

SLOUGH BOROUGH COUNCIL

REPORT TO: Audit & Corporate Governance Committee **DATE:** 3 August 2020

CONTACT OFFICER: Sushil Thobhani, Service Lead Governance & Deputy Monitoring Officer

(For all enquiries) 07542 229125

WARD(S): All

PART I **FOR INFORMATION**

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN – COMPLAINTS, FINDINGS, OUTCOMES & LESSONS LEARNT

1 Purpose of Report

The purpose of this report is to update the Committee on complaints to the Local Authority and Social Care Ombudsman (“the Ombudsman”) published by the Ombudsman, since the last report to the Committee on this subject on 5 March 2020. This report also updates the Committee on the actions taken by the Ombudsman since the coming into force of the “lockdown” restrictions due to the pandemic caused by the spread of the coronavirus SARS-CoV-2

2 Recommendation(s)/Proposed Action

The Committee is requested to note the contents of this report.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

The delivery of all these strategic priorities is dependent on the highest possible standards of openness, honesty and accountability. The Council’s learning and actions in response to these findings and recommendations will serve to enhance the delivery of these priorities.

4 Other Implications

(a) Financial

There are no direct financial implications arising from this report.

(b) Risk Management

Recommendation from section 2 above	Risks/Threats / Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
Request to note the report	Reputational damage to the Council of findings of	Receipt of reports from the Ombudsman	Legal & Regulatory Risk.	No further controls

	maladministration by the Ombudsman and risk of payment of compensation pursuant to his recommendations.	by the Chief Executive, oversight by Audit & Corporate Governance Committee and Monitoring Officer consent to any payment of compensation pursuant to a recommendation of the Ombudsman.	Likelihood is and very low and the impact is negligible. The Risk Score is 2.	
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(c) Human Rights Act and Other Legal Implications

The law relating to the Local Government and Social Care Ombudsman is contained in the Local Government Act 1974, as amended.

Under the Local Government Act 1974, as amended, the Ombudsman can investigate any alleged or apparent:

- Maladministration in connection with the Council's administrative functions
- failure in a service which it was the Council's function to provide
- failure to provide a service which it was the Council's function to provide
- failure in a service provided by the Council under its public health functions; or
- failure to provide a service under the Council's public health functions.

The Ombudsman can prepare a report following his or her investigation which may include recommendations of actions for the Council to take to remedy the maladministration including a recommendation to pay monetary compensation to the complainant.

The Ombudsman does not have formal legal powers to enforce compliance by the Council with his recommendations. Failure by the Council to comply with the recommendations could, however, result in the issue by the Ombudsman of a formal public interest report about the complaint, naming the Council. This report must be made available to the public and advertised in the local press covering the Council's area. If the Council do not agree to carry out the recommendations in the report the Ombudsman will issue a further report. After this, if the Council still do not take satisfactory action they must publish a statement in a local newspaper explaining why they have refused to follow the Ombudsman's recommendations.

Under the Monitoring Officer Protocol in Part 5.6 of the Council's constitution Directors must consult the Monitoring Officer prior to making any compensation payments for alleged maladministration found against the

Council and Directors and Members must report any breach of statutory duty or material breach of Council policy/procedures and other vices or constitutional concerns to the Monitoring Officer as soon as reasonably practicable.

(d) Equalities Impact Assessment

No need to conduct an Equality Impact Assessment is identified from the matters contained in this Report.

(e) Workforce

There are no workforce implications arising from this Report.

5 Supporting Information

- 5.1 On 26 March 2020 the Ombudsman announced that he had suspended all casework activity that demanded information from, or action by, local authorities, in the light of the current coronavirus outbreak. The Ombudsman took this step in the wider public interest to protect the capacity of local authorities to deliver vital frontline services during the outbreak. He indicated he would not be asking councils to answer enquiries on new or existing cases for the time being and cases still in progress would be frozen until normal service resumed but he would take into account any delays when considering whether complaints had been brought within the normal 12 month time limit specified in the legislation.
- 5.2 On 3 July 2020 the Ombudsman announced that he had opened up to new complaints on 29 June 2020 and resumed existing casework with all councils. He recognised, however, that Covid-19 had had a major and long-lasting effect on a range of council services and normal services may have been significantly and unavoidably disrupted during the period of crisis and national emergency, and that he would take this into account in his investigations. He also recognised new legislation and government guidance was issued in response to the Covid-19 outbreak and that this guidance had been changed and updated and continues to be updated and he would formally consider whether this legislation and guidance was followed in particular circumstances.
- 5.3 The following table summarises the complaints, findings, outcomes and lesson learnt in relation to complaints made to the Local Government and Social Care Ombudsman, concerning the Council, since the last published findings reported to the Committee on 5 March 2020.

No.	Council Function Involved	Nature of complaint	Findings, recommendations, outcome and lessons learnt
1.	Housing - Allocations	The complainant complained about her housing transfer application being removed from the housing register and the refusal to accept a new application, and the failure of the Council to move her despite many years of complaints about anti-social behaviour.	<p>Findings:</p> <p>The complainant is a housing association tenant who had complained to her landlord about anti-social behaviour in her area since 1995. In 2019 she found out the Council had cancelled her application for housing in 2018 when she failed to complete a renewal form. The Council refused to accept a new application due to ineligibility as she was adequately housed and had not provided any medical or other information to evidence grounds for reasonable preference.</p> <p>Outcome:</p> <p>The ombudsman found that he could only investigate complaints about transfer applications where they have reasonable preference status under the Housing Act 1996. Councils can devise their own allocation schemes and the complainant did not qualify for any priority under it. He would review the case if new information came forward which altered the complainant's priority. The Ombudsman did not</p>

			<p>investigate the complaint because it was not a matter he could consider. There was no fault in the Council's decision to refuse her new application and the complainant could ask for a further review.</p> <p>Lessons Learnt:</p> <p>Possible need for Council to consider process for warning applicants on housing register of their pending removal from it.</p> <p>Possible signposting of non-council social housing tenants to information on Council website about anti-social behaviour and agencies able to help.</p>
2.	Housing – Housing Benefit	The complainant complained about the Council stopping his housing benefit.	<p>Findings:</p> <p>The complainant disagreed with the Council's decision to suspend his housing benefit and lodged an appeal with the Tribunal set up by Parliament to consider disputes about housing benefits. The Ombudsman has no power to investigate when an appeal is lodged with the Tribunal. The complainant is unhappy the Council will not consider his complaint under its complaint's process but because the complainant has appealed to the Tribunal the Ombudsman would not</p>

			<p>criticise the Council for not considering the complaint under a parallel process. The Tribunal can give the complainant the outcome he wants and the ombudsman will not consider a council's complaints handling if he is not going to consider the substantive issue complained about.</p> <p>Outcome:</p> <p>The Ombudsman cannot investigate the complaint because the complainant has appealed to the Tribunal and so the complaint is outside his jurisdiction.</p> <p>Lessons Learnt:</p> <p>Not Applicable.</p>
3.	Planning – Planning Applications	<p>The complainant complained that the Council did not properly consider the impact a development close to her home would have on her amenity when it approved a planning decision and did not take appropriate enforcement action when it became clear the development did not conform to approved plans.</p>	<p>Findings:</p> <p>The complainant lives in a single storey bungalow on a road with similar properties. A neighbour applied for planning permission to build a front extension and a single storey side extension with a loft extension. The Council consulted neighbours including the complainant and she lodged objections relating to loss of light from side extension, over shadowing of solar panels, difficulties of access and loss of privacy to her garden. The Report to planning committee stated the</p>

			<p>overshadowing of solar panels and difficulties of access were not material planning considerations. With regard to being overlooked the report noted that there were no flank wall windows facing the complainant's property. The report made no mention of loss of light. During construction the complainant noticed windows being installed which were not on the plans contrary to condition in the consent to build according to approved plans. The Council wrote to the neighbour to comply with conditions or make a retrospective planning application, which the neighbour did. The Council gave the complainant the number of the new application to enable her to raise objections. The Council considered the revised plans addressed the complainant's concerns and did not issue enforcement notice. The new application remained to be determined at the time of the complaint. The Council conceded the objections had not been fully considered and offered the complainant £150 compensation for time and trouble for the application to the Ombudsman. The Ombudsman considered the compensation offered for the time and trouble was suitable but that</p>
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			<p>council had not properly considered impact of its errors in considering the original application but that it was difficult to assess the exact level of injustice as revised application still under consideration. Council should assess this once application was decided and complainant could make new application to ombudsman if considered inadequate, following new decision. Ombudsman would not substitute his judgement for that of the Council upon the decision not to take enforcement action in the light of the new application. Council not at fault in this decision as they were entitled to consider revisions in new application addressed complainant's concerns.</p> <p>Outcome:</p> <p>Agreed action that Council would carry out assessment of the impact that its fault has had on the complainant's amenity within three months of the date of its decision on new application and offer a suitable remedy to the complainant based on the Ombudsman's guidance on compensation.</p> <p>Lessons Learnt:</p> <p>Every element of any objection to a planning application must be</p>
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			<p>addressed in Officers' reports to planning committee.</p> <p>Need for a policy on planning enforcement applied consistently. This has now been actioned and a policy has been approved by the Planning Committee.</p>
4.	Transport & Highways – abandoned vehicles	The Complainant complained that the Council had not properly explained its involvement in the removal of his vehicle from land near his property.	<p>Findings:</p> <p>The Council, on 24 September, placed a sticker on the complainant's vehicle following a report from a neighbour that the vehicle was abandoned. This was part of their informal process before invoking their formal process for dealing with abandoned vehicles. The sticker indicated that the Council believed the vehicle was abandoned and that the owner should contact the Council. The Council checked on 2 October and the vehicle was not there. The Council maintained at all times that it did not remove the vehicle. The assumption was that it had been stolen. The complainant stated he was on holiday at the relevant times and so could not have responded to the sticker. He was convinced that the Council were involved in the removal of the vehicle and so pursued the matter through the Council's corporate</p>

			<p>complaints procedure and by seeking information and documents from the Council under the Freedom of Information Act. The complainant was not satisfied with the outcome of the corporate complaint's process and complained to the Ombudsman. The ombudsman carried out an investigation and concluded that there was no evidence to show that the Council was involved in the removal of the vehicle and the police were better placed to make any further investigations.</p> <p>Outcome:</p> <p>Complainant not upheld.</p> <p>Lessons Learnt:</p> <p>Not applicable.</p>
5.	Planning – Planning Enforcement	The complainant complained about how the Council investigated a possible breach of planning control. He believed enforcement officers unnecessarily visited his home and discriminated against him.	<p>Findings:</p> <p>In November 2019 an enforcement officer visited the complainant's home after receiving complaints about a possible breach of planning control relating to the use of an outbuilding as a residence. The complainant said officers had been to his home on many occasions since 2015 in relation to planning applications and alleged breaches of planning</p>

			<p>control, that visits would not have been necessary if background checks had been conducted following receipt of reports, that enforcement officers entered his garden without permission. He also said he was being harassed by the Council and inspections were only carried out due to his ethnic background. He said further that officers did not write to him following the visit as they said they would. The Ombudsman concluded he would not investigate because it was unlikely he would find fault by the Council. The Council were obliged to carry out proportionate investigations following complaints about breach of planning control, previous visits related to unconnected matters, officers had power to enter land under their enforcement powers and there was no requirement to give advance notice unless entering a dwelling and officers did e-mail the complainant with the outcome of its investigation and decision not to take further action.</p> <p>Outcome:</p> <p>The Ombudsman will not investigate as unlikely he would find fault. Closed after initial enquiries.</p>
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			<p>Lessons Learnt:</p> <p>Not applicable. Adoption of formal enforcement policy will provide framework for enforcement actions.</p>
6.	Housing - Allocations	The complainant complained about the Council's refusal to allow him to join the Housing Register.	<p>Findings:</p> <p>The Complainant lives in a three bedroom house which she rents from a Housing Association. She lives with an adult daughter, a dependent son and a niece. The Complainant's partner is due to move in. The complainant also claims to suffer from depression. The Council decided the complainant cannot join the register as she is adequately housed because the adult daughter cannot be taken into account and each of the other three people have their own room and no suggestion that the property significantly affects the complainant's health. The Ombudsman found adult daughter cannot be taken into account and sufficient rooms for others as partner expected to share room when moves in. Will not investigate as unlikely to find fault by the Council.</p> <p>Outcome:</p> <p>The Ombudsman will not investigate the complaint due to insufficient evidence of fault by the Council.</p>

			<p>Lessons Learnt:</p> <p>Not applicable.</p>
7.	Children – Child Protection	The complainant complained about how the Council treated his friend during an assessment.	<p>Findings:</p> <p>The Complainant says a Social Worker carried out an assessment at his probation officer's request. He says the Social Worker treated his friend very badly. The complaint related not to the complainant but to a third party so alleged injustice not to complainant but to third party who has not provided consent to complainant to complain on his behalf. There is no significant injustice to complainant.</p> <p>Outcome:</p> <p>Ombudsman will not investigate as unlikely he will find complainant was caused significant personal injustice.</p> <p>Lessons Learnt:</p> <p>Not applicable.</p>
8.	Licensing – Dog Boarding Licence	The complainant complained about loss of earnings and damages due to council rejecting her application for a dog boarding licence.	<p>Findings:</p> <p>The Complainant complained that the Council caused her to cease trading in 2009 due to an administrative error and this caused her £80,000 loss of earnings between 2009 and 2017. The Complainant says the Council caused her to cease trading again from 31 December 2018 causing £8,000</p>

		<p>loss of earnings. She also complains she has been unfairly targeted and claims £5,000 damages for loss of confidence, stress and strain. She also claims £2,000 bank charges incurred due to loss of earnings. The Ombudsman cannot investigate complainants about events known to the complainant for more than 12 months. Complainant knew of events between 2009 and 2017 and could have brought complaint sooner and has provided no good reasons for failure. In November 2018 Council inspected Complainant's property and advised improvements necessary to renew licence in January 2019. Following compliance with improvements and clarification from planning department full home boarding licence granted on 11 January 2019. Complainant could have appealed to Tribunal against prior refusal and reasonable for her to have done so. Damages in 2018 a matter for the courts, not for the Ombudsman.</p> <p>Outcome:</p> <p>Ombudsman will not investigate. Part of Claim not brought within normal 12 months and no good reasons shown</p>
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			<p>for exercise of discretion to accept complaint now. Complainant also had an appeal right to a tribunal and also reasonable for her to seek compensation from the Courts.</p> <p>Lessons Learnt:</p> <p>Does not apply.</p>
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6 **Conclusion**

The Committee is requested to note the Contents of this Report.

7 **Background Papers**

The Local Government and Social Care Ombudsman's decision notices.