

## WAVERLEY BOROUGH COUNCIL

### CORPORATE OVERVIEW & SCRUTINY COMMITTEE - 24 SEPTEMBER 2012

#### EXECUTIVE – 2 OCTOBER 2012

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**Title:**

**OMBUDSMAN INVESTIGATIONS  
INTO COMPLAINTS MADE ABOUT WAVERLEY'S SERVICES IN 2011/12**

**[Portfolio Holder: Cllr Robert Knowles]  
[Wards Affected: All]**

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**Summary and purpose:**

This report addresses the issues raised in the Ombudsman's annual letter to Waverley for the year 2011/12. It includes information about the types of complaint made to the Ombudsman about Waverley's services over the past year and the eventual outcomes.

Comments from the Corporate Overview and Scrutiny Committee will be circulated at the meeting.

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**How this report relates to the Council's Corporate Priorities:**

Investigating Ombudsman complaints can help to identify areas in which the Council could provide better value for money in its services, and on occasion can result in action to improve processes and systems that will improve the lives of residents. It also increases confidence in the community that Waverley follows high standards of administration and governance and contributes to understanding residents' needs.

**Equality and Diversity Implications:**

Complaints to the Ombudsman about Waverley's services can provide the Council with an opportunity to review its arrangements for delivering services to all sections of the community. Investigating complaints can highlight areas where improvements or changes need to be made to ensure that no one is disadvantaged in accessing the Council's services.

**Climate Change Implications:**

None.

**Resource/Value for Money Implications:**

See paragraph on the Corporate Priorities above.

**Legal Implications:**

None

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## **Background**

1. A summary of the remit, work processes and powers of the Ombudsman is attached as Annexe 1.
2. The Local Government Ombudsman's annual review of complaints about Waverley's services received in 2011/12 is attached at Annexe 2. The statistical annexe is not attached because all the information it contains is included in this report. The following paragraphs provide Members with an overview of the complaints referred to Waverley by the Ombudsman over the past year.

### **Premature complaints and Ombudsman's initial enquiries received in 2011/12**

3. If someone complains to the LGO Advice Team without having taken up the matter with a council, the Team will refer it back to the council as a "premature complaint" to see if the council can resolve the matter.
4. Premature complaints referred to Waverley are investigated by the Chief Executive under Level 3 of the Council's complaints procedure. However, since these complaints are often quite complex, the timescale for dealing with premature complaints is 28 days in line with the target time set by the Ombudsman for responding to initial enquiries.
5. Six premature complaints about Waverley were received in 2011/12. Another five premature complaints were forwarded to the Ombudsman's investigative team after these had been referred back and considered by the Council. This means that in 2011/12 a total of 11 premature complaints were received about Waverley's services.
6. The LGO Advice Team provided advice in another seven cases where the complainant did not pursue their complaint, and forwarded a further 15 complaints to the investigative team following confirmation from the complainant that they had come to the end of the Council's complaints procedure. The table below gives more information about complaints received about Waverley's services in 2011/12.

<b>Enquiries and complaints received by the LGO Advice Team in 2011/12</b>	<b>Housing</b>	<b>Benefits and tax</b>	<b>Planning</b>	<b>Corporate and other services</b>	<b>Env services</b>	<b>Other</b>	<b>Total</b>
Premature complaints	2	1	0	1	1	1	6
Resubmitted premature complaints forwarded to investigative team	1	0	2	0	2	0	5
New complaints forwarded to investigative team	2	0	9	1	2	1	15
Advice given	4	0	1	0	1	1	7
<b>Total</b>	<b>9</b>	<b>1</b>	<b>12</b>	<b>2</b>	<b>6</b>	<b>3</b>	<b>33</b>

## **Waverley's approach in dealing with Ombudsman's enquiries**

7. All Ombudsman complaints are investigated by the Council's Customer Relations Officer who then prepares a response for consideration by the Chief Executive. Every effort is made to provide as comprehensive a response as possible to these initial enquiries. This gives the Ombudsman confidence in the Council's management of complaints, and in most cases avoids the need for further correspondence. Working relations with the Ombudsman's office are good.
8. Waverley is committed to learning from complaints, and once an Ombudsman's investigation has been completed, a note on lessons learned is given to the appropriate Head(s) of Service, and if necessary administrative systems are reviewed and staff are briefed on how to avoid similar complaints arising in the future. Improving the learning process continues to be one of the Democratic and Legal Service's priorities.

## **Timescales in dealing with the Ombudsman's enquiries**

9. The table below gives Waverley's response times in 2011/12 and in the previous four years

Year	No of first enquiries	Average number of days to respond
2011/12	8	25.5
2010/11	5	22.0
2009/10	4	23.0
2008/09	10	20.1
2007/08	8	32.4

## **Outcome of complaints made about Waverley's services in 2011/12**

10. With effect from 2011/12 the Ombudsman has changed the classification of complaint outcomes so that the descriptions of the Ombudsman's decisions follow more closely the wording in the Ombudsman's governing legislation (part 3 of the Local Government Act 1974) and add greater precision. As a result of these changes, the term Local Settlement is no longer being used. This term has replaced by the following categories:

"injustice remedied before investigation completed" ie where a local authority has suggested a remedy in the course of responding to the Ombudsman; or

"injustice remedied as a result of investigation" ie where the remedy is proposed by the Ombudsman as a result of their investigation.

As previously, where an Ombudsman decides there has been maladministration on the part of a local authority, they will issue a formal report.

11. There have been no findings of maladministration in respect of complaints made about Waverley's services in the past fifteen years.
12. Detailed information about the six complaints which have been closed following the injustice being remedied before the Ombudsman's investigation has been

completed or as a result of the investigation, is set out in Annexe 3. Four of these complaints resulted in financial compensation being paid to the complainants.

### **LGO developments –reform of Housing complaints following establishment of single Housing Ombudsman**

13. The Localism Act has changed the jurisdiction of the Housing Ombudsman so that with effect from 1 April 2013 local housing authorities will become 'registered providers'. As a result complaints against local authorities in their role as social landlords (as well as in respect of their ownership and management of leasehold housing) will be considered by the Housing Ombudsman, and will no longer fall within the remit of the Local Government Ombudsman.
14. Under these new arrangements, tenants of registered providers will be able to request that their complaints be considered by a 'designated person' once they have completed the internal procedure of their landlord. Such a person can be an MP, a local Councillor or a recognised Tenant Panel. The designated person may help resolve the complaint directly, may refer the complaint to the Housing Ombudsman or may decline to do either. In the latter case the complainant may approach the Ombudsman direct to ask that he considers the complaint, and the complainant may also approach the Ombudsman directly if more than eight weeks have elapsed since the completion of the internal procedure of the landlord, without the need to involve a designated person first.
15. Further information about these new arrangements will be reported to Members as soon as this becomes available. It may be appropriate for the new Corporate Overview and Scrutiny Housing Improvement Sub-committee to take a role in developing the new arrangements.

### **Recommendation**

It is recommended that the Executive receives any observations from the Corporate Overview and Scrutiny Committee and agrees any appropriate actions.

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### **Background Papers (CEX)**

Local Government Ombudsman's annual letter to Waverley for 2011/12 dated 22 June 2012.

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## **Background note on the remit, work processes and powers of the Local Government Ombudsman**

### **1. Remit of the Local Government Ombudsmen**

The Local Government Ombudsmen provide independent, impartial and prompt investigation and resolution of complaints against injustice caused by maladministration by district, borough, unitary, metropolitan or county councils (and other public authorities) and to promote fair and effective local government.

An Ombudsman may investigate complaints by members of the public who consider that they have been caused injustice by maladministration in connection with action taken by, or on behalf of, authorities within the Ombudsman's jurisdiction in the exercise of their administrative functions.

Normally complaints to a Local Government Ombudsman must be made within 12 months of when the problem first arose, although the Ombudsman does have discretion to conduct an investigation into a complaint that relates to a matter that is more than 12 months old if he or she considers it reasonable to do so.

The Ombudsman may not investigate a complaint where there is a right of appeal to a tribunal or a Minister or where the complainant has a remedy by way of proceedings in a court of law. However again the Ombudsman has discretion to investigate if he or she is satisfied that in the particular circumstances it is not reasonable to expect the aggrieved person to appeal or to go to court. An Ombudsman also cannot investigate a complaint about any action which affects all or most of the inhabitants of the local authority's area.

Despite these restrictions, most of the administrative actions of local authorities are within the Ombudsmen's jurisdiction.

### **2. Approach taken by the Ombudsman in investigating complaints**

The LGO Advice Team is now the single point of contact for all enquiries and complaints made by members of the public. Once a complaint has been forwarded to the Investigative Team, it is allocated to an Investigator who then decides what information is needed in order to reach a decision on whether the complainant has suffered a personal injustice as a result of maladministration by the local authority concerned.

There is no statutory definition of maladministration and little judicial authority on the subject. However, the main test of whether there has been maladministration is whether an authority has acted reasonably, and in accordance with the law, in the implementation of its own the generally accepted standards in local administration. The Ombudsman is concerned with the way in which a decision has been reached and not with the merits of the decision.

Similarly there is no statutory definition of injustice, and it is left to the Ombudsman to say what this means in any particular case.

Sometimes a complainant will have provided sufficient information to allow the Investigator to conclude with reasonable confidence either that there has been no fault or that there has been no injustice or both. If this is the case the Investigator will write to the complainant to explain why he or she has reached that decision and the complaint is then discontinued.

However in many cases it will not be clear exactly what the complainant is objecting to or what injustice the complainant believes he or she has suffered. Therefore having obtained further clarification from the complainant, the Investigator will then write to the authority, defining the complaint and asking for comments. They will also usually specify what information they need e.g. copies of policies, minutes of meetings, correspondence with the complainant.

Having received a full response from the authority, the Investigator will usually send a copy of the response to the complainant with a request for comments. Once these comments have been received the Investigator considers whether further investigations are needed. The scope of an investigation will vary from case to case. Sometimes it will be possible to reach a view and determine the complaint following an exchange of correspondence with the authority and the complainant. However, sometimes an Investigator will decide that more detailed work is required, for example an inspection of the relevant files, interviewing officers and members or obtaining information from other sources.

### **3. Outcome of complaints**

Decisions taken by a member of the Ombudsman's investigation team are classified as follows:

**Not investigated** - this is where the LGO has decided not to investigate for one of the following reasons –

- No power to investigate
- No reason to use Ombudsman's exceptional power to investigate
- Investigation not justified

**Investigated** – where the LGO has discontinued an investigation for one of the following reasons:

- Not enough evidence of fault
- Injustice remedied during or as a result of enquiries
- No or minor injustice

**Report issued** - where the LGO has found fault causing serious injustice.

### Details of complaints where injustice remedied during or after completion of investigations in 2011/12

#### **1. Complaint A**

##### (i) Details of complaint

The Council failed to take action to deal with problems the complainant had been experiencing with her neighbours regarding noise nuisance, antisocial behavior, unpleasant smells from keeping dogs and poor state of their garden. The complainant considered that the Council should transfer her to another property and pay her compensation.

##### (ii) Outcome

The LGO concluded that the Council was not at fault in failing to take further action in respect of the alleged ASB and noise issues in the absence of clear supporting evidence. However, the Council could have done more to deal with the dogs and the LGO accepted Council's offer to pay the complainant £400 compensation. (NB Compensation subsequently refused by the complainant.)

##### (iii) Lessons learned

Estates management officer should have taken action at a much earlier stage to deal with the issue of dogs which were being kept without Council's permission.

#### **2. Complaints B and C (two complaints investigated jointly)**

##### (i) Details of complaint

The Council:

- (a) Failed to monitor and take effective planning enforcement action against activities taking place at an aerodrome near the complainants' house which they believed did not benefit from planning permission or permitted development rights.
- (b) Failed to monitor and take effective enforcement action against noise nuisance caused by those activities.

##### (ii) Outcome

The Council agreed to pay the complainants £175 compensation in recognition of:

- time taken to progress investigations of unauthorised weekend flying activity and tannoy use since May 2012;
- failure to update the complainants about the progress or outcome of Council's consideration of reports of alleged noise nuisance and planning breaches; and
- their time and trouble in pursuing their complaint.

##### (iii) Lessons learned/action taken

Accepted that the Council needed to improve the way it deals with complaints about this complex site regarding noise and alleged planning breaches. The following were actions taken:

- new page on Council's website dedicated to planning and noise issues relating to the site;
- new dual-purpose online form placed on the Council's website for residents to use when reporting complaints;

- 2012 PD list up-dated and placed on website;
- residents kept up-dated about progress in preparing a noise management plan for the site.

### **3. Complaint D**

#### (i) Details of complaint

The Council delayed unreasonably in arranging a Disabled Facilities Grant (or other funding) and commencing works for an extension to the complainants' home to provide downstairs living space for the special needs of their son.

#### (ii) Outcome

Council agreed to pay the complainants a total of £5000 –comprising £3,000 in recognition of the delay in the adaptation works which had caused distress and inconvenience to them and their son, and for their time and trouble in dealing with the matter, and £2,000 in recognition of the delay in installing a ramp to provide wheelchair access.

#### (iii) Lessons learned

Officers need to keep to the Council's policy for dealing with tenants' applications for disabled adaptations. In this case problems arose as a result of officers trying to find alternative sources of funding. Although officers had acted with the best of intentions, their actions led to an unacceptable delay in progressing the application.

### **4. Complaint E**

#### (i) Details of complaint

The Council:

- (a) failed to adequately address issues raised by the complainant relating to disruption caused when its contractors were working in the neighbouring flat;
- (b) had not taken sufficient action to trim the hedge at the exit to her driveway; had not addressed what the complainant considered to be a category 1 hazard caused by a window opening onto a footpath used by the occupants of the neighbouring flat; and
- (c) had not given sufficient consideration to a proposal the complainant had made regarding victims of domestic abuse.

#### (ii) Outcome of complaint

The LGO concluded that there were no grounds on which to find against the Council in respect of complaints regarding the hedge, window or domestic abuse proposal. However, there was evidence to find fault with the Council regarding the renovation works in the upstairs flat and further remedial action warranted to address outstanding injustice caused to the complainant as a result. Agreed that Council should pay the complainant £300 as compensation for damage caused to her kitchen during the works.

#### (iii) Lessons learned

None

### **5. Complaint F**

#### (i) Details of complaint

The Council did not respond promptly to the complainant's concerns about noise from the metal exit plates at a neighbouring Council-owned car park.

(ii) Outcome of complaint

An apology was offered to the complainant for delay in responding to his emails regarding the noise caused by the exit plates. The Council also agreed to remove the exit plates as part of the renovation project. However, the project was subsequently delayed and therefore stand-alone works were arranged to immobilise plates.

(iii) Lessons learned

Need to respond promptly to complaints and within target time of 10 working days.