

WIRRAL COUNCIL

COUNCIL EXCELLENCE OVERVIEW AND SCRUTINY COMMITTEE

1 OCTOBER 2012

| | |
|---|---|
| SUBJECT | <i>FREEDOM OF INFORMATION REQUESTS AND LOCAL GOVERNMENT OMBUDSMAN CONTACTS</i> |
| WARD/S AFFECTED | <i>ALL</i> |
| REPORT OF | <i>DIRECTOR OF FINANCE</i> |
| RESPONSIBLE PORTFOLIO HOLDER | <i>COUNCILLOR ANN MCLACHLAN</i> |
| KEY DECISION | NO |

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to provide members with quarterly analysis of requests received under the Freedom of Information Act 2000 ('FOIA') and matters being dealt with by the Local Government Ombudsman, as recommended by Cabinet at its meeting on 12 April 2012 (Minute 404). Additional qualitative information is offered on service performance in responding to contacts, highlighting any exceptions.
- 1.2 This report was considered by Cabinet on 6 September 2012 and resolved that the content of the report be noted, and the approach outlined in the report to deal with the issues and matters arising under the Freedom of Information Act 2000, be endorsed.

2.0 BACKGROUND AND KEY ISSUES

2.1 Freedom of Information (Fol)

2.1.1 The FOIA was implemented in stages between November 2000 and January 2005, supplemented by the Environmental Information Regulations 2004. It provides a right of access to information held by public authorities on request. The Council has a duty under the FOIA to inform the requester whether or not the information is held and, if it is, to communicate it to the requester within 20 working days of the request being received. This limit can be extended by a further 20 working days if applying a qualifying exemption to the information to be provided; there is a need to balance the public interest or if particularly complex/requiring clarification from the requester.

2.1.2 In addition to specific categories of exempt information detailed in the FOIA, the Council can also refuse requests on the grounds of cost if it can be shown that the time taken to respond, including that taken to collate the information, would incur costs in excess of £450. The service is regulated by The Information Commissioner's Office who has the power to issue enforcement notices compelling public authorities to respond to requests within 20 working days.

2.1.3 Freedom of Information matters (FOI Contacts') are categorised as:

- Freedom of Information requests
- Environmental Information Regulations requests
- Internal Reviews (internal appeals e.g. against a delay in providing the requested information or a failure to disclose/fully disclose)
- Contacts from the Information Commissioners Office (external appeals on similar grounds to internal reviews)

2.1.4 Since 01 April 2012 all FOI Contacts have been recorded on the Council's Customer Relationship Management (CRM) system, in alignment with corporate customer feedback contacts (i.e. corporate complaints; Councillor and MP contacts; Local Government Ombudsman contacts; comments; suggestions and compliments) already collated through this system. This ensures a consistent approach is taken across the Council and allows comparative monitoring across services and customer contact types.

2.2 Local Government Ombudsman

2.2.1 The LGO investigates complaints against Councils and some other public authorities and provides advice on good practice, specifically in relation to complaint responding; administration and potential remedies.

2.2.2 The LGO will generally only consider a complaint once the council has had the opportunity to resolve the issue through its own corporate procedure. There is a standard target to respond to LGO contacts within 28 calendar days from the date the contact was received though this is reduced to 14 calendar days for schools appeals. Individual LGO investigators can also opt to vary this timescale, dependant on the information being sought from the council.

2.2.3 LGO contacts are categorised as:

- Initial requests for information
- Follow-up enquiries/clarification sought
- Investigations

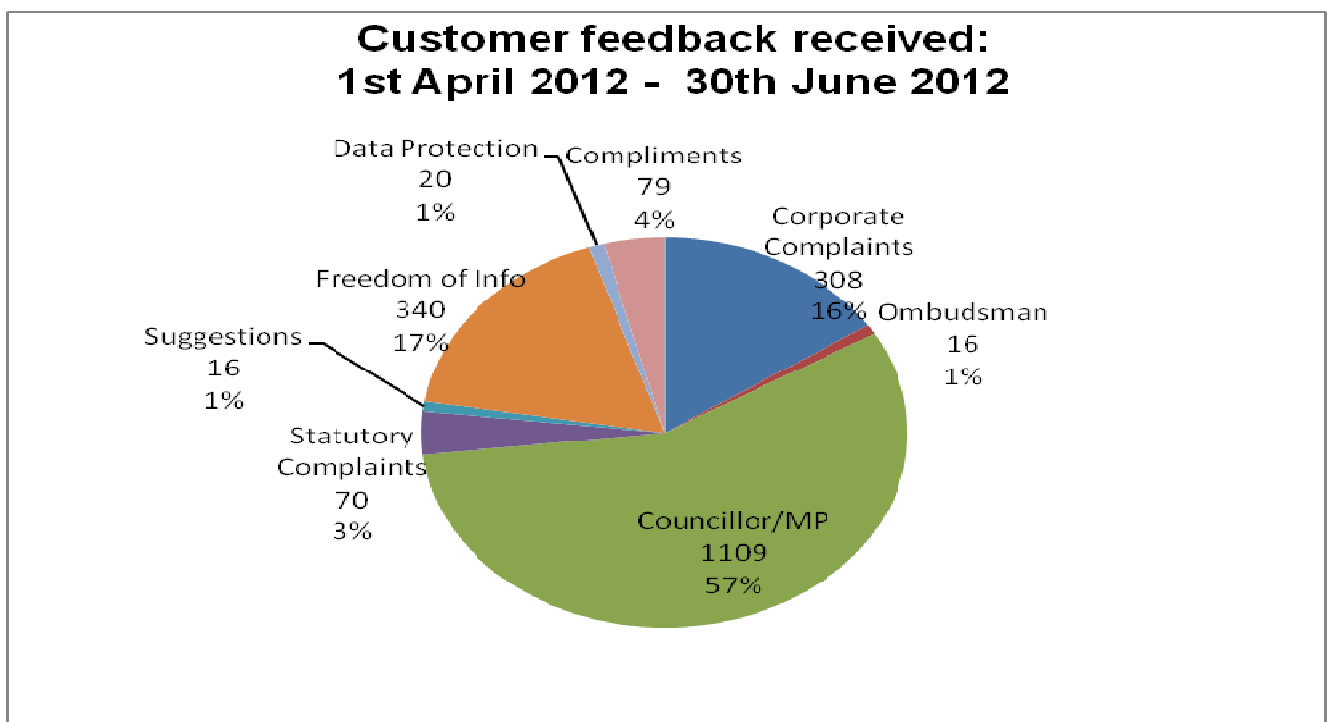
2.2.4 Once the LGO has reviewed a submitted complaint it provides both the complainant and the Council with a finding, categorised as:

- Premature complaints - council not had an opportunity to consider the complaint
- Outside jurisdiction - precluded from investigation by LGO due no legal authority existing.

- Local settlement – during course of LGO investigation the Council takes some course of action which the LGO considers a satisfactory resolution of issue
- Ombudsman’s discretion – discontinued as complainant withdraws complaint; LGO unable to maintain contact with complainant; the complainant takes court action or insufficient injustice found to continue the investigation
- No evidence of maladministration – Council has acted appropriately and no indication of any wrong-doing

2.3 PERFORMANCE QUARTER 1 2012/13

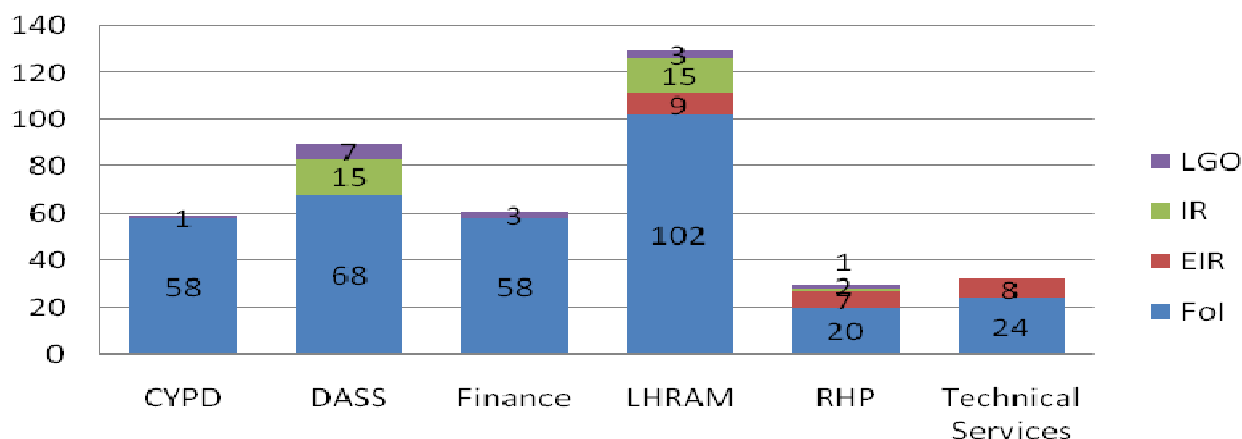
2.3.1 For context and to offer volume comparisons, FOI Contacts and LGO contacts are displayed in the table below as part of wider customer feedback contacts received in this quarter:



2.3.2 FOI Contacts were split over FOI requests (84%); requests made under the Environmental Information Regulations (7%) and internal reviews (9%). LGO contacts were split over requests for information (87.5%) and follow-up enquiries (12.5%).

2.3.3 By department FOI/LGO contacts were split as follows, excluding 3% FOI contacts classified as corporate; relating to multiple departments or non-council:

FoI requests received by department: 1st April 2012 - 30th June 2012

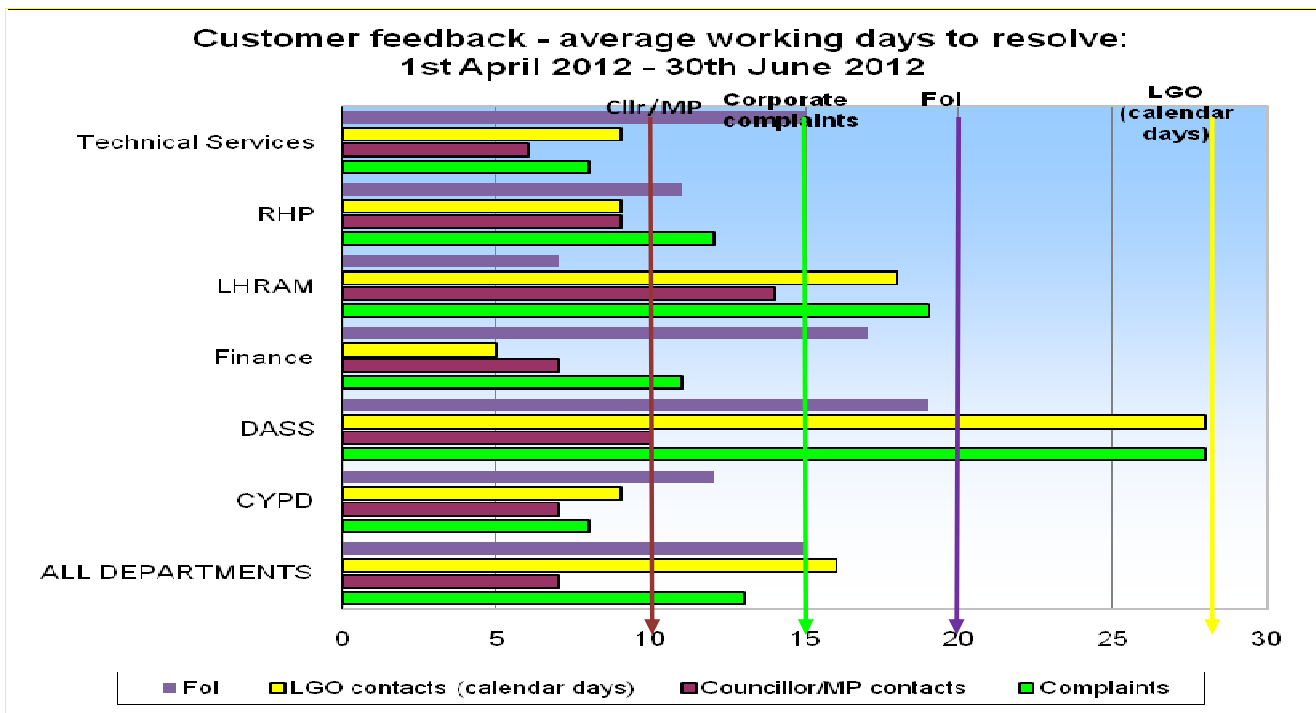


2.3.4 Analysis within the figures displayed in the table above reveals the following high volume service areas across departments.

- CYPD social care/schools accounted for 17% of total FOI requests received
- DASS access and assessment accounted for 18% of total FOI requests received and 62.5% of all requests for internal reviews; care services accounted for 37.5% of total LGO contacts received
- Finance support services accounted for 7% of total FOI requests received though this includes some requests handled by the FoI coordinator on behalf of the council/other departments; the revenues services accounted for 19% of all LGO contacts received
- LHRAM, (in particular Legal and Member Services) accounted for 10% of total FOI requests received and 37.5% of all internal review requests
- RHP development control and land charges accounted for 17% of all EIR requests received; planning services accounted for 12.5% of all LGO contacts received
- DTS highway maintenance enforcement accounted for 17% of all EIR requests

2.3.5 Both departmental and specific service area FOI contact totals have been inflated by numerous requests received from a single source, accounting for 19% of all FOI requests and 81% of all internal review requests received in this quarter. From a service area perspective, this single source accounts for 61% of all contacts received for DASS access and assessment; 37.5% of all LHRAM - Human Resources and 53% of all LHRAM - Legal and Member Services contacts received in the quarter.

2.4 Again, for comparison against other key customer feedback contacts, FOI and LGO performance information is provided in the table below.



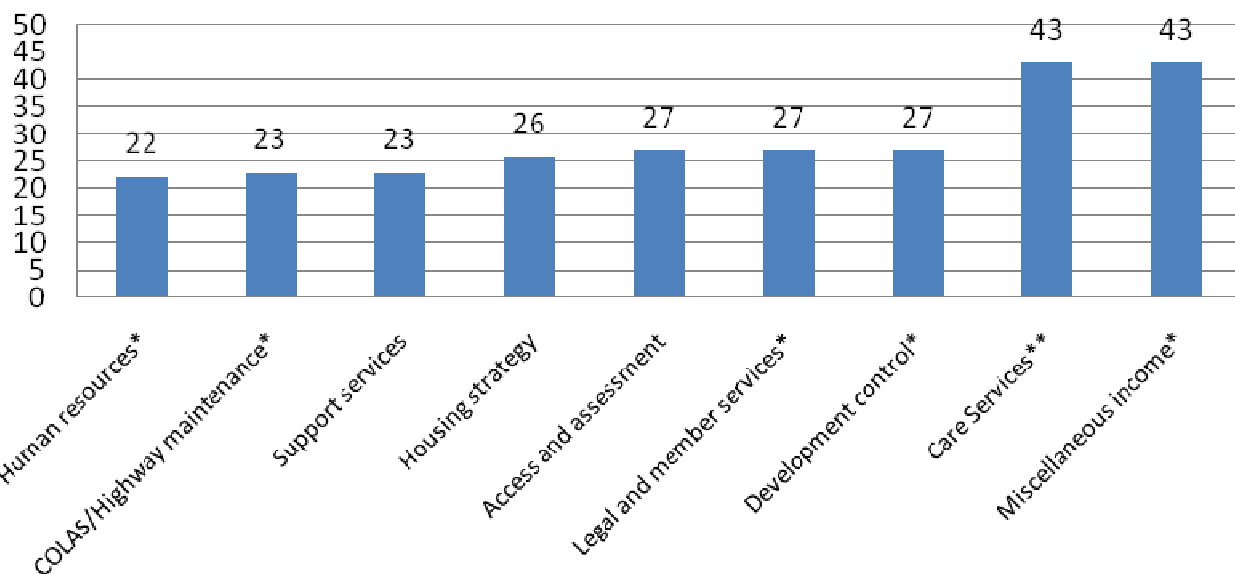
2.4.1 All departments maintained an average response rate within both FOI (20 working days) and LGO (28 calendar days) targets for contacts closed in the quarter. DASS (19 working days) and Finance (17 working days) took the longest to respond to FOI contacts with LHRAM (7 working days) taking the least amount of time to respond.

2.4.2 Across all FOI contacts closed in the quarter the Council requested an additional 20 working days to respond for three contacts.

2.4.3 Of all the LGO contacts responded to in the quarter, the LGO has communicated a final decision in three cases: all were resolved within the ombudsman’s discretion (see point 2.2.4).

2.4.4 Service areas responding to FOI/LGO contacts outside of the designated target during this quarter were as follows:

Average days for services responding outside of target: 1st April 2012 - 30th June 2012



*indicates single contact only

**indicates relates to LGO contacts

2.4.5 Issues relating to finite resources available to respond to a particularly high volume of FOI requests were a key factor in these response times for (Finance) support services; (DASS) access and assessment and care services and (LHRAM) Legal and Member services. As per point 2.3.5 a number of FOI requests from a single source focused on specific service areas, which created greater pressures on Council resources to effectively respond to incoming requests.

2.4.6 The ability to record and monitor FOI contacts alongside other customer feedback received by the Council, including LGO contacts, should offer improved visibility over future quarters to identify trends and take remedial action were necessary to address performance issues.

2.4.7 The Local Government Ombudsmen's Annual Review Letter that provides the Council with statistics of the enquiries and complaints received and the Ombudsman's opinion of the response provided by the Council concludes with:

"I am pleased to say that I have no concerns about your authority's response times and there are no issues arising from the complaints that I want to bring to your attention."

A copy of the letter and associated statistics are attached as Appendix 1

2.5 FOI SPECIFIC ISSUES RELATING TO THE NOTICE OF MOTION SUBMITTED TO COUNCIL ON 16 JULY

2.5.1 FOI requests continue to rise, particularly when anything controversial appears in the local press; 340 requests were received in the first quarter of 2012/12. Assuming this remains constant, the estimated total for the year is 1,360.

2.5.2 Comparisons with other local authorities show that Wirral receives a disproportionately higher amount of enquiries compared to those of a similar size. There is a lot of interest from citizens/press and organisations regarding how the Council operates.

2.5.3 Analysis of the FOI requests received over the last twelve months has shown that a significant number originate from a limited number of individuals as shown in the table below. Names have been omitted on the advice of the Acting Director of Law HR & Asset Management.

| Top Ten Originators of FOI Requests | | |
|--|-----------------|----------------------------|
| Name | Requests | % of total requests |
| Originator 1 | 245 | 19.0% |
| Originator 2 | 22 | 1.7% |
| Originator 3 | 19 | 1.5% |
| Originator 4 | 10 | 0.8% |
| Originator 5 | 9 | 0.7% |
| Originator 6 | 9 | 0.7% |
| Originator 7 | 8 | 0.6% |
| Originator 8 | 7 | 0.5% |
| Originator 9 | 7 | 0.5% |
| Originator 10 | 7 | 0.5% |
| Total | 343 | 26.6% |

2.5.2 The FOI legislation allows a public sector organisation to refuse requests on the basis that they are either vexatious or repeated. If a request is to be refused then the Council must issue a refusal notice to the requester within twenty working days of receipt of the request and include details of the Council's internal review process and inform them of their right to appeal to the Information Commissioners Office (ICO).

2.5.2 For a request to be considered vexatious then it must meet more than one of the following criteria:

- Could the request fairly be seen as obsessive
- Is the request harassing the authority or causing distress to staff
- Would complying with the request impose a significant burden in terms of expense and distraction
- Is the request designed to cause disruption or annoyance
- Does the request lack any serious purpose or value

2.5.3A Request can be refused as repeated if:

- It is made by the same person as a previous request;
- It is identical or substantially similar to the previous request; and
- A reasonable interval has not elapsed since the previous request.

A request can only be refused as repeated if the Council has provided the requester with the information they have previously asked for.

2.5.4 In reality only three refusals have been issued in the last seven years, staff try to respond to all requests. Where the cost of responding is likely to exceed the £450 limit allowed within the act (approx 18.5hrs of staff time) the requester is asked to modify their requirements to bring it within the cost limit.

2.5.5A plan is in place to try to reduce the number of requests received and improve the overall service. This includes:

1) Extending the Council's Publication Scheme and putting more information in the public domain. The ICO guidance on this, which will be followed, includes the following categories:

- Who we are and what we do
 - Organisational information, locations and contacts, constitutional and legal governance.
- What we spend and how we spend it.
 - Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
- What our priorities are and how we are doing.
 - Strategy and performance information, plans, assessments, inspections and reviews.
- How we make decisions.
 - Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.
- Our policies and procedures.
 - Current written protocols for delivering our functions and responsibilities.
- Lists and Registers.
 - Information held in registers required by law and other lists and registers relating to the functions of the authority.
- The Services we Offer.
 - Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

2) Establishing best practice across a number of public sector organisations including the police service, NHS and other local authorities.

3) Including the FOI service in the project to establish "A transparent Council" being undertaken by a group of Heads of Service as part of the Council's overall improvement plan. The group will examine the business process across the service, including those within each department and the legal support required.

2.6 Way Forward

- 2.6.1 The Acting Director of Law, HR and Asset Management has recently had discussions with the ICO to explore ways in which the Council can address the outstanding FOI Contacts, improve the way in deals with FOI Contacts and reviews, and proactively and fairly deal with frivolous and vexatious FOI requests.
- 2.6.2 The Chief Executive is keen for a meeting to take place with the ICO to move this initiative forward and arrangements are in hand for that meeting to take place shortly. Council officers are finalising a full analysis of FOI Contacts which will be shared with the ICO. Work has started to explore more effective ways to deal with the FOI matters and issues. Additional resources are also currently being secured to ensure this initiative is progressed in a timely and effective manner.
- 2.6.3 Following discussions with the ICO and the review being undertaken by officers, an action plan will be prepared (and implemented) which will set out how the Council will address the matters and issues arising in relation to FOI Contacts.
- 2.6.4 A further report will be submitted to Council Excellence Overview and Scrutiny Committee once the investigations are concluded and an action plan finalised.

3.0 RELEVANT RISKS

- 3.1 That the council fails to meet target responses, which is mitigated by the performance review offered here and the opportunity to address identified performance related issues.

4.0 OTHER OPTIONS CONSIDERED

- 4.1 None.

5.0 CONSULTATION

- 5.1 No consultation has been carried out in relation to this report.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 6.1 There are no implications for voluntary, community or faith groups.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 7.1 There are no significant resource implications other than those already referred to in the body of the report (point 2.4.5).

8.0 LEGAL IMPLICATIONS

- 8.1 The legal implications are set out in the main body of the report

9.0 EQUALITIES IMPLICATIONS

- 9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no relevance to equality within the report.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 None.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 None.

12.0 RECOMMENDATION

12.1 That the report and approach outlined in the report to deal with the issues and matters arising under the Freedom of Information Act 2000 be noted.

13.0 REASON FOR RECOMMENDATION

13.1 To ensure Members are informed of the number and nature of FOI and LGO requests received by the Council, the level of performance in responding to these contacts and the service improvement plan in place for FOI.

FNCE/173/12

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APPENDICES

Appendix 1~ Local Government Ombudsman Annual Review Letter & Associated Statistics.

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

| Council Meeting | Date |
|------------------------|-------------------|
| Standards Committee | 29 September 2009 |
| Standards Committee | 29 March 2010 |
| Standards Committee | 29 September 2010 |
| Standards Committee | 02 December 2010 |
| Standards Committee | 26 January 2011 |
| Standards Committee | 29 September 2011 |
| Cabinet | 12 April 2012 |
| Cabinet | 6 September 2012 |

22 June 2012

Local Government
OMBUDSMAN

Mr I Coleman
Acting Chief Executive
Wirral Metropolitan Borough Council
New Municipal Building
Cleveland Street
BIRKENHEAD
Merseyside CH41 6BL

Dear Mr Coleman

Annual Review Letter

I am writing with our annual summary of statistics on the complaints made to me about your authority for the year ended 31 March 2012. I hope the information set out in the enclosed tables will be useful to you.

The statistics include the number of enquiries and complaints received by our Advice Team, the number forwarded by the Advice Team to my office, and decisions made on complaints about your authority. The decision descriptions have been changed to more closely follow the wording in our legislation and to give greater precision. Our guidance on statistics provides further explanation ([see our website](#)).

The statistics also show the time taken by your authority to respond to written enquiries.

I am pleased to say that I have no concerns about your authority's response times and there are no issues arising from the complaints that I want to bring to your attention.

Changes to our role

I am also pleased to have this opportunity to update you on changes to our role. Since April 2010 we have been exercising jurisdiction over the internal management of schools on a pilot basis in 14 local authority areas. This was repealed in the Education Act 2011 and the power restored to the Secretary of State for Education. During the short period of the pilot we believe we have had a positive impact on the way in which schools handle complaints. This was endorsed by independent research commissioned by the Department for Education which is available [on their website](#).

Our jurisdiction will end in July 2012 and all complaints about internal school matters will be completed by 31 January 2013.

From April 2013, as a result of the Localism Act 2011, local authority tenants will take complaints about their landlord to the Independent Housing Ombudsman (IHO). We are working with the IHO to ensure a smooth transition that will include information for local authority officers and members.

/....

Supporting good local public administration

We launched a new series of Focus reports during 2011/12 to develop our role in supporting good local public administration and service improvement. They draw on the learning arising from our casework in specific service areas. Subjects have included school admissions, children out of school, homelessness and use of bankruptcy powers. The reports describe good practice and highlight what can go wrong and the injustice caused. They also make recommendations on priority areas for improvement.

We were pleased that a survey of local government revenue officers provided positive feedback on the bankruptcy focus report. Some 85% said they found it useful.

In July 2011, we also published a report with the Centre for Public Scrutiny about how complaints can feed into local authority scrutiny and business planning arrangements.

We support local complaint resolution as the most speedy route to remedy. Our training programme on effective complaint handling is an important part of our work in this area. In 2011/12 we delivered 76 courses to councils, reaching 1,230 individual learners.

We have developed our course evaluation to measure the impact of our training more effectively. It has shown that 87% of learners gained new skills and knowledge to help them improve complaint-handling practice, 83% made changes to complaint-handling practice after training, and 73% said the improvements they made resulted in greater efficiency.

Further details of publications and training opportunities are on [our website](#).

Publishing decisions

Following consultation with councils, we are planning to launch an open publication scheme during the next year where we will be publishing on our website the final decision statements on all complaints. Making more information publicly available will increase our openness and transparency, and enhance our accountability.

Our aim is to provide a comprehensive picture of complaint decisions and reasons for councils and the public. This will help inform citizens about local services and create a new source of information on maladministration, service failure and injustice.

We will publish a copy of this annual review with those of all other English local authorities on our website on 12 July 2012. This will be the same day as publication of our Annual Report 2011/12 where you will find further information about our work.

We always welcome feedback from councils and would be pleased to receive your views. If it would be helpful, I should be pleased to arrange a meeting for myself or a senior manager to discuss our work in more detail.

Yours sincerely



Anne Seex
Local Government Ombudsman

Local authority report - Wirral MBC

for the period - 01/04/2011 to 31/03/2012

LGO advice team

| Enquiries and complaints received | Adult Care Services | Benefits & Tax | Corporate & Other Services | Education & Childrens Services | Environmental Services & Public Protection & Regulation | Highways & Transport | Housing | Planning & Development | Total |
|---|---------------------|----------------|----------------------------|--------------------------------|---|----------------------|----------|------------------------|-----------|
| Advice given | 2 | 1 | 4 | 10 | 2 | 3 | 0 | 0 | 22 |
| Premature complaints | 8 | 5 | 4 | 6 | 10 | 3 | 1 | 1 | 38 |
| Forwarded to Investigative team (resubmitted) | 1 | 1 | 0 | 2 | 0 | 0 | 0 | 1 | 5 |
| Forwarded to Investigative team (new) | 6 | 2 | 4 | 4 | 4 | 1 | 0 | 2 | 23 |
| Total | 17 | 9 | 12 | 22 | 16 | 7 | 1 | 4 | 88 |

Investigative team - Decisions

| Not investigated | | | Investigated | | | Report | Total |
|-------------------------|---|-------------------------------------|------------------------------|-------------------------------|-------------------------------------|--------|-------|
| No power to investigate | No reason to use exceptional power to investigate | Investigation not justified & Other | Not enough evidence of fault | No or minor injustice & Other | Injustice remedied during enquiries | | |
| 6 | 2 | 7 | 6 | 4 | 6 | 0 | 31 |

| Response times to first enquiries | No of first enquiries | Avg no of days to respond |
|-----------------------------------|-----------------------|---------------------------|
| | 6 | 15.5 |

