Joint Audit and Governance Committee

Report of Head of Corporate Services

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TO: Joint Audit and Governance Committee

DATE: 25 March 2019

Review of complaints received during 2017/18

Recommendation

That the Committee notes the report.

Purpose of Report

1. The purpose of this report is to provide the committee with information about formal complaints received during 2017/18. It includes our performance against targets for responding to formal complaints, and compares performance against previous years.

2. The official annual complaints reports from the Local Government and Social Care Ombudsman are included at Appendix 4 (Vale), and Appendix 5 (South).

3. Complaints statistics are reported regularly in Board Reports which are available on the councils' website.

Strategic Objectives

4. By analysing complaints, we can begin to identify any trends and where appropriate introduce service improvements central to our ambitions in providing a good customer service. The way in which we respond to complaints is fundamental to creating positive relations with our customers. The councils are committed to providing a high level of service, and putting people at the centre of everything we do.

Background

The Complaints Procedure

5. The councils' current complaint procedure is a two stage process:

   Stage one - The head of service or service manager will respond (or arrange for a member of their team to respond on their behalf) within 20 calendar days of receipt of the complaint. All complaints are logged on the complaints database, and tracked corporately.

   Stage two – Where a customer is not happy with the response at stage one, they can elect to have it considered as a stage two complaint, and an independent head of service or the chief executive will normally respond within 20 calendar days of receipt of the request to escalate the complaint to stage two.

6. Relevant ward member(s) are advised when we receive and respond to complaints at both stages.

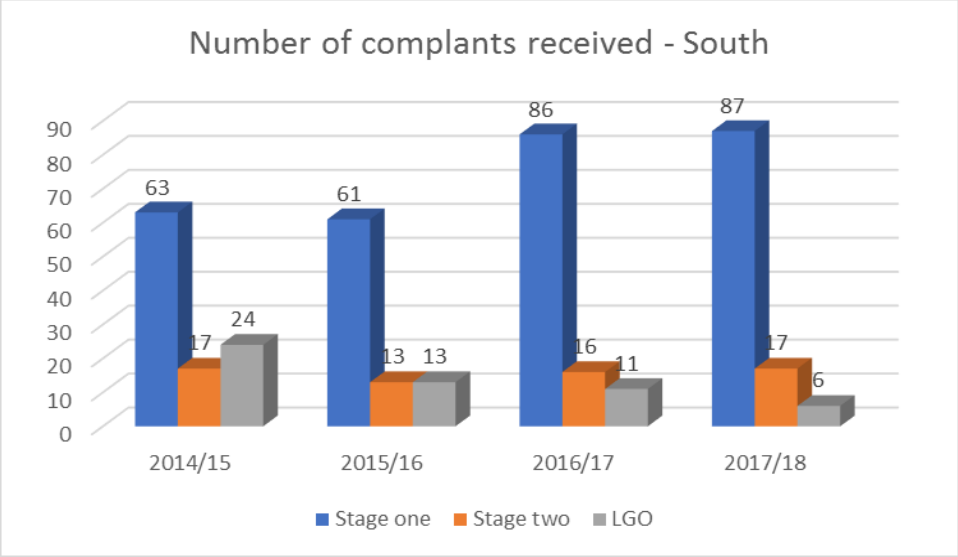
7. Automatic reminders are generated to ensure that, wherever possible, we respond within the target deadlines.

8. If, having followed our complaints procedure, the complainant remains dissatisfied, they have the right to ask the Local Government and Social Care Ombudsman (LGO) to investigate their complaint.

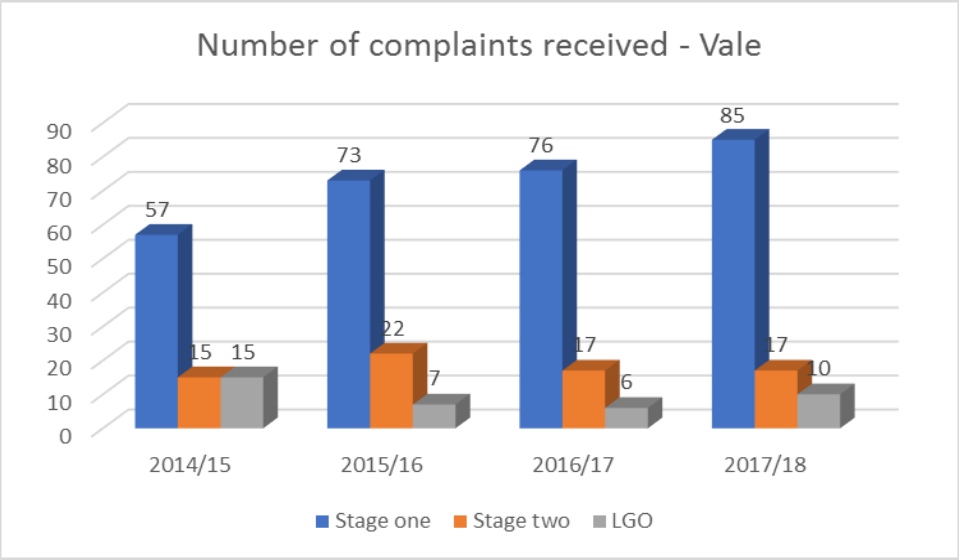
9. During the period leading up to and during the restructure heads of service in particular were under significant resource pressures in responding to stage One complaints within the 20 calendar day target; to address this, a revised deadline has been offered to complainants, of 30 calendar days. This is a temporary measure and is kept under ongoing review.

Complaints by Council

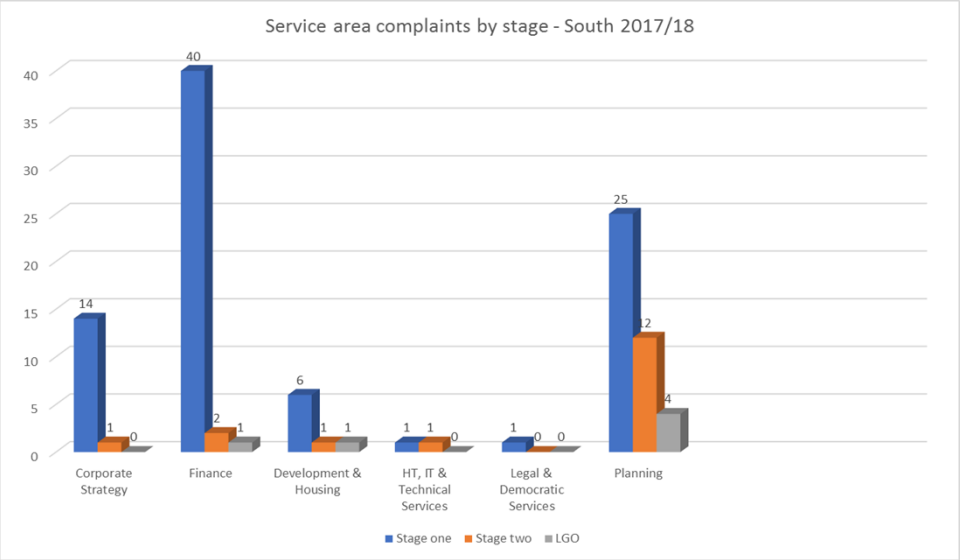
10. For South, the number of stage one and stage two complaints remained similar to 2016/17, and there was a reduction in the number of LGO complaints, as shown in the table below.

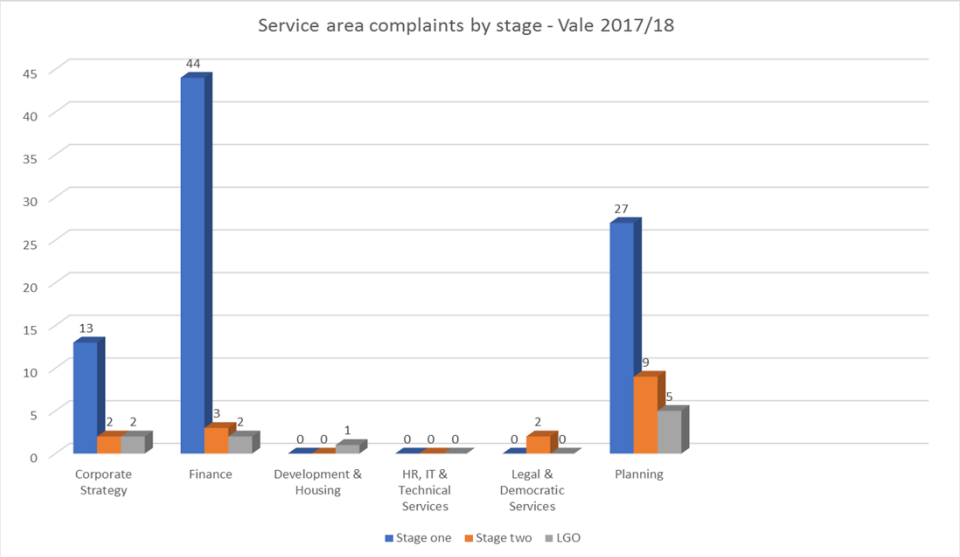


11. For Vale, the number of stage one and LGO complaints received in 2017/18 have risen slightly since the previous year, while the number of stage two complaints has remained the same.



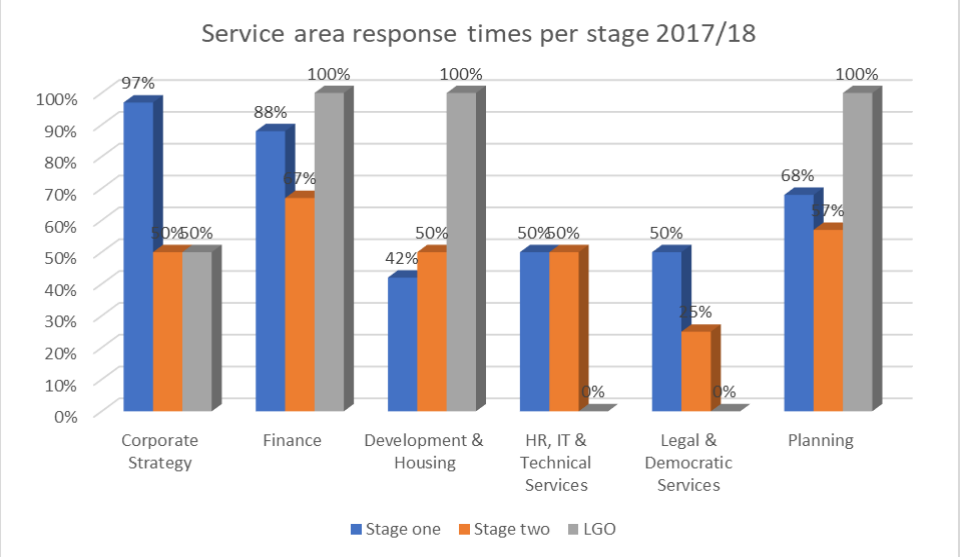
12. The following charts show the number of complaints received in 2017/18 for each service area and at each stage of the complaints procedure, for each council. As in previous years the highest number of complaints received were for planning and finance; numbers have remained reasonably stable for each team. Please note that the groupings represent teams before the recent restructure; work is underway to restructure the database to reflect the new team structures.





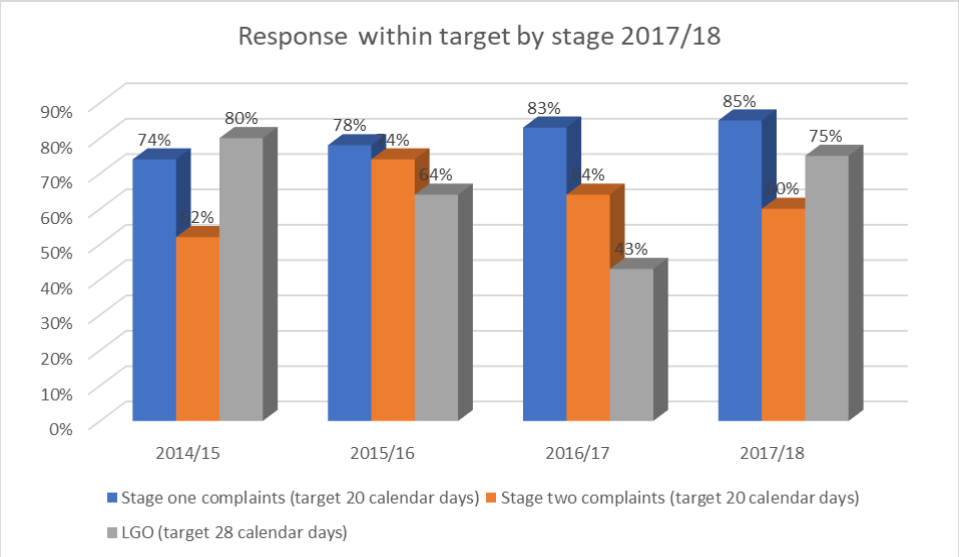
Performance against target response times

13. The councils' performance against the target response times at each stage are shown in the following charts. Across both councils, an average of 66 per cent of complaints at stage one, and 50 per cent of complaints at stage two, were responded to within the target time of 20 calendar days.



Comparison of performance year on year

14. The councils' combined performance against target in responding to complaints over the past four years 2014/15 to 2017/18 is shown below.



Local Government Ombudsman (LGO) investigations

15. During 2017/18 the LGO received six complaints against South compared with 11 in 2016/17, and seven against Vale compared with six in 2016/17.

16. The Ombudsman upheld three of the complaints made against South and five of those against Vale. Copies of the Ombudsman's decision on those complaints upheld are attached in appendix one and two.

17. Note that there is a discrepancy between the number of complaints recorded by the Ombudsman and those recorded by South and Vale as going to the Ombudsman. This is generally because the LGO has received complaints which cannot be investigated until the complainant has been through the council's internal complaints procedure, and the complainant chooses not to do so; or a complaint is outside the jurisdiction of the Ombudsman, including where there is an alternative right of appeal.

Financial Implications

18. There are no financial implications arising directly from this report.

Legal Implications

19. There are no legal implications arising directly from this report.

Risks

20. There are no risks arising directly from this report.

Other implications

21. There are no human resources, sustainability, equality or diversity implications arising directly from this report.

Conclusion

22. This report sets out information about complaints received during 2017/18. The number of complaints received by the councils' in 2017/18 have risen slightly on the previous year, with finance and planning continuing to receive the highest numbers. We responded to 66

per cent of complaints at stage one within 20 days, and 50 per cent at stage two. The LGO received six complaints about South and seven against Vale, of which three and five were upheld respectively.

Background papers

None

Appendix One – Vale LGO decisions upheld – 1 April 2017 to 31 March 2018

1. LGO decision – upheld: maladministration and injustice
Remedy – compensation paid: £1,700
Decision date – 5 October 2017
LGO main subject area – Housing and Development

Complaint

Mr X was unhappy that he was not allowed to go on the housing register and was unhappy with the advice he was given.

Mr X is complaining that the Council:

1. Operated a 'sit tight' policy so did not assist him when he was facing eviction from his property between 2011-2014.

2. Did not inform him that he would be excluded from the housing register if he had capital of £60,000 when he applied for the housing register in 2005 and did not inform him that housing associations which he could be nominated to may have lower financial thresholds for exclusion than the Council.

3. Would not provide a recording of his telephone call of 3 August 2016 despite the Council saying it records all telephone calls.

Ombudsman's findings

The Council is at fault as it did not take sufficient action when it became aware Mr X had savings in excess of £60,000 in August 2015. It did not suspend his housing register application to make enquiries into his position despite being aware of the level of his savings. The Council did not take any action when Mr X continued to bid and it encouraged him to continue to do so in its email of 5 April 2016. The Council's record of its telephone call of 26 August 2015 shows Mr X was aware that his savings were an issue that could affect his eligibility. So he could have made further enquiries of the Council before bidding. But the Council's failure to act on the information it had about Mr X's savings meant it gave mixed messages and his expectations that he was eligible for a property were raised. The Council should remedy this injustice.

Agreed action

The Council will:
• make a payment of £1500 to Mr X to cover the costs of his eviction as it is unlikely he would have incurred these costs if he had been aware he was not eligible for properties provided by the Council's registered social housing provider partners.

• make a payment of £200 to acknowledge Mr X's expectations about being eligible for a property were raised due the Council's failure to review his housing application when it became aware he was not eligible for the housing register due to his savings. The Council should make these payments within one month of my final decision.

• amend its housing allocations policy within three months of my final decision to make housing register applicants aware that its partner registered social housing providers may apply different financial eligibility criteria.

The Council has also undertaken to introduce staff training and new procedures to ensure potentially ineligible applicants are suspended from the housing register. This suspension

should be while the Council makes enquiries into the applicant's eligibility.

Final decision

There is no evidence of fault in the Council's decision to require Mr X to provide a notice to quit from his employer requiring him to leave his tied accommodation before it would increase his priority on the housing register. The Council is at fault in failing to notify Mr X of its financial threshold for eligibility on the housing register and that of its housing association partners. As a result Mr X was unaware he was not eligible to bid for properties provided by the housing associations. The Council has agreed to remedy the injustice to Mr X as recommended so I have completed my investigation.

2. LGO decision – upheld: maladministration and injustice
Remedy – the council emailed the correct documentation to the complainant
Decision date – 31 May 2017
LGO main subject area – Finance

Complaint

Mr B complains the Council did not tell him a deduction was to be made from his salary for a housing benefit overpayment which he had challenged. He further complains the Council would not stop the deduction even though he offered to make payments direct and failed to provide the information he needed to appeal against the recovery of the overpayment. He complains about the conduct of staff dealing with his claim. He said that because of the deductions he could not meet his basic living expenses and has had to give up work.

Ombudsman's findings

Mr B complained that he was unaware the Council had requested deductions be made from his salary. The Council has not been able to provide a copy of the notice as it is manually produced and a copy was not saved to the electronic record. The Council has commented that most of the correspondence it sends to Mr B's last known address is returned although the notice was not. It is therefore likely that Mr B did not receive the notice but this is not because of some fault by the Council. Mr B has not provided the Council with a postal address and in these circumstances it was fault for the Council to send the notices and other correspondence to his last known address.

Mr B has said that he would receive correspondence to this address because he has a forwarding arrangement but the envelopes the Council use are marked do not redirect. The Council comments that this is an anti-fraud measure as recommended by the Department of Work and Pensions. This is not fault.

Mr B comments that he understood that the matter was being investigated and was therefore on hold. He was not told that recovery action would be proceeding. In January 2016 Mr B provided more information which the Council acted on and issued a revised entitlement letter. This was telling Mr B that he owed over £14,000 and also told him how he could challenge the decision. I consider this was making clear that the Council considered him liable. I have seen no evidence to show that Mr B took any action at this point and I consider it would be reasonable for him to assume that the Council was going to take action to recover the money owed.

I have seen email correspondence between Mr B and the agents acting for the Council. Mr B offered to pay £50 and asked the Council to stop the deductions from his salary. The Council said that it would stop the deductions if Mr B agreed to pay £100 a month and provided his current address. Mr B comments that the Council expected him to pay the £100 on top of the deduction that had already been made and he was not able to provide an address as he was living in a number of temporary places. The Council did initially ask for an immediate payment of £100 but in response to Mr B's reply the Council agreed to accept a payment once the deductions from his salary were stopped. The Council did say that he must provide an address where he was living as it needed to send some correspondence in writing. This was not fault. I understand Mr B's living arrangements were not permanent but he still needed to provide the Council with a postal address. In not doing so he ran the risk of not receiving important communications.

In responding to Mr B's complaint the Council said that the only way it could consider a payment arrangement would be if Mr B completed a means enquiry form. This would mean it could assess whether the deductions were causing him hardship. The Council posted a form to his last known address. Mr B asked for it to be emailed but the Council did not do so. I consider the Council should have emailed the form to Mr B. But Mr B did not chase the

Council for a form nor did he provide evidence of his income and expenditure in some other way.

Mr B says the Council did not tell him how he could appeal against the overpayments. The standard notifications of the overpayment the Council sent to Mr B in July 2015 and in March 2016 after the reassessment contained details of how to appeal.

Mr B complained in general terms about the staff he had dealt with about this matter. I have seen nothing to suggest any fault.

Agreed action

The Council has emailed a means enquiry form to Mr B.

Final decision

There was no fault by the Council in using a direct earnings attachment from Mr B's salary to recover overpaid housing benefit. There was fault in the failure to email a means enquiry form. The Council will now email the form to Mr B and that is a satisfactory resolution of the complaint.

3. LGO decision – upheld: maladministration and injustice
Remedy – compensation paid: £1,000
Decision date – 24 August 2017
LGO main subject area – Finance

Complaint

Mr B complains that the Vale of White Horse Council failed to treat his letter of 17 July 2013 as an appeal against the Council's decision to refuse his wife's (Ms C's) claim for housing benefit. The Council referred the appeal to the Tribunal Service in June 2016. Mr B won his appeal in April 2017. The delay in receiving the correct benefit has caused Mr B financial hardship.

Ombudsman's findings

The Council failed to refer Mr B's case to the tribunal following its commitment to do so in August 2013. This was fault. If it had referred it then, it is likely the case would not have been heard until approximately 10 months later (this is an estimate based on the later timescales for the appeal hearing). But if the appeal had been heard before 30 July 2014 it would have failed as Ms C had no award of income support at this point. So there is limited injustice arising out of the initial delay.

Mr B did not chase up the appeal between August 2013 and May 2015. He says it was reasonable to rely on the Council to follow through on its original commitment. He says he chased the Council after ten months but I do not have evidence of this. He did have contact with the Council in 2014 regarding his own claim and said Ms C was not living with him. He also did not inform the Council in July 2014 that Ms C had been awarded income support. So I have concluded there was some contribution by Mr B in not chasing up the Council sooner.

The Council also failed to act on information provided by Mr B in May 2015 and the DWP in November 2015, that Ms C had been in receipt of income support from 30 July 2014 with effect from August 2013 and should no longer be treated as a person from abroad. The Council could have picked up this point sooner as Mr B provided the information in May 2015. It also could have revised its decision on her claim without waiting for the tribunal hearing because of the change in her status due to the income support award. The failure to do so was fault.

If the correct benefit had been paid soon after May 2015, it would have reduced Mr B's rent arrears considerably and he could have used the money he spent clearing the arrears in early 2016 on his other financial commitments. It may also have prevented some of the stressful recovery action such as bailiff visits. But I cannot say the failure to pay the benefit sooner would have prevented the rest of Mr B's debts in their entirety. Mr B and Ms C were not entitled to any benefit for the period from May until August 2013 which would have caused approximately £2000 of rent arrears to accumulate. There also appear to have been other delays in 2014 in paying housing benefit which complicate the situation.

Agreed action

The Council took two years to pay the correct benefit to Mr B and Ms C. I welcome the offer of £300 in recognition of the distress caused to them by the delay. But I consider a higher payment is appropriate: Mr B and Ms C were on a low income as Ms C was entitled to income support. So I consider the delay of two years in paying £2800 of housing benefit had a significant effect and would have exacerbated their already precarious financial situation.

Final decision

I consider a payment of £1000 more accurately reflects the injustice caused to them over a prolonged period and I asked the Council to increase its payment to this amount. I am pleased to say it has agreed to do so.

4. LGO decision – upheld: maladministration, no injustice
Remedy – compensation paid: £100
Decision date – 27 July 2017
LGO main subject area – Planning

Complaint

Mr X and his partner, Ms Y, bought a house on a new housing development. They stated the developer breached planning conditions and did not build the development in accordance with the approved plans. They complained that the Council failed to take action to rectify the situation.

Ombudsman's findings

Councils have a duty to record and investigate any report of a breach of planning control. In considering enforcement complaints, councils must have regard to the government's policy on enforcement in the National Planning Policy Framework (NPPF).

The NPPF acknowledges that effective enforcement is important to maintain public confidence in the planning system. However, councils are not obliged to take enforcement solely to regularise a breach of planning control or to ensure developments are carried out strictly as the plans show. Rather, councils have discretion and they have to decide if it is appropriate to take action, and what action to take based on individual cases. The NPPF says council should act proportionately and they should take into account the impact of any breach of planning when reaching their decision about what action to take.

Driveway and Road Surfacing

I understand that Mr X and Ms Y felt the Council should formally enforce the road and driveway surface materials the developer stated he would use for the development in 2014. However, as I say above the law does not require councils to rigidly enforce approved plans in this way. In a situation like this, the council has to consider if the materials being proposed (tarmac) would be acceptable in planning terms. It will usually consider how it would have viewed the use tarmac roads and driveways if the developer had originally applied for them.

If councils consider the new materials proposed are acceptable and would not cause harm in planning terms, they often have no grounds to refuse permission to vary materials used. For this reason I consider there was no fault in the Council's initial view that it may not be expedient to take formal action. Since that time the developer has submitted a planning application, this is yet to be decided. However, I note Mr X and Ms Y have been able to comment on the application. It is for the Council to determine this application in accordance with the NPPF and its local planning policies. In this case the Council's consideration includes whether permeable or impermeable surfaces should be accepted.

In the event that the Council decides the variance in materials used is acceptable in planning terms, I can understand why Mr X and Ms Y may still consider that the developer's decision to change the materials is frustrating and not acceptable to them. They noted the developer made this change after they purchased their property and they consider this a breach of contract.

I should explain that the planning system exists to determine whether the development proposed is acceptable in planning terms only. It does not exist to protect an individual's legal rights. So, quite apart from the Council's planning decision on the materials that are acceptable, if Mr X and Ms Y considered the developer acted unreasonably by varying the contract they had, they may wish to take legal advice about how they may address any contractual issues with the developer.

Although the Council could have explained the position more fully, I do not consider its decisions about the changes to materials represent fault.

Car Ports
I have reviewed the original approved plans. These appear to show car ports for the two plots that Mr X and Ms Y questioned. This part of the plan could have been clearer (garages on other plots seem to have been outlined more boldly) but, as the plans do show car ports for the plots in question the Council's decision that this was not a breach of planning control was appropriate.

I note that Officer A's original response incorrectly referred to a non-material planning application (for Mr X and Ms Y's double garage) when responding. This error was unfortunate and caused some confusion.

Street Lighting
There are two issues here. Firstly, Mr X and Ms Y were unhappy the developer proposed relocating a lamp post nearer to their home. They noted the proposed location was their land and they would not allow this. Officer A's initial response stated the Council would be unlikely to object to the relocation of the lamp post. However, he did not make it clear whether the Council considered this a breach of planning control.

The Council's first response to the formal complaint clarified this. It acknowledged there was a technical breach because the proposed position of the lamp post had changed from that shown on the approved plans. However, the developer agreed they would move the lamppost to land opposite Mr X and Ms Y's property to resolve this issue.

The planning system does not override the rights of those who own land. So, even if the Council had agreed the relocation would not be harmful to their amenity, and would be acceptable in planning terms, Mr X and Ms Y could still have refused the developer permission to land they own for the lamp post if they wished to.

In terms of the overall lack of lighting, councils generally apply 'pre-occupation' conditions for a reason. In this case, the planning permission for the development required the street lighting for the estate to be operational before the development was occupied for residents' living conditions and for highway safety reasons. The street lights were not complete and were not working when residents moved in. This is a clear breach of the pre-occupation condition.

Initially the council's response to this issue was flawed. The Council incorrectly accepted the developer's statement that all but one of the street lights were in place. It acknowledged this when responding to the complaint. However, when it considered this further, it took into account the correct situation and maintained its view that it would be disproportionate to take formal enforcement action. Councils are required to consider whether it is proportionate to take formal action. When it considered the impact and noted the developer was working to remedy the problem, it decided formal action was not warranted. Although I appreciate Mr X and Ms Y may disagree, this is a decision the Council is entitled to take. I do not have grounds to question it.

Civil / Contractual issues
The Council should reach decisions on the planning matters raised by Mr X and Ms Y in accordance with planning legislation. In terms of new housing estates, the Council will consider whether any deviations from the approved plans are acceptable in planning terms, but this does not mean the Council could ensure the properties that people have purchased are finished to the specification as sold, or as they expect. Mr X and Ms Y may wish to take up concerns about any changes to the specification directly with the developer.

Mrs Y's condition
Mr X had explained Ms Y had Asperger's Syndrome. He noted that she saw things as 'black or white'. This meant changes from the approved plans caused her greater anxiety and concern and she had the expectation that the development should be carried out strictly in accordance with the approved plans.

The Council's responses to the complaint were inaccurate at times. This caused some confusion and contributed to the escalation of the complaint. As the Council was on notice that Ms Y had Aspergers Syndrome, I would also have expected the Council's decisions to have been better explained. I consider the flaws in the Council's responses affected her more than it would have affected someone without her condition. As a result I recommended the Council pays Ms Y £100 to reflect the time and trouble she spent pursuing the complaint. It agreed to do so.

I am satisfied the Council's planning decisions themselves were reached properly. The Council is still considering what action to take in respect of the development as a planning application covering issues at the site is still being considered.

Agreed action
The Council should pay Ms Y £100 to reflect the failings in the way it responded to the complaint and the time and trouble she spent pursuing the matter.

Final decision
There was fault causing injustice. I intend to complete my investigation on the basis the Council has agreed to the recommended remedy.

5. LGO decision – upheld: maladministration and injustice
Remedy – compensation paid: £150 and a letter of apology
Decision date – 30 August 2017
LGO main subject area – Planning

Complaint

Mrs X complains that the Council failed to consider her objections and impact on her amenity when granting planning permission for her neighbour's development. Mrs X also complains that the Council failed to refer the application to the planning committee to decide.

Ombudsman's findings

There is no evidence of fault in the Council's decision to notify fewer residents for the second application than it did for the first. The Council is only required to notify those residents adjoining the development site or placing a site notice. The Council notified the adjoining residents including Mrs X. It was not required to notify any other residents.

There is no evidence of fault in how officer B assessed the resubmitted application. Officer B carried out a site visit so she was in a good position to assess the impact on Mrs X's property. The photographs taken by officer B show she was aware of the surrounding properties including Mrs X's. In commenting on my draft decision Mrs X has raised that officer B did not visit her property when assessing the application but officer A did. There is no obligation for the Council to visit neighbouring properties when assessing planning applications. So officer B was not at fault for not visiting Mrs X's property. Officer B's photographs and her report show she was aware of the proximity of Mrs X's property.

Officer B's report noted the objections received including Mrs X's. Her report shows she considered the impact on Mrs X's property including on her light and explained why she considered the impact to be acceptable. In response to Mrs X's complaint and my enquiries the Council has further explained why it considers the impact on Mrs X's property to be acceptable. I understand Mrs X disagrees with the Council's assessment. But as there is no fault in how officer B assessed the application I do not have grounds to question her professional judgement.

In commenting on my draft decision Mrs X has said the eaves height of the new development will not remain the same and the roof does not slope away on the front extension. The approved plans show the eaves height adjacent to Mrs X's property will remain the same and the roof facing Mrs X's property slopes away from her property. So there is no evidence of fault in officer B's assessment.

Mrs X has also said officer B did not refer to the front extension which she considers will overshadow her property. Officer B's report shows she assessed the impact of the development as a whole on Mrs X's property. She acknowledged the development may cause some overshadowing but this was not significant enough to warrant refusal of the application. So there is no evidence of fault.

Mrs X also considers the Council has underestimated the difference in land levels between the development site and her property. She considers it to be 0.5m. I do not know if Mrs X's figure or that of the Council is correct. But I will not pursue the matter any further. This is because, on balance, a difference of land levels of 0.5m would not have changed the Council's decision that the development was acceptable. Officer B visited the site so she would have been aware of the difference in land levels when assessing the application and the impact on Mrs X's property.

The Council has acknowledged that officers did not correctly advise the local councillor that he needed to make a separate request to call in the planning application in accordance with its constitution. So the local councillor did not follow the proper process for calling in the application. This is fault.

As a result the planning application was not considered by the planning committee as it should have been. Mrs X was also denied the opportunity to present her objections to the planning committee.

The question for me is whether the outcome for Mrs X would have been any different had the planning committee considered the planning application. On balance I do not consider the planning committee would have refused the application. Mrs X would have been able to present her objections. But officers would have recommended approval for the application as they considered the development to be acceptable. Councillors have to take account of officers' assessment of the application and their recommendation. While they are not compelled to follow officers recommendation they frequently do and councillors have to give planning reasons for refusing an application. So it is likely that the planning committee would have approved the application.

But Mrs X had a reasonable expectation that the application would be considered by the planning committee and she lost the opportunity to present her objections to the planning committee. The Council should remedy this injustice.

Agreed action

That the Council sends a written apology and makes a payment of £150 to Mrs X to acknowledge that she had a reasonable expectation that the application would be considered by the planning committee and she lost the opportunity to present her objections to committee as a result of fault by the Council.

Final decision

The Council is at fault as Mrs X's neighbour's planning application should have been determined by the planning committee rather than officers. As a result Mrs X lost the opportunity to present her objections to the planning committee. The Council has agreed to remedy this injustice as recommended so I have completed my investigation.

Appendix Two - South LGO decisions upheld – 1 April 2017 to 31 March 2017

1. LGO decision – upheld: maladministration, no injustice
Decision date – 5 July 2017
LGO main subject area – Finance

Complaint

The complainant, who I shall call Mr X, says the Council has unfairly and without any form of warning or redress, applied retrospectively for 18 months of business rates. He says this has caused him distress, financial hardship and worry and created uncertainty for the long term prospect for his small rural business. He questions why the Council did not identify his business sooner.

Ombudsman's findings

Mr X has operated his business from the same premises for a number of years, but had not been charged business rates. In March 2016 one of the Council's Rates Inspectors visited the site and found the unit Mr X occupied, which was not on the rating list. They told the VOA.

In September a VOA officer visited the site. They found Mr X occupied two units on the site. The VOA brought both properties into the rating list from 1 April 2015. Although Mr X had operated from the premises prior to 1 April 2015, this was the furthest the law allowed the rating to be backdated. The VOA officer told Mr X they were adding his properties to the list, but he assumed this would not take effect until the following financial year. It was open to Mr X to appeal the VOA's decision on the rateable value of the properties and the date it brought the properties into rating. The VOA also told the Council the properties were in the rating list. In October 2016 the Council sent Mr X business rates bills for each unit, backdated to 1 April 2015.

Mr X complained to the Council about the backdated bills. He considered they were issued unreasonably late and without warning. Mr X also questioned why the Council had not given him the rates reduction the Government allows for small business. Based on this new information the Council granted him the small business rate relief for one of the units for the financial year 2015/2016. It later explained to him exactly how the Government regulations governing the relief worked and how it had calculated the award.

As Mr X was not eligible for small business rate relief for both units, or for the year 2016/ 2017 he asked if he could have rural rate relief or discretionary rate relief. The Council refused both applications. Under the relevant Government regulations the settlement Mr X's business was in did not count as a rural community. Nor was Mr X's vehicle repair business eligible for the Council's discretionary rate relief scheme.

As Mr X did not pay the first instalments due, in November 2016 the Council sent a reminder notice. Having applied the small business rate relief it then sent a revised bill in December 2016, together with a payment plan. Mr X did not make the first payment under this plan so the Council issued a reminder in January 2017. It then issued a Magistrates court summons in March 2017.

Mr X was unhappy with the Council's actions and has asked the Ombudsman to investigate his complaint. Mr X believes the Council's Rates Inspector should have been aware of his business and visited much sooner. His business premises were originally farm buildings, but the owner applied for a change of use several years ago. Had the Council visited sooner, Mr X would not be faced with backdated bills which have created financial difficulties for his business.

Mr X is also unhappy with the way the Council has tried to collect the rates. He does not consider he was allowed an adequate opportunity to pay the rates and feels the Council has been heavy handed.

In response to my enquiries the Council states that in recent years it implemented information sharing systems to assist its property inspectors. It states there is nothing associated with Mr X in its case history that would have prompted an inspection of the farm buildings. The inspector noticed Mr X's units during a routine inspection.

The Council states Mr X would have known about business rates. Although he was not legally obliged to notify the Council he was occupying the units, it cannot be a surprise that the Council has now issued demands for business rates. The Council does not consider Mr X has suffered any injustice as a result of the late service of the rates bills. Mr X does not have to pay a higher amount than he would have had the demands been issued sooner. However the Council acknowledges Mr X's business is relatively small. Rather than add any financial strain to the business by demanding payment in full, the Council has agreed a lengthy repayment plan.

The Council considers it has reached a satisfactory outcome for the repayment of the rates that are legally due.

Both the Council and Mr X have responded to the draft decision. Mr X has reiterated his concern about the way the Council has tried to collect the rates. He considers the Council was wrong to send a reminder notice threatening legal action just 19 days after issuing the initial bill. Mr X also considers the Council's system for awarding rural rate relief and discretionary rate relief to be unnecessarily complicated.

The Council's response accepts the two entries for Mr X's properties could have been added to the Valuation list sooner. This would have meant he received bills sooner. It confirms that although the planning department did provide reports to the non domestic rates department it can find nothing relating to Mr X's address. The Council also noted Mr X has appealed the VOA's decision to list the properties separately. The VOA has now merged his two premises into one list entry, backdated to 1 April 2015. The Council has awarded small business rate relief on the merged account back to 1 April 2015.

Although the Council has information sharing procedures between its departments, these do not appear to have identified when Mr X first occupied his premises. A retrospective planning application for a change of use of some of the agricultural buildings in 2009 refers to Mr X as the occupier of one of the units. Had the non domestic rates department been aware of this planning application it is likely a property inspector would have visited the site much sooner. The VOA could then have added Mr X's business unit to the rating list.

I consider the failure to identify Mr X's premises sooner amounts to fault, but I am not persuaded this has caused Mr X a significant injustice.

I appreciate Mr X did not expect the units to be valued separately or to be billed retrospectively for two years business rates and that this will have a financial impact on his business. But the Council billed him as soon as it could after the VOA told it the properties were in the rating list and has allowed him to pay the rates in instalments. The Council has also awarded Mr X small business rate relief where applicable.

Agreed action

Although Mr X was not obliged to notify the Council of the start of his business, he would have known of the rates liability and could have notified the Council or budgeted accordingly. The Council has a duty to collect the rates due and has sent Mr X the appropriate demands, reminders and notices in order to do so. The Council must allow the rate payer at least 14 days from the issue of the bill in which to pay. It can then send a reminder notice.

Final Decision

The Council's delay in identifying Mr X's business units so that they could be included on the business rating list amounts to fault but has not caused Mr X a significant injustice

2. LGO decision – upheld – maladministration and injustice
Remedy – payment of £150 and an apology to the complainant within 6 weeks
Decision date – 22 December 2017
LGO main subject area – Planning

Complaint

Mr X complains that:

- The Council decided not to take enforcement action following unauthorised work to a tree protected by a Tree Preservation Order (TPO); and
- Details of a new TPO on the Council's website and in the schedule of the TPO itself contained inaccuracies, which could make it unenforceable.

Ombudsman's findings

I accept the Tree Officer's explanation that inaccurate descriptions on the website would not hinder enforcement and that the TPO had remained enforceable, despite the error in the schedule. I also accept the Council was entitled to reach the decision it has on enforcement regarding the lopped tree. This is because, in making its decision, it considered:

- the allegation
- its enforcement powers under the Town and Country Planning Act 1990
- relevant government guidance
- evaluated the harm caused by a potential breach

This is the process we expect and so there was no fault in the way the enforcement decision was made.

There were faults on the Council's website and in the schedule of the TPO. Mr X raised at least two of these faults with the Council before bringing his complaint to the Ombudsman. The Council has accepted it was at fault and the steps it has taken to improve its practice and procedure are satisfactory.

Agreed action

To remedy this complaint, the Council has agreed to:

- apologise to Mr X;
- pay £150 for his time and trouble in bringing his complaint to the Ombudsman's attention; and
- inform the Ombudsman of its progress in carrying out the remedy within 6 weeks from the date of our final decision.

Final Decision

There was fault which the Council has agreed to remedy and so I have completed my investigation.

3. LGO decision – upheld: maladministration and injustice
Decision date – 20 February 2018
Remedy – compensation of £100 paid to the complainant and surcharge waived
LGO main subject area – Planning

Complaint

Mr and Mrs B complain that the Council:

- did not notify them that Mr B was liable to pay a Community Infrastructure Levy (CIL) when they obtained planning permission to demolish and rebuild their home
- wrote to their architect and said there was no CIL liability, then proposed to charge them, but reduced the amount by half when they complained
- levied late payment surcharges despite their complaints to the Council

They are unhappy with the way the Council dealt with the CIL and their complaint about this, and consider that the Council should waive the charge.

Ombudsman's findings

Failure to inform Mr B directly

Mr B has complained that the Council did not properly inform him about the charge because it did not contact him at the correct address. I note that Mr B had signed Form 1 in March 2016 accepting liability for the CIL. However, I also understand he may not recall this as he had serious health problems at the time.

The Regulations state that:

"The collecting authority must issue a liability notice as soon as practicable after the day on which a planning permission first permits development."

In this case, the Council issued the Liability Notice very promptly on the date that planning permission was granted, so there was no fault here.

However, the Regulations also state that

"The collecting authority must serve the liability notice on—

(a) the relevant person;

(b) if a person has assumed liability to pay CIL in respect of the chargeable development, that person…"

In this case, Mr B had assumed liability to pay CIL. Although the Council sent Mr B's architect a copy of the Notice and sent the Notice to the site address, the Council's duty was to serve notice on Mr B. To serve notice on Mr B, the Council should have written to him at the correspondence address he provided in Form 1. Not doing so was fault and contributed to the subsequent problems.

Misleading letter to the architects

Mr B says the letter to his architect was confusing.

The Council has accepted that the wording was open to interpretation and has amended the wording in letters to third parties to avoid such confusion in future.

I understand the architect may not have received a letter of this nature before, given that the Council had only recently introduced CIL. I appreciate that this letter also contributed to the subsequent confusion. However, the Council has taken appropriate steps to ensure that its correspondence is clearer.

CIL – Initial calculation

Mr B has criticised the Council for proposing to charge him £12,900 before reducing the proposed charge to £5,700. He considers that this shows a lack of care on by the Council.

I see no fault here. The Council calculated the charge based on the measurements Mr B's architect provided.

CIL – Final liability

I have considered whether Mr B could have appealed to the VOA over the sum due and, if so, whether this is within the Ombudsman's jurisdiction. However, as development had commenced, Mr B had no appeal right over the sum due when the Liability Notice was issued, so the Ombudsman can consider this. In this case, the development involves the building of a new dwelling, but none of the exemptions apply, so CIL is payable. The Council has also calculated the charge based on the revised figures Mr B has provided. I see no fault here, and the charge remains payable.

Agreed action

The Council has agreed to waive the £341.17 surcharge and pay Mr B £100 for his time and trouble.

Final Decision

I have closed my investigation into the complaint because the agreed remedy is a suitable response to the injustice Mr B has experienced.