

Is the final decision on the recommendations in this report to be made at this meeting?

**Yes**

## Complaints Annual Report

<b>Final Decision-Maker</b>	Council
<b>Lead Head of Service</b>	Angela Woodhouse, Head of Policy, Communications and Governance and Patricia Narebor, Head of Legal Partnership
<b>Lead Officer and Report Author</b>	Angela Woodhouse and Anna Collier
<b>Classification</b>	Public
<b>Wards affected</b>	All

### This report makes the following recommendations to Council:

1. The Council's performance on complaint management in 2016/17 is noted.
2. The Local Government Ombudsman's Annual Review Letter 2016/17 is noted.
3. The Local Government Ombudsman's report on Complaint reference 16 004 603 is noted.
4. To make a decision on whether the Council should follow the recommendations made by the Local Government Ombudsman as follows:
  - a) Apologise to Mr and Mrs A for the fault identified
  - b) pay them £500 to reflect lost and broken belongings including a television
  - c) pay Mr and Mrs A £550 for the cost of Bed and Breakfast from 6 to 13 July 2015
  - d) pay Mr and Mrs A's removal and storage costs of £370.
  - e) pay Mr and Mrs A £750 which reflects some of the cost of takeaway food for the two months the family was in the Bed and Breakfast after the eviction.
  - f) pay them £2,000 to reflect the high distress.

**This report relates to the following corporate priorities:** Good complaints management ensures that the Council learns from customer experience and develops services to deliver both priorities

- Keeping Maidstone Borough an attractive place for all
- Securing a successful economy for Maidstone Borough

### Timetable

<b>Meeting</b>	<b>Date</b>
Council	6 December 2017

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 To provide Council with an overview of how the Council has performed in responding to complaints in 2016/17.
  - 1.2 The Council is required under section 5(2) of the Local Government and Housing Act 1989 to prepare a formal report to the council 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 LGO has conducted an investigation in relation to the matter. This requirement applies to all Ombudsman complaint decisions, not just those that result in a public report. Providing an annual report on complaints is sufficient to meet this requirement.
  - 1.3 Council is also required to make a decision on the findings and recommendation of a recent LGO decision against the Council.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 Complaints, including Local Government and Social Care Ombudsman (LGO) complaints are managed and monitored by the Policy and Information team.
- 2.2 The Council's formal complaints procedure, has two stages with the following response timescales:
  - Stage 1 within 10 working days; and
  - Stage 2 within 20 working days.
- 2.3 Stage one complaints are dealt with by the manager of the service or their line manager if the complaint is about them. Stage two complaints are investigated by the Head of Policy, Communications and Governance.
- 2.4 Following stage two, unsatisfied complainants then have the opportunity to refer their complaint to the LGO.
- 2.5 The LGO undertake an independent and impartial investigation of complaints within their jurisdiction and where they consider there has been fault recommend redress which is they consider to be proportionate, appropriate and reasonable based on all the facts of the complaint.
- 2.6 The LGO does not have any legal power to enforce the Council to follow their recommendations but can publish their findings.

## 3. Complaints Management 2016/17

- 3.1 The Council received 578 Stage One Complaints in 2016/17. Of these complaints the highest volumes relate to four services;
  - Council Tax

- Development Management
- Environmental Services  
and
- Parking

3.2 The Council received 71 Stage Two Complaints in 2016/17. This is an escalation rate of 12%. This low percentage indicates the quality of investigation, resolution and response at the first stage, ensuring that complainants do not need to seek further resolution.

3.3 Stage two complaints can vary across the authority but the highest numbers were from

- Council tax
- Development Management  
and
- Parking

4. Local Government and Social Care Ombudsman Annual Review Letter 2016/17

4.1 The LGOs Annual Review Letter can be seen at Appendix I.

4.2 The LGO reviewed 35 complaints in 2016/17. The table below shows the LGO decision on each of these:

<b>Decision Category</b>	<b>Number</b>	<b>Explanation</b>
Closed No further action required	13	On the basis of the complainants referral the LGO have decided not to investigate
Referred back to Council	10	The complaint hasn't gone through the Council's official complaint process and it is referred back to the Council
Not Upheld	6	Following explanation the LGO agrees with the Council's decision
Upheld	5	The LGO doesn't agree with the Council's decision and finds in favour or partial favour with the complainant
Invalid/not enough information	1	The LGO was unable to progress the complaint

4.3 Whilst the Council would strive to have no complaints upheld by the LGO, the performance overall has been good both in relation to the number of complaints escalated to the LGO, the number investigated and the number upheld. For the five complaints upheld, the table below shows the LGO recommendations. In each case the recommendation was implemented.

<b>Complaint</b>	<b>Service</b>	<b>Redress</b>
1	Planning & Development	Apology, Financial Redress

2	Benefits & Tax	Financial Redress, Procedure Change, Training
3	Planning & Development	Apology, Financial Redress
4	Highways & Transport	Null
5	Planning & Development	Null

5. Local Government and Social Care Ombudsman – Maladministration and injustice Report

- 5.1 On the 17<sup>th</sup> of October 2016 the Council were notified that the LGO would be investigating a complaint that had been escalated to them; regarding the Council's handing of homelessness application and the temporary accommodation arrangements.
- 5.2 As required by legislation the Council placed an advert in the Local press to inform the public of the issuing of the report and copies were made available for public inspection in the Link.
- 5.3 The Council is required by law to consider the LGO's report within three months of issue and inform the LGO of the action(s) it intends to take in relation the suggested remedy proposed by them.
- 5.4 The LGO's final report can be seen at Appendix II, they have found 'fault causing injustice and recommendations made'. It should be noted though that this is only partial fault as the LGO have not found against the Council on all points.
- 5.5 The LGO makes a number of recommendations that Council will have to consider. The Council must let the LGO know within 3 months of the report being issued what it intends to do. The recommendations are listed below.
- a. apologise to Mr and Mrs A for the fault identified;
  - b. pay them £500 to reflect lost and broken belongings including a television;
  - c. pay them £550 for the cost of Bed and Breakfast from 6 to 13 July 2015 (the Council has already agreed to do this);
  - d. pay their removal and storage costs of £370;
  - e. pay them £750 which reflects some of the cost of takeaway food for the two months the family was in the Bed and Breakfast after the eviction; and
  - f. pay them £2,000 to reflect their avoidable distress.
- 5.6 An apology was issued by the Council and an offer was made in response to the original complaint to pay the cost of the Bed and Breakfast accommodation and subsequently it has been acknowledged that the Council should refund the cost of removal and storage costs.
- 5.7 To date officers have not accepted the other recommendations and challenged the findings of the report; the Council's response to the draft letter can be seen at Appendix III.
- 5.8 There are three overarching reasons for the challenge as well as minor challenges on aspects of the complaint:

- i. That the LGO has stepped outside its jurisdiction. The LGO report outlines, it would not normally investigate a complaint that could have been dealt with through the courts as identified in the Local Government Act 1974, section 26, (6) "A Local Government Commissioner shall not conduct an investigation under this part of this Act in respect of any of the following matters – (c) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law". In this case it would have been reasonable to expect Mr and Mrs A to go to Court especially as they had a solicitor at the outset of the complaint and they could have requested damages via a County Court action in the small claims court and would not have needed legal representation.
- ii. The investigation, report and recommendations are formed on the basis that Mr and Mrs A did not breach the rules of the property which they occupied.
- iii. The Council has already admitted responsibility for the elements of fault that it considers it was responsible for. Additionally; as the LGO have been advised there have been a range of procedural changes to improve processes across the service.

5.9 The LGO do not agree with the Council's challenges but have acknowledged the points and these have been included in the letter.

5.10 The housing service has made numerous changes since this complaint; including updating policy, procedures and most significantly purchasing its own temporary accommodation; a full list can be seen at appendix IV.

5.11 Whilst these have been acknowledged by the LGO they also state that since this was not as a result of this complaint they do not satisfy their concerns; officers have argued, that the team learnt a lot from this complaint and this plus other factors led to the changes and the changes are wide ranging and significant.

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## **6. AVAILABLE OPTIONS**

6.1 Council could choose to accept all of the recommendations made by the LGO; and make full payment and issue an apology to the complainants. This option contains the least risk in terms of publicity but does potentially leave the Council open to future challenge, from others.

6.2 Council could choose to reject all recommendations made by the LGO. This would come with increased risk; as the complainants may choose to take the issue further, resulting in increased negative publicity and increased resource both financial and staffing.

6.3 Council could choose to agree to some of the recommendations made by the LGO, as officers consider these are fair and reasonable given the facts of the complaint. Whilst this does still come with an element of risk that the complainants will take the case further, it does afford the Council the

opportunity to put their case forward. However, the likelihood of success is not guaranteed should the matter be referred to Court.

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## **7. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

7.1 That Council choose to agree to some of the recommendations. It is recommended that Council agree to the following recommendations made by the LGO.

- pay Mr and Mrs A £550 for the cost of Bed and Breakfast from 6 to 13 July 2015
- pay Mr and Mrs A's removal and storage costs of £370.

7.2 The Council has already offered to pay Mr and Mrs A the money for the cost of bed and breakfast and has acknowledged in hindsight it is appropriate that the cost of storage is also paid.

## **8. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

8.1 A press release was issued under s.30 of the Local Government Act 1974 following receipt of the public report. Any action agreed by Council will be reported to the LGO.

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## **9. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

9.1 Once Council has made a decision, the LGO will need to be informed by the 1 February 2017.

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## **10. CROSS-CUTTING ISSUES AND IMPLICATIONS**

<b>Issue</b>	<b>Implications</b>	<b>Sign-off</b>
<b>Impact on Corporate Priorities</b>	Good complaints management ensures that the Council learns from customer experience and develops services to deliver both priorities	Head of Policy, Communications and Governance
<b>Risk Management</b>	There is substantial reputational risk	Head of Policy, Communications and Governance
<b>Financial</b>	The total cost of the the LGO's remedy is £4,170. Should Council decide to approve the officer recommendation the cost of	[Section 151 Officer & Finance Team]

	the remedy would be £920	
<b>Staffing</b>	N/A	Head of Policy, Communications and Governance
<b>Legal</b>	The legal implications are detailed within the report, in particular paragraph 1.2 and 5(8)(i).	Patricia Narebor Head of Mid Kent Legal Partnership
<b>Equality Impact Needs Assessment</b>	The complainants made an accusation of racism however the LGO could find no evidence that this was the case. The Council had previously looked into this and could find no evidence either	Head of Policy, Communications and Governance
<b>Environmental/Sustainable Development</b>	N/A	Head of Policy, Communications and Governance
<b>Community Safety</b>	N/A	Head of Policy, Communications and Governance
<b>Human Rights Act</b>	N/A	Head of Policy, Communications and Governance
<b>Procurement</b>	The LGO has recommended that the Council formalises its relationship with the accommodation providers cited in the complaint.	Head of Policy, Communications and Governance
<b>Asset Management</b>	N/A	Head of Policy, Communications and Governance

## 11. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix I: Local Government Ombudsman Annual Report 2016/17
  - Appendix II: Local Government and Social Care Ombudsman Complaint Investigation Report
  - Appendix III: Letter to the Local Government Ombudsman from Maidstone Borough Council
  - Appendix IV: List of changes to Housing Service
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