimes focused on the number of complaints and timeliness of responding as opposed to focusing on capturing learning and trends. The Monitoring Officer is responsible for reporting maladministration to members and the Head of Legal has taken a lead on reviewing all cases which have been referred to the LGSCO on behalf of the Monitoring Officer to ensure the Council responds in an open and transparent manner and that options for early resolution are explored.

#### 4.1 *Financial implications*

4.1.1 Payment of compensation is made on individual cases as directed by the LGSCO. Below shows the compensations awarded by the LGSCO. Total payments £6300.

- Adult Social Care **Public interest report** - £3550
- Adult Social Care £1350
- Adult Social Care - £450
- Council Tax - £250
- Environmental £150
- Home to School transport - £250
- SEND - £300

#### 4.2 *Legal implications*

4.2.1 The LGSCO is the independent body responsible for investigating complaints made against local authorities where it is alleged that there has been maladministration causing injustice. Under the Local Government Act 1974, the LGSCO is responsible for investigating complaints against council and some other authorities, investigating complaints about adult social care providers from people who arrange or fund their own adult social care and for providing advice and guidance on good administrative practice.

4.2.2 The expectation is that a complainant will utilise a local authority's complaints process prior to referring the matter to the LGSCO, although the LGSCO can dispense with this requirement in specific cases. Complaints can be made by a member of the public, their authorised representative, a personal representative of a deceased person or a person deemed suitable to act on behalf of a member of the public if that person is unable to authorise them.

4.2.3 The LGSCO has the power to make recommendations to a local authority following a complaint on how to improve its services and to put things right for the complainant. The recommendations are not mandatory and the local authority does not have to accept or follow them. Remedies recommended by the LGSCO can include an apology, financial compensation, a review of procedures, staff training, and reconsideration of a decision and payment of money where this should have been paid.

4.2.4 Maladministration is not defined in the legislation, however case law has held that it includes bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude

and arbitrariness. Examples of maladministration include excessive or unreasonable delay, making misleading or inaccurate statements, failing to follow a specified procedure, failing to consult or liaise, failing to provide information when requested to do so, not keeping adequate records and failing to investigate or reply to a query from a member of the public. The LGSCO is concerned with the manner in which the decision was reached, as opposed to the actual decision.

4.2.5 Personal injustice can include the time and trouble involving in pursuing a complaint against a public body, the loss of a right or service, costs associated with pursuing the complaint and inconvenience, worry, distress and hurt feelings.

4.2.6 Certain matters are outside the remit of the LGSCO. These include decisions where there is a statutory right of appeal, situations where the complainant has had a remedy by way of court proceedings and where the complainant has failed to make a complaint within 12 months of the matter complained of (although there is discretion to extend this time limit).

4.2.7 The LGSCO regularly publishes good practice guides both on complaints handling and on suggested remedies for specific complaints. These include guidance relating to council housing repairs, neighbour nuisance, council housing management, benefits, school admissions, special educational needs, environmental health, planning and social care.

4.2.8 The Department for Levelling Up, Housing and Communities have recently consulted on draft guidance on best value standards and intervention, which include seven best value themes. Under governance, this states that well-functioning authorities learn the lessons from complaints and under service delivery, that a well-function authority has an effective and accessible complaints process and provides appropriate redress. A sign of failure could be a high level of complaints made to the LGSCO and/or annual letter requesting action to improve with no associated action plan.

### 4.3 *Risk management implications*

4.3.1 Complaints can be an essential means by which the Council assures the quality of council service. By listening to complaints and looking at learning, taking improvement action where necessary, the Council minimises the risk of non-compliance with legal requirements as well as financial loss and ensures improved customer satisfaction.

### 4.4 *Equality implications*

4.4.1 Learning from complaints also assists the Council in fulfilling its statutory duty under s149 of the Equality Act.

4.4.2 Section 149 of the Equality Act 2010 sets out the Public-Sector Equality Duty which requires a public authority (or those exercising public functions) to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not
- foster good relations between persons who share a relevant protected characteristic and persons who do not.

### 3.6 *Procurement implications*

3.6.1 None

### 3.7 *Workforce implications*

3.7.1 None

### 3.8 *Property implications*

3.8.1 None

## **4. Background Papers**

None.