



Standards Committee

Date:	Monday, 21 June 2010
Time:	6.00 pm
Venue:	Committee Room 3 - Wallasey Town Hall

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AGENDA

1. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members are asked to consider whether they have personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they are.

2. MINUTES (Pages 1 - 4)

To receive the minutes of the meeting held on 29 March 2010, which were received by the Council.

3. MINUTES - MATTERS ARISING (Pages 5 - 8)

(a) Chair's Discussion Paper – response from the political groups.

(b) Use of Recording Media at Meetings and in Council Meetings – report back from the Director of Law, HR and Asset Management

4. COMPLAINTS AND CUSTOMERS FEEDBACK - ANNUAL REPORT 2009/10 (Pages 9 - 20)

5. FINDINGS OF THE LOCAL GOVERNMENT OMBUDSMAN - COMPLAINT REGARDING MALADMINISTRATION OF A PLANNING APPLICATION (Pages 21 - 26)

6. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR

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STANDARDS COMMITTEE

Monday, 29 March 2010

Present:

Brian Cummings (Chair)

Councillors	C Blakeley	A McLachlan
	A Bridson	C Meaden
	L Fraser	C Tegg
	K Hayes	P Williams

Deputies

Councillors D Roberts (In place of WJ Davies)

Independent
Members

Alex Nuttall
Stella Elliott

Apologies

Councillors Ken Harrison

22 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members were asked to consider whether they had personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they were. No such declarations were made.

23 MINUTES AND MATTERS ARISING

The Director of Law, HR and Asset Management, submitted the minutes of the meeting held on 25 January, 2010.

Further to minute 19 (Attendance at Meetings), Director of Law, HR and Asset Management, referred to other council commitments and the need to attend meetings elsewhere which had prevented him from attending meetings of this committee. He explained that there were no known conflicts with other principal council committee meetings in next year's committee calendar and he would attend as many Standards Committee meetings as possible.

Resolved –

That the minutes be received.

24 STANDARDS COMMITTEE - ITEMS FOR DISCUSSION

Further to minute 20 (25/1/2010) the Chair asked if there was any response from the political groups on his discussion paper.

Resolved - That this matter be deferred until the June meeting of this committee to allow further discussion within the political groups.

25 ASSESSING THE IMPACT OF STANDARDS COMMITTEES

The Director of Law, HR and Asset Management, submitted a report which incorporated a copy of a research document commissioned by Standards for England which centred on nine areas of notable practice for local Standards Committees.

Resolved – That the report be noted.

26 LOCAL GOVERNMENT OMBUDSMAN PERFORMANCE REVIEW - APRIL TO DECEMBER 2009

The Director of Finance submitted a report providing a summary of council performance in dealing with enquiries received from the Local Government Ombudsman (LGO), covering the period 01 April 2009 to 31 December 2009 as well as the last comparator period with other North West Authorities.

Resolved – That the report be noted.

27 STANDARDS FOR ENGLAND - ONLINE GUIDES

The Director of Law, HR and Asset Management, submitted a report which incorporated copies of the following on-line guides produced by Standards for England which supplement the existing guidance on the Members' Code of Conduct:

- Bullying and the Code of Conduct
- Disclosing Confidential information
- Freemasons and the Code of Conduct
- Gifts, Hospitality and the Code of Conduct
- Independent Members
- Lobbying
- Personal and Prejudicial Interests

Resolved –

(1) That the report be noted.

(2) That the on-line guides be circulated to all members of the Council.

28 USE OF RECORDING MEDIA AT MEETINGS AND IN COUNCIL MEETINGS

The Director of Law, HR and Asset Management, submitted a report giving consideration to the possible standards implications of recording media in Council buildings, whether during Council meetings or at other times.

The views of the Standards Committee were sought as to whether the use of recording media by Members within Council buildings should remain unregulated; or

whether it should be prohibited (or subject to other controls) by way of a local protocol to be incorporated in the Council's Constitution.

It was moved by Councillor Blakeley and seconded by Councillor Fraser that:

“ (1) Council should adopt an additional Standing Order to formalise the common law powers of the Mayor (or Chair) to control the conduct of a meeting, including the use of recording media; and

(2) The use of recording media by Members within Council buildings should be prohibited.”

It was moved as an amendment by Councillor Williams and seconded by Councillor McLachlan that the motion be amended by the deletion of paragraph (2) and the substitution of the following:

“ (2) That the Director of Law, HR and Asset Management, be asked to report back to the June meeting of this committee on the results of his enquiries with other local authorities regarding this matter, and that he provide more fully worked up proposals as a way forward.”

The amendment was put and carried (9:3)

The motion, as now amended, was put and carried (9:0) (3absts)

Resolved –

(1) That Council should adopt an additional Standing Order to formalise the common law powers of the Mayor (or Chair) to control the conduct of a meeting, including the use of recording media; and

(2) That the Director of Law, HR and Asset Management, be asked to report back to the June meeting of this committee on the results of his enquiries with other local authorities regarding this matter, and that he provide more fully worked up proposals as a way forward.

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STANDARDS COMMITTEE

- Build relationships between L.A. and public
 - should be advertised in local press and public buildings. Make public aware of Committee.
- Must be:- Impartial, dutiful, informative, factual and evidential
- Confirm percentage of Officers and Members accept the Code of Conduct and the Standards Committee.
- Apparently there will be a Revised Code in 2010.
- Beware of “tit for tat” complaints. There should be no penalty for putting forward ‘Frivolous’ complaints.
- Discuss with Chief Executive what other roles should be carried out by the Independent Members of Committee.
- Committee should have the opportunity to discuss feedback from the Ombudsman.
- Chairman of Standards Committee is expected to have regular meetings with the Monitoring Officer/Borough Solicitor.
- Hold a review to enable all applicable to understand and interpret the Standards Committee.
- Preach “we can make a difference”. Take up the challenge and invoke our standards.
- Values:- Strive for higher values, conduct, respect, ethics and standards. These and the code must be integral to all Council activities.
- Members must receive training on the Code of Conduct.
- Officers must take strong action against any aboration of the Code.
- Members of the Standards Committee should have access to the Annual Report and attend Council Meetings (Independent Members).
- Standards Committee should build relationships with Officers and Members.
- Chairman of Committee should have meetings with group leaders – build trust.
- Should share experiences with neighbouring Councils.

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- Promote awareness of Standards Committee to schools and local organisations/groups.
- Do not become at odds with elected members; encourage members to attend meetings to raise issues.
- Engage with Councillors. Always appreciate that we are appointed not elected (Independent).
- Be fair and transparent. Rate your independence! "You are serving for the greater good of the Community".
- Standards Committee is a "friend, not a foe, a guide dog not a watch dog".
- You must be made aware of concerns of people in the street.
- Must keep Independence – Be careful not to be seen to be more friendly with one group than another.
- Passionate about ethics and standards.
- Monitoring Officers needs:- Courage, motivation, trust, relationships, performance, be moral.
- Be aware of the community impact of committee (letters page in local press/statements etc.)
- What is the perception of public?
Trust and citizens?
Councillors & Officers?
Democracy?
- Bullying of Officers will not be acceptable.
- Planning Committee – what are its protocols?
Can these be explained?
Training – in view of recent events.

↓
Social Services Similarly
Setting Standards
Councillors Expenses?

Issues for discussion.

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WIRRAL COUNCIL

STANDARDS COMMITTEE

21 JUNE 2010

REPORT OF THE DIRECTOR OF FINANCE

COMPLAINTS AND CUSTOMER FEEDBACK - ANNUAL REPORT 2009/2010

1. EXECUTIVE SUMMARY

- 1.1 This report is the annual update on performance in dealing with customer feedback. It provides analysis of contacts received over the period 1 April 2009 to 31 March 2010, highlights trends and describes some of the challenges faced in ensuring all feedback is recorded and responded to consistently. The focus for customer feedback is to 'put things right and learn from it' which recognises that complaints should not be dealt with in isolation and instead should be used to inform future improved service delivery. The report is for noting.

2. BACKGROUND

- 2.1 Customer feedback includes the following types of contact:
- Corporate complaints
 - Statutory complaints (Adult Social Services and Children's Social Care)
 - Councillor/MP contacts
 - Local Government Ombudsman (LGO) contacts
 - Contacts made directly with the Chief Executive
 - Customer Suggestions
 - Customer Compliments
- 2.2 Customer feedback is reported quarterly through the corporate performance report to the Cabinet and contributes to performance indicators PI 2004 (annual number of corporate complaints received) and PI 2015a (percentage of corporate complaints resolved within timescale).
- 2.3 Feedback is primarily recorded through the Customer Relationship Management (CRM) system although a separate application (Respond) is used to support the distinct statutory complaint process.
- 2.4 Each department has a designated coordinator to record; assign; progress chase and update contacts with resolution details. Coordinators meet regularly to raise issues with escalation to the cross departmental Customer Services Group (CSG) and to Chief Officers as appropriate, to share best practice and to communicate departmental changes. Where feedback is received outside of the generic customer access channels (One Stop Shops; call centre; email and web), the effectiveness of these coordinators is dependent on clear and consistent communication within departments.

- 2.5 To support best practice and promote a consistent approach to how customer feedback is dealt with across the Council, the Customer Care Standards were created and promoted corporately. These guidelines focus on the commitment made to ensuring the expected standards of customer service are met across the Council. It allows customers to clearly identify the minimum level of service expected and measure how their contact experience compares. Intranet guidance supports this and stresses customer service is a responsibility of all staff members, not just staff dealing directly with customers.
- 2.6 The approach to customer feedback has seen a marked improvement since the corporate process was implemented and the customer care guidelines adopted. Departments recognise a standard definition of 'what is a complaint' and commit to a standard process for dealing with customer feedback contacts. Comparison between service areas and departments can be undertaken, providing vital information on what customers are contacting the Council about and identifying best practice. The challenge is to maintain this consistency and drive service improvements.

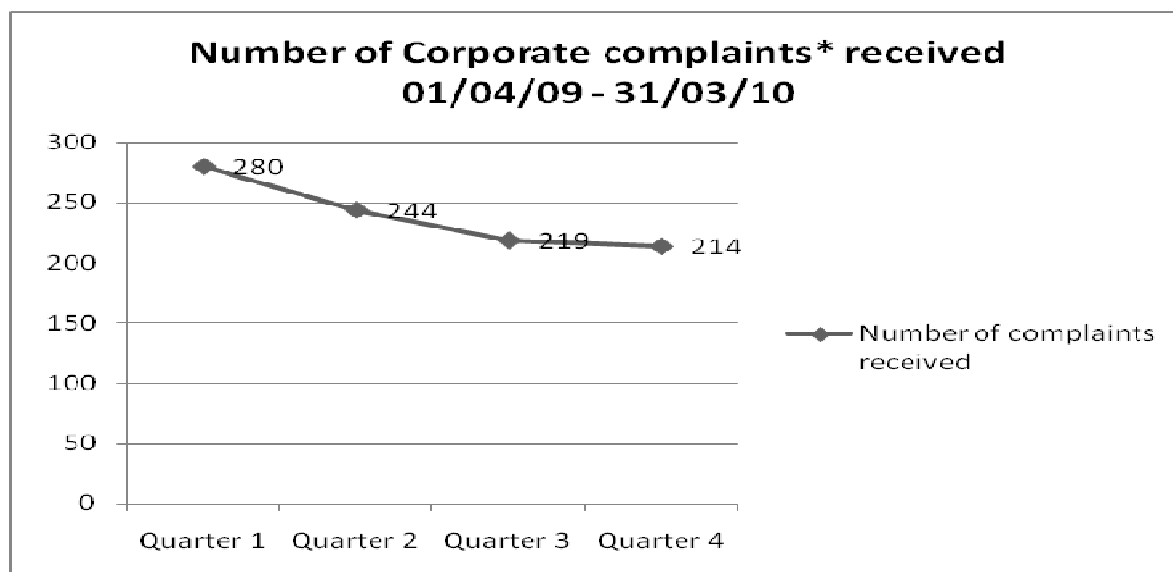
3. PERFORMANCE SUMMARY

3.1 Corporate Complaints

- 3.1.1 The 1,332 corporate complaints received (all stages) in 2009/10 showed minimal change from the figure reported for 2008/09 which was 1,329. The departmental split for 2009/10 is as follows:

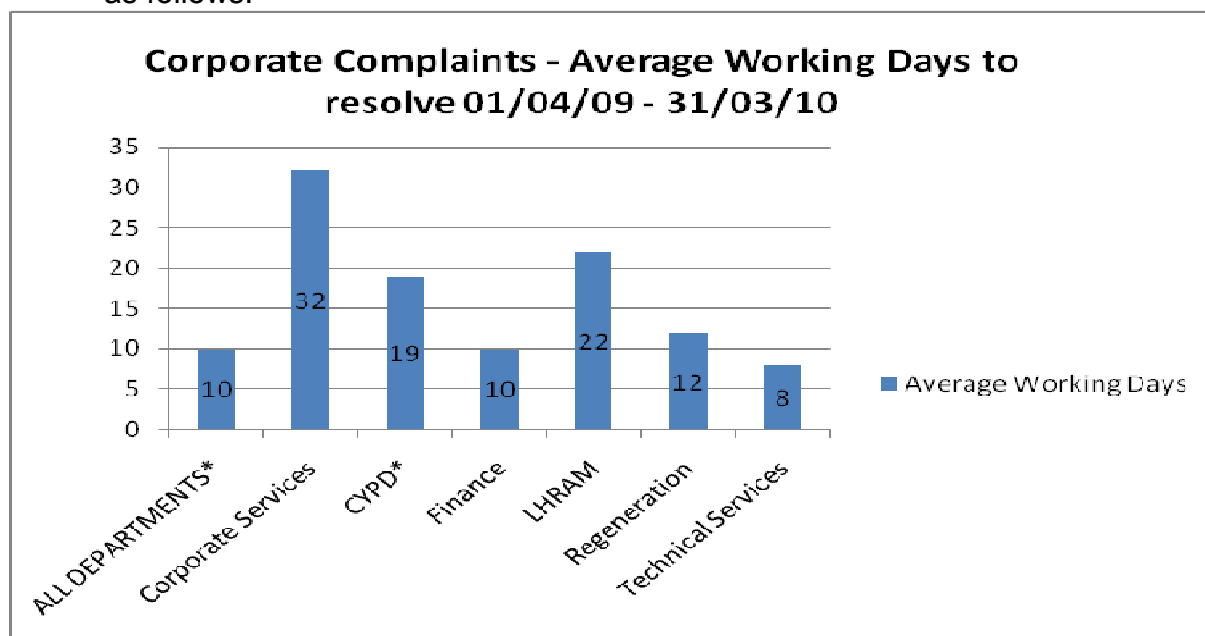
CYPD	10	(78 recorded as statutory complaints)
Corporate Services	7	
DASS	0	(249 recorded as statutory complaints)
Finance	254	
Legal HR & Asset Man	14	
Regeneration	378	
Technical Services	669	

- 3.1.2. Three departments account for nearly all corporate complaints. Technical Services record the largest number. Finance Department complaints mainly focus around Revenues and Benefits (201). Sports and Recreation services dominate Regeneration accounting for 197 complaints with Parks and Open spaces next with 69.
- 3.1.3. As with the Strategic Asset Review in 2008/09, a single issue contributed significantly to complaint volumes in 2009/10 with the adverse weather conditions of January 2010 affecting the delivery of key services by Technical Services. During this period (quarter 4) the refuse collection service recorded 375 complaints (28% of annual total) with 209 complaints received on a single day (18 January 2010). Previously in 2009/10 there was an average of 24 complaints received for this service per quarter and this emphasises the unparalleled disruption caused to key services such as bin collection and the consequent frustration expressed by Wirral residents. Analysis excluding this figure displays a downward trend over the year:



*Excluding refuse collection complaints received in quarter 4

3.1.4. The percentage of complaints resolved within 15 working days improved for the second year in succession from 87% reported in 2008/09 to 89.7% in 2009/10. This compares to the corporate target of 88%. Technical Services department resolved 98% of contacts within 15 working days over the 2009/10 period (compared to 97% in 2008/09), taking on average 8 working days. The improved performance is driven by customer feedback coordinators efforts in progress chasing responses, supported by prioritisation through the Customer Relationship Management system (CRM). The average number of working days to respond to complaints by department is as follows:



*Excluding Statutory complaints received by DASS and Children's Social Care

3.1.5 Split between the three complaint stages, 90% of stage 1 were resolved within 15 working days, followed by 89.5% for stage 2 and 68% for stage 3. The introduction of an independent review by a Chief Officer of an alternate Department can partly explain the longer time taken to resolve these stage 3 complaints.

3.1.6. The corporate complaint process allows customers to progress to stage 2 if 'unhappy with the outcome of the stage 1 complaint'. Only 5.4% of customers required this further review of their complaint (67 in total). This dropped to 2.3% for stage 3 complaints received (28 in total).

3.2 Statutory Complaints

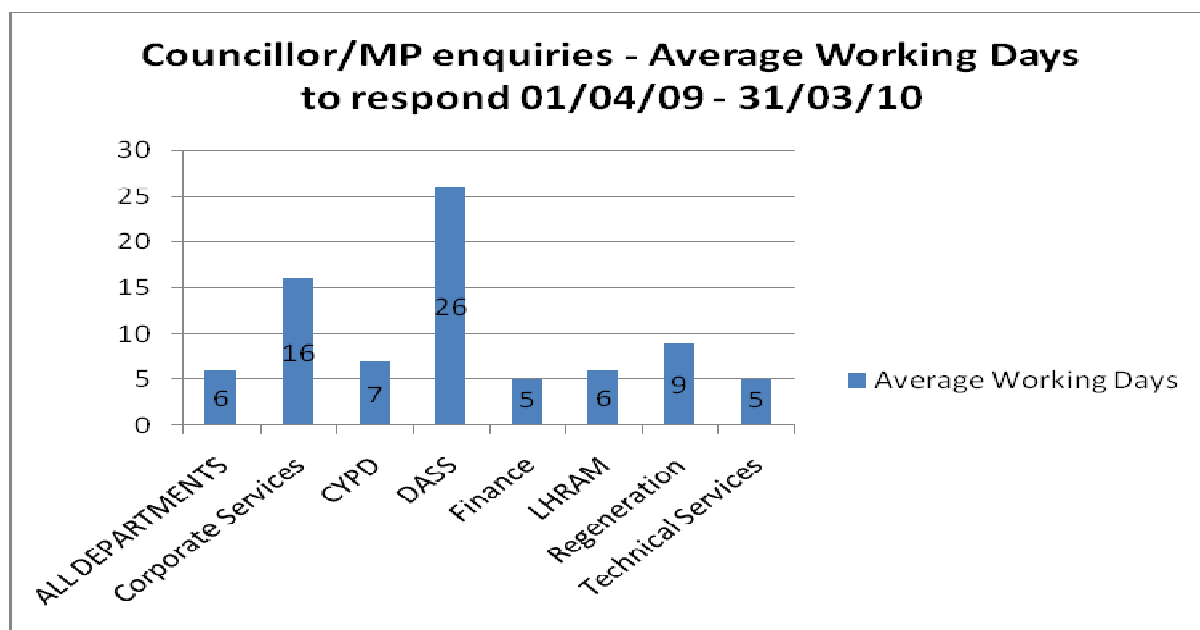
3.2.1 Adult Social Services (DASS) and Children's Social Care (part of CYPD) respond to complaints within a statutory framework, outside of the Council process. This limits the opportunity for comparative analysis with corporate complaints received.

3.2.2. A total of 327 statutory complaints were received, split between 249 for DASS and 78 for Children's Social Care. Adult Social Services - Access and Assessment issues accounted for the majority of DASS statutory complaints received (58% of total).

3.3 Councillor / MP contacts

3.3.1 A total of 3,846 formal Councillor or MP contacts were received in 2009/10, compared to 4,363 contacts for the previous year, an 11.8% decrease. Unlike complaints no single issue dominated councillor/MP contacts although Technical Services continue to receive the highest number of contacts with 75% of the total. This compares with 70.5% of 2008/09 recorded contacts.

3.3.2 The corporate standard for resolution of these contacts is 10 working days and the average number of days taken for resolution in 2009/10 was 6 working days. The average number of working days to respond to these contacts by department is as follows:



3.3.3. The number of Councillor and MP contacts by department was as follows;

CYPD	145
Corporate Services	4
DASS	128
Finance	106
Legal HR & Asset Man	2
Regeneration	576
Technical Services	2885

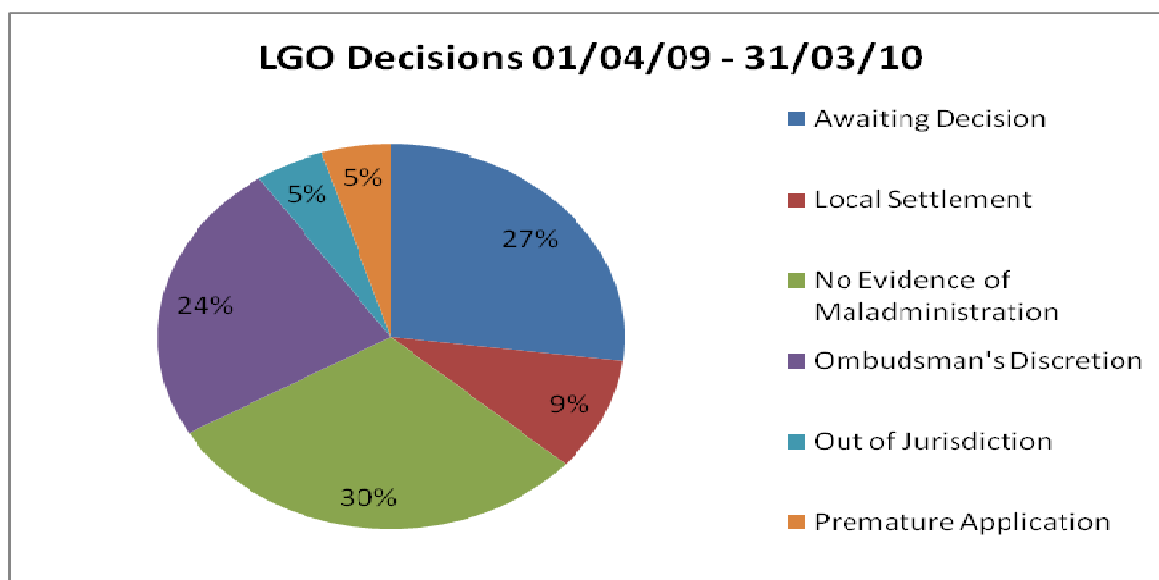
3.3.4. The Council responded to 91% of all Councillor/MP contacts within 10 working days, compared to 79% in 2008/09.

3.3.5. Within the departmental totals the key areas of enquiry were DASS Access and Assessment issues accounting for 81% of DASS enquiries. Benefits and Revenues accounted for 96% of Finance queries. Regeneration Re-Housing Services (169); Parks and Open Spaces (137) and Environmental Health (96) providing the majority (70%) of the departmental contacts. The Community Safety team (anti-social behaviour; alley gates etc) received 54 contacts. Technical Services contacts other than the refuse collection service were road enquiries (402), pavement defects (383) and traffic issues (384).

3.4 Local Government Ombudsman (LGO) contacts

3.4.1 The process for recording LGO contacts and the way in which the LGO investigates complaints changed from 1 April 2009 and so comparison with 2008/09 figures is not meaningful. Changes were made to ensure that all contacts from the LGO were recorded via a single generic email address, coordinated by a team within the Finance Department.

- 3.4.2. The LGO has also changed how it deals with complaints, using a first stage 'triage' service to restrict the number of contacts being passed for consideration by an experienced 'ombudsman'. The 'ombudsmen' are also now far more likely to ask for information, rather than instigate a full investigation to resolve a complaint as happened in previous years.
- 3.4.3 A total of 79 contacts were recorded (55 preliminary requests for information; 21 follow-up enquiries and 3 full investigations) covering 63 individual LGO cases.
- 3.4.4. The 79 complaints received in 2009/10 show a departmental split as follows;
- | | |
|--------------------|----|
| CYPD | 23 |
| DASS | 18 |
| Finance | 11 |
| Regeneration | 5 |
| Technical Services | 22 |
- *Corporate Services and LHRAM did not receive any LGO contacts in 2009/10
- 3.4.5. Schools appeals dominated the CYPD figures, accounting for 70% of all LGO contacts received. Care Services received 94% of DASS LGO contacts. Finance contacts all concerned the Benefits service. In Regeneration the Licensing service accounted for 60% of all contacts with the remaining enquiries being for Sports and Recreation and Re-Housing services. The Planning Service accounted for 86% of Technical Services contacts received.
- 3.4.6 The LGO provides a decision category on all cases considered and the breakdown for 2009/10 is as follows:



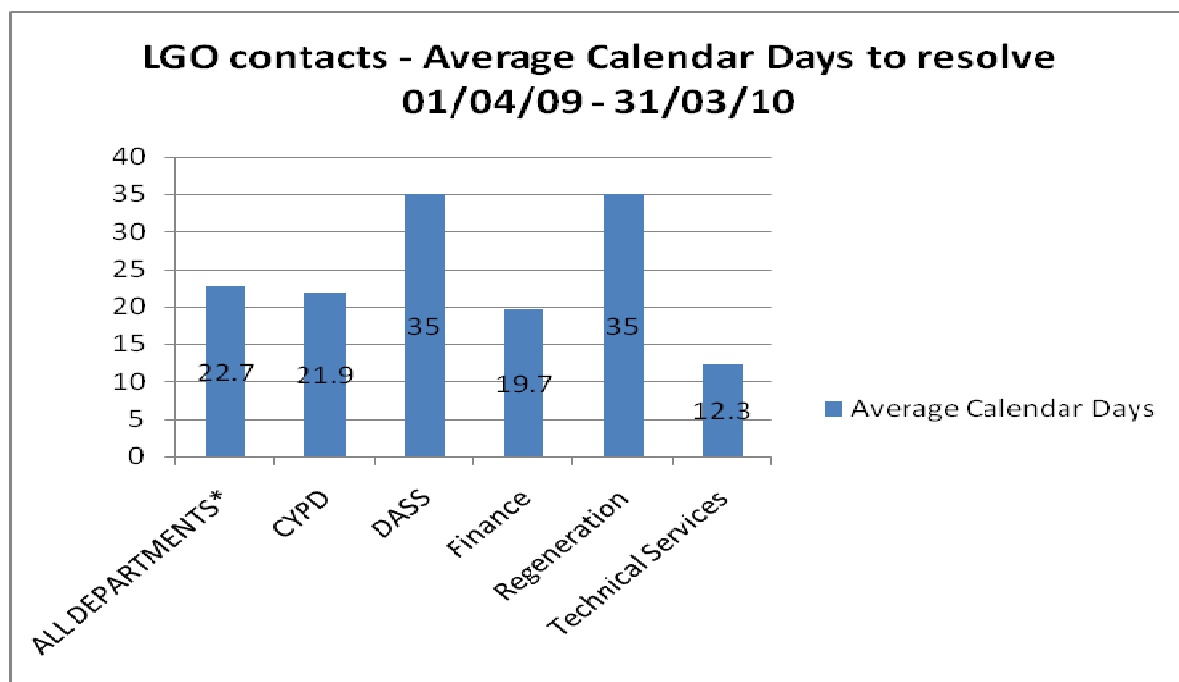
- Awaiting Decision: enquiry responded to and awaiting evaluation from LGO
- Local Settlement: the Council has come to a satisfactory arrangement with the complainant to resolve issue(s)
- No Evidence of Maladministration: LGO can find no evidence of wrong-doing

- Ombudsman's Discretion: LGO has decided not to investigate further, usually due to insufficient evidence of injustice caused
- Out of Jurisdiction: case is outside the LGO's remit to investigate
- Premature Application: Council has not had the opportunity to investigate the complaint fully before referral to the LGO; reconsidered as corporate/statutory complaint

3.4.7 The standard by which the Council is measured is 28 calendar days to respond to LGO contacts, excluding complaints about schools (14 calendar days) or if the LGO provides specific target dates. Across the contacts recorded the Council responded on average in 22.7 calendar days for 2009/10.

3.4.8 The LGO are currently preparing their formal annual performance report for all councils in England which has a provisional figure of 26.8 calendar days for Wirral. The disparity is due to differences in the method of calculation used between the Council and the LGO. A meeting is to be arranged with the LGO so that monitoring of performance in 2010/11 can be aligned more effectively with the LGO's interpretation. The LGO's reported figure would still place Wirral in the top 53% of Metropolitan Authorities with an average of 28 calendar days or less. A formal response will be provided to the LGO's annual letter to Wirral once received from the LGO and will subsequently be reported to this Committee.

3.4.6 The average number of calendar days to respond to LGO contacts by departments who received LGO contacts is as follows:



- 3.4.9. There are pressures on resources to effectively respond to LGO contacts, particularly when enquiries can be complex in nature, requesting significant (possibly historic) information which can require research by a number of Council officers. The Council investigation can be in response to a number of separate LGO contacts requesting different information over a wide time frame. As an example one case commenced by the LGO on 20 March 2009 and a decision was communicated on 12 March 2010 after three separate contacts were responded to in the intervening period. The LGO tends to use these individual contacts to provide a cumulative total of days taken to respond whereas the Council records these as self-contained enquiries, which produces some disparity in the analysis of response times.
- 3.4.10 Constructive discussions with the LGO have identified a number of specific issues about how the LGO contacts the Council and how in turn the Council responds to requests for information under the new investigation regime. A meeting has been arranged for June 2010 with the Assistant Ombudsman to clarify reporting techniques and promote best practice for future performance.

3.5 Other feedback

- 3.5.1 There were 88 contacts recorded via the Chief Executive's Office with Technical Services enquiries accounting for 94% of this total. Contacts regarding Highway maintenance (15%); Planning (14%) and Footway/carriageway issues (11%) featured prominently.
- 3.5.2 Customer feedback coordinators recorded 68 customer suggestions, with the Regeneration department contributing 88% of these contacts. Sports and Recreation was most popular with 62% of all suggestions received. The majority of suggestions within this service area relate to the availability of activities and classes; standard of facilities and opening times.
- 3.5.3 The Council officially recorded 370 compliments in 2009/10, although the expectation is that many more expressions of satisfaction with services provided were received in the numerous interactions with customers across all departments and delivery channels. Typical comments include "excellent service received"; "praise for officers involved"; "appreciation of the level of service provided"; "extremely impressed with work" and a "pleasure to deal with the Council".

4. DEVELOPMENTS FOR 2010/11

4.1 Improved Reporting

- 4.1.1 From 1 April 2010 all customer feedback recorded on the CRM computer system is entered in a consistent format to support more effective analysis in 2010/11. A new range of reporting tools has been provided for departmental coordinators to both scrutinise trends in feedback and to assist progress chasing throughout the reporting period. The intention is to improve response times in areas identified as "previously performing poorly" in relation to the corporate standards.

- 4.1.2 New analysis will include the identification of complaints resulting in changes to process or procedure i.e. the focus of '*putting things right and learning from it*'. Since 1 April 2010 there have already been 47 complaints identified by coordinators as instigating some positive action to minimise similar expressions of dissatisfaction in the future.
- 4.1.3 Changes have included ensuring Streetscene email responses are free of jargon/abbreviations; Council building alterations in Birkenhead to improve disabled access; review of working hours for Council contractors to minimise disturbance to local residents; improvements in access for the refuse collection service; improved changing facilities at a leisure centre and additional fitness classes provided for customers.
- 4.1.4 The drive to raise the profile of customer feedback as a positive tool for change and a catalyst for service improvement will continue into 2010/11, supported by regular liaison between customer feedback coordinators and escalation of issues to the cross department Customer Service Group (CSG).

4.2. Customer Satisfaction Surveys

- 4.2.1 From Quarter 1 in 2010/11 a proportion of complainants will be asked for their opinions on the complaint process itself, focusing on timeliness; quality of response and confidence in an impartial review undertaken of the issue. Results will be reported from Quarter 2 onwards and reviewed in the annual report for 2010/11.

4.3 Customer Care Standards Review

- 4.3.1 Launched in 2008, these standards set out the Council commitment to delivering high quality services across all departments in a consistent and measurable manner, clearly defined for both staff and customers.
- 4.3.2 In 2010 an independent review will be taking place using dedicated resources to benchmark customer service across alternate departments to ensure the standards are being consistently applied in all service areas. Supplementing this is a rolling exercise of mystery shopping across departments which focuses on the customer care standards.

4.4 Customer Focus

- 4.4.1 This area of work underpins the Customer Access Strategy (CAS) and incorporates customer feedback; customer care standards and liaison with the LGO. In addition there are the following on-going projects which aim to promote customer access to Council services. Improved customer consultation is being achieved through focus groups (customer service focus group held January 2010), questionnaires, exit surveys and feedback analysis.

4.5 Freedom of Information (FOI) Requests

- 4.5.1 The intention is to incorporate FOI requests into the CRM customer feedback module during 2010/11, recognising the potential for greater insight into what customers are contacting the Council for and identifying what measures can be taken to make such information more accessible.

4.6. Performance Objectives 2010/11

- 4.6.1 Key aims will be to recognise organisational changes made in response to customer feedback; improve consistency between departments; address anomalies in reporting LGO contacts; incorporate FOI requests into customer feedback and objectively measure the customer experience of contacting the Council. All of the above supports the aspiration for greater customer insight to shape future delivery of services and create an Excellent Council.

5. FINANCIAL IMPLICATIONS

- 5.1. There are none arising directly from this report.

6. STAFFING IMPLICATIONS

- 6.1. There are none arising out of this report.

7. EQUAL OPPORTUNITY IMPLICATIONS

- 7.1 There are none arising directly from this report.

8. HUMAN RIGHTS IMPLICATIONS

- 8.1. There are none arising directly from this report.

9. LOCAL AGENDA 21 IMPLICATIONS

- 9.1. There are none arising directly from this report.

10. COMMUNITY SAFETY IMPLICATIONS

- 10.1. There are none arising directly from this report.

11. PLANNING IMPLICATIONS

- 11.1 There are none arising directly from this report.

12. LOCAL MEMBER SUPPORT IMPLICATIONS

- 12.1. There are no implications for specific Members or wards arising out of this report.

13. BACKGROUND PAPERS

13.1. No background papers were used in the preparation of this report.

14. RECOMMENDATION

14.1. That the report be noted.

IAN COLEMAN
DIRECTOR OF FINANCE

FNCE/96/10

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WIRRAL COUNCIL

STANDARDS COMMITTEE

21 JUNE 2010

REPORT OF THE DIRECTOR OF TECHNICAL SERVICES

FINDINGS AND RECOMMENDATIONS OF THE LOCAL GOVERNMENT OMBUDSMAN FOLLOWING INVESTIGATION OF A COMPLAINT REGARDING MALADMINISTRATION OF A PLANNING APPLICATION

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to inform Members of the outcome and recommendations from an investigation by the Local Government Ombudsman of a complaint arising from the maladministration, due to an error made on a planning application, and a consequent claim for compensation.
- 1.2 As the Ombudsman's award exceeds the amount that can be authorised via the Chief Officers delegated powers, this report seeks the approval of Members to pay compensation to the Complainants in the sum of £5723.00 in accordance with the Local Government Ombudsman recommendations.

2.0 BACKGROUND

- 2.1 There is a detailed planning history with regard to development on the site in question dating back to 2001. Subsequent applications have been made for a similar kind of development in 2006 and 2007, with this latter application being re-determined by the Planning Committee in 2009, following a Judicial Review.
- 2.2 The error occurred because in 2001 a planning application was submitted to the Council showing a building of similar size and in a similar location to that submitted in 2007 and approved in 2008. The building as originally applied for in 2001 was said to be 20m back from the road frontage. However, prior to that application being approved, an amended siting plan was received by the Council, which showed the building 40m back from the road frontage. It is accepted by the Council, that it was in fact, the latter amended plan which was the subject of the approval and not the original application plan. Furthermore, when the permission was renewed in 2006, it was the location 40m back that was again approved. When considering the planning application in 2007, it appears that the officer inadvertently considered the previously superseded plan from 2001 when comparing dimensions with the new application and this led to his report containing a factual inaccuracy and that this immaterial consideration was referred to when considering and determining the planning application.

- 2.3 The Council accepted that the factual error contained within the case officers report, provided the grounds for a neighbour to seek Judicial Review of the decision and did not contest the quashing of the 2007 planning approval.
- 2.4 On 16 June 2008 the Council advised the complainants that its decision to grant them planning permission was now subject to Judicial Review because its decision to approve the application was based on the measurements taken from plans attached to a previous application. The Council confirmed that it could not anticipate the outcome and suggested that the complainants would be wise to suspend their building work until the position became clearer.
- 2.5 In the event the complainants ceased building until they had an approved set of plans in mid 2009. In the intervening period they lived in a caravan and now claim compensation from the Council for the distress and financial loss they suffered as a result of the Council's error.

3.0 LEGAL VIEW OF THE LOCAL GOVERNMENT OMBUDSMAN

- 3.1 The complainants say the Council was negligent in its handling of their planning application. The Ombudsman should not, as a general rule, investigate complaints where the complainants have or have had a right of action through the courts. The Ombudsman has had to consider whether the complainants have or have had such a right. The Ombudsman doubts that the complainants could do so with any hope of success.
- 3.2 Negligence is governed by the law of tort. In order to succeed in an action in tort, claimants must show a duty of care was owed to them, that the duty was breached and that the loss they suffered as a result could reasonably have been foreseen.
- 3.3 Public authorities have no general immunity for claims in negligence and the courts recognise that it would be wrong to confer such immunity. However the courts also recognise that public funds come from the taxpayer and are not unlimited. The current legal position is that the courts are reluctant to find a duty of care where the 'damage' suffered is economic loss or psychological trauma. The courts have said, however, that they may find a duty owed if those responsible for the action complained of have acted not just negligently but with actual malice or complete indifference to the consequences of their actions. The Ombudsman finds that there is no suggestion of this in this case.
- 3.4 The Local Government Act 2000 empowers Councils to pay compensation where, as a result of maladministration, a member of the public may have been adversely affected by their actions.

4.0 FINAL DECISION OF THE LOCAL GOVERNMENT OMBUDSMAN

- 4.1 The maladministration here was not great, although as the Council readily acknowledges, the consequent injustice to the complainants was significant. There is no evidence to suggest, however, that the Council's initial error was compounded by any subsequent action it took or failed to take.
- 4.2 The complainants had to live in a caravan for about a year longer than they should have done. Although the Council was responsible for the mistake which led to this, it was not responsible for the extent of the delay, much of which was due to the High Court. However, because the High Court action was a direct result of the Council's error, it is reasonable for the Council to accept some responsibility for this time too. Some of the delay was, clearly caused by the complainants themselves and the Ombudsman has taken this into account.
- 4.3 First there was a delay of around six weeks when proceedings were arrested because of the complainant's solicitor's intervention and a further delay in obtaining the fresh planning application because the complainants had not built according to the previously approved plans and also because they had started to build a summer house and garage without planning permission. The Ombudsman finds that the Council cannot be held responsible for either of those delays.
- 4.4 The Council was not wrong to tell the complainants that legal proceedings against it were unlikely to be successful. However, it acknowledges that compensation can be paid where there has been maladministration. The Ombudsman has concluded that the payment of compensation would be appropriate in this case.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The Local Government Ombudsman has stated that she cannot be absolutely precise, but from the information available to her, she is of the opinion that it is fair to establish that the Council was responsible for 38 weeks delay. The complainants have not provided detailed receipts for items such as storage, water bottles and laundry bills that appear in their claim and the Ombudsman doubts that they would have them. Rather than suggest that the Council reimburse them for actual out of pocket costs, it is the Ombudsman's suggestion that the Council pay the complainants £10 for every additional days stay in the caravan for which the Council was responsible. The Ombudsman calculates that amount to be **£2660**. It is the further view of the Ombudsman that no liability for the purchase of the caravan should attach to the Council, whatever the cost, since it was bought in 2007 presumably to live in during the construction of the bungalow.

- 5.2 The Ombudsman does not generally recommend that Councils reimburse legal costs, but in the circumstances here, where the complainants felt that they had no one else to turn to, the Ombudsman considers it to be not unreasonable to ask the Council to refund their legal costs. The total receipted costs were **£1663.02**
- 5.3 The complainants found it necessary to secure the partly built bungalow and protect it from the weather after work was suspended in June 2008, incurring an additional cost of **£900** in doing so. The Ombudsman recommends that the Council reimburse this cost.
- 5.4 The Ombudsman states that there can be no doubt whatsoever that the whole experience was *“nerve racking and extremely distressing”* for the complainants, but that there is no evidence to suggest that the Council had acted dishonestly in any way.
- 5.5 The problem, in the opinion of the Ombudsman, is that once the complainants neighbour was given leave to apply for Judicial Review, no one locally had any control over anything. Moreover, no one could say with certainty how long the legal process would take.
- 5.6 It is the recommendation of the Ombudsman that the Council pay the complainants **£500** in recognition of the time, trouble and distress which this unfortunate experience caused them.
- 5.7 In total, the Local Government Ombudsman recommends that the Council pay the complainants £2660 plus £500 for the distress and inconvenience they suffered, plus their out of pocket expenses of £1663 and £900. A total amount of **£5723.00**

6.0 STAFFING IMPLICATIONS

- 6.1 There are no staffing implications arising as a result of this report.

7.0 EQUAL OPPORTUNITIES/EQUALITY IMPACT ASSESSMENT

- 7.1 There are no equal opportunities implications arising from this report.

8.0 HEALTH IMPLICATIONS/IMPACT ASSESSMENT

- 8.1 There are no health implications/impact assessments required as a result of this report.

9.0 COMMUNITY SAFETY and LOCAL AGENDA 21 IMPLICATIONS

- 9.1 There are no Community Safety or Local Agenda 21 implications as a result of this report.

10.0 PLANNING IMPLICATIONS

- 10.1 Processes and procedures within the Planning section have been improved to introduce a clear delineation between superseded, amended and original plans. The introduction of these improved measures will significantly reduce the probability of a similar error occurring in the future.

11.0 ANTI POVERTY and SOCIAL INCLUSION IMPLICATIONS

- 11.1 There are no anti poverty and social inclusion implications as a result of this report

12.0 HUMAN RIGHTS IMPLICATIONS

- 12.1 There are no human rights implications as a result of this report

13.0 LOCAL MEMBER SUPPORT IMPLICATIONS

- 13.1 The complainant's property is in the Leasowe and Moreton East ward.

14.0 BACKGROUND PAPERS

- 14.1 No background papers have been used in the preparation of this report

15.0 RECOMMENDATION

- 15.1 Members are asked to accept the recommendation of the Local Government Ombudsman and authorise the payment of compensation to the complainants in the sum of £5723.00

DAVID GREEN, DIRECTOR
TECHNICAL SERVICES

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