

# Joint Audit and Governance Committee



Report of: Head of Corporate Services

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To: Joint Audit and Governance Committee

DATE: 22 September 2020

## Review of complaints received during 2018-19 and 2019-20

### Recommendation

That the committee reviews formal complaints received in 2018-19 and 2019-20 and performance in responding to complaints against timescales set out in our Corporate Complaints Policy.

### Purpose of report

1. The purpose of this report is to provide the Committee with a review of formal complaints we received during 2018-19 and 2019-20 in line with the corporate complaints procedure.

### Strategic objectives

2. This report sets out formal complaints received by the councils, it therefore underpins all of our Corporate Plan objectives; along with our ambitions to provide excellent customer service and transparency in decision-making. By recording complaints, we can understand when things have gone wrong resulting in us failing to meet customer expectations, failure to provide a service or where we have not followed correct procedure.

3. Appendix Two includes the official annual complaints reports received from the Local Government and Social Care Ombudsman (LGSCO).

## **The Complaints Process**

4. Our corporate complaints policy and council-wide procedure for dealing with complaints ensures that:
  - members of the public know what to do if they have a complaint and understand how we will deal with it
  - staff are confident about what to do when they get a formal complaint
  - customers are treated fairly and equally
  - we can improve our services by analysing complaints
5. As stipulated in the LGSCO guidance on good practice: the purpose of a complaints system is to put right what has gone wrong, and to learn from it. Where a complainant has a justified grievance, there is a duty to put things right at the earliest opportunity. Depending on the seriousness and type of complaint, putting things right could involve a range of outcomes, from a simple written apology to a reimbursement of funds or a compensation payment.
6. Following a review of the councils' corporate complaints process, the policy and procedure was updated in June 2019. The key changes made are:
  - the timescale for responding to a formal complaint was revised from 21 calendar days to 15 working days; this adjustment was made to allow sufficient time for staff to investigate and respond, taking account of bank holidays and the Christmas closure.
  - responsibilities for response were changed – the service manager responsible for the team a complaint is about, now responds to a complaint at stage one, allowing the relevant head of service to review and provide a response if the complaint reaches stage two. Previously the relevant head of service responded at stage one and another head of service at stage two.

### **Stage one**

7. Each service has nominated officers responsible for logging stage one complaints. The relevant service manager will ensure that the complaint is investigated and that a response is sent to the complainant within 15 working days.

### **Stage two**

8. If the complainant is not satisfied with the stage one response, then they can ask for their complaint to be reviewed as a stage two within six weeks of the date of the stage one response. The complainant must explain why they are not satisfied with the response they received at stage one, and what outcome they would like to achieve in pursuing a stage two complaint.
9. The complaints team will inform the head of service for the relevant service area that the complaint has been received. However, if the Chief Executive or Head of Corporate Services considers it more appropriate, a complaint may be re-allocated to an alternative head of service. The head of service will investigate the complaint and prepare a response within 15 working days of receipt.

## The Local Government and Social Care Ombudsman

10. If the complainant remains dissatisfied with the stage two response, they have the right to ask the LGSCO to investigate their complaint. The LGSCO investigates complaints of alleged injustice concerning Local Authorities.

## Complaints reporting

11. Historically numbers of complaints have been reported twice yearly in the March and September board reports which are available on the councils' website, and annual reports have been brought to this Committee. Reporting of the 2018-19 figures has been delayed pending work on a new corporate complaints database which has enabled us to simplify and improve the reporting process, and latterly due to relevant staff being involved in the response to the Covid19 pandemic.
12. **Appendix One** sets out the number of complaints received and our performance against target for issuing responses.
13. Our report this year includes a comparison of previous years; as well as to date, unpublished data from 2018-19. A true comparison of service teams has not been possible this year due to the restructuring of service areas. The new database should allow for this in future reports.

### South Oxfordshire District Council

2019-20 saw an increase of only one complaint at stage one on the previous year, with a higher number of complaints at stage two than in the previous two years. There was also a higher number being referred to the Ombudsman compared to previous years.

### Vale of White Horse District Council

Vale received considerably less stage one complaints in 2019-20 compared to 2018-19, but a similar number to 2017-18. The noticeable difference is due to a fall in complaints received by Finance in 2019-20. Stage two complaints increased by one on the previous year, and there was an increase in those referred to the Ombudsman.

14. The LGSCO send annual letters with a summary of their decisions. This is available in **Appendix Two** of this document, it shows a comparison of our performance against other district councils.

## LGO investigations

15. The Ombudsman upholds complaints when they find fault in an authority's actions, including where the authority accepted fault before their investigation. A focus on how often things go wrong, rather than simple volumes of complaints provides a clearer indicator of performance.
16. They recommend ways for authorities to put things right when faults have caused injustice. Recommendations try to put people back in the position they were in before the fault. Monitoring is carried out to ensure recommendations are complied with.
17. The Ombudsman encourages the early resolution of complaints and credit authorities that have a positive and open approach to resolving complaints, and where satisfactory remedies have been provided.
18. Of the 17 complaints received by the Ombudsman for Vale in 2019-20, five were investigated formally and two were upheld. The Ombudsman received 17 complaints for South, of which four were investigated and one upheld. This compares with no upheld complaints for either councils in the previous year 2018-19.

19. The upheld complaint for South required a remedy of an apology to be sent to the complainant.
20. Summaries of the upheld complaints are available in Appendix Two.

### **Financial Implications**

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

### **Legal Implications**

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

### **Other implications**

23. There are no other implications arising directly from this report.

### **Risks**

24. It is important to have a robust and efficient complaints system in place to ensure that members of the public receive clear and fair responses to their queries and concerns; and to have oversight and review of the process. This provides transparency for customers and manages reputational risk.

### **Conclusion**

25. This report sets out a review of formal complaints received during 2018-19 and 2019-20. The Committee is asked to review complaints received, and response times.

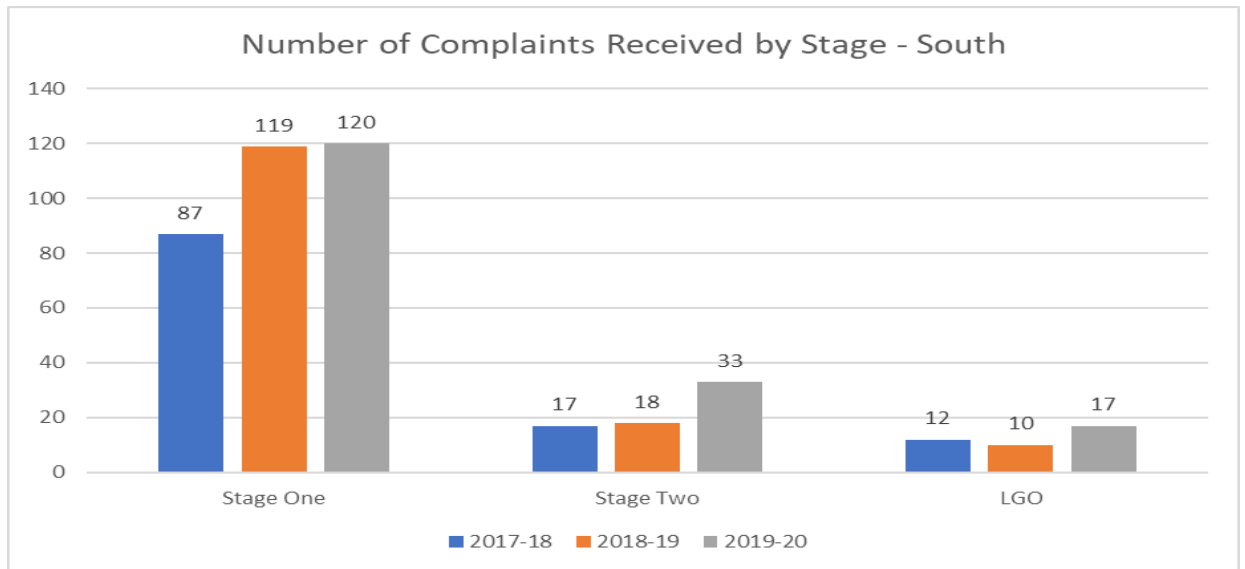
### **Background papers**

- None

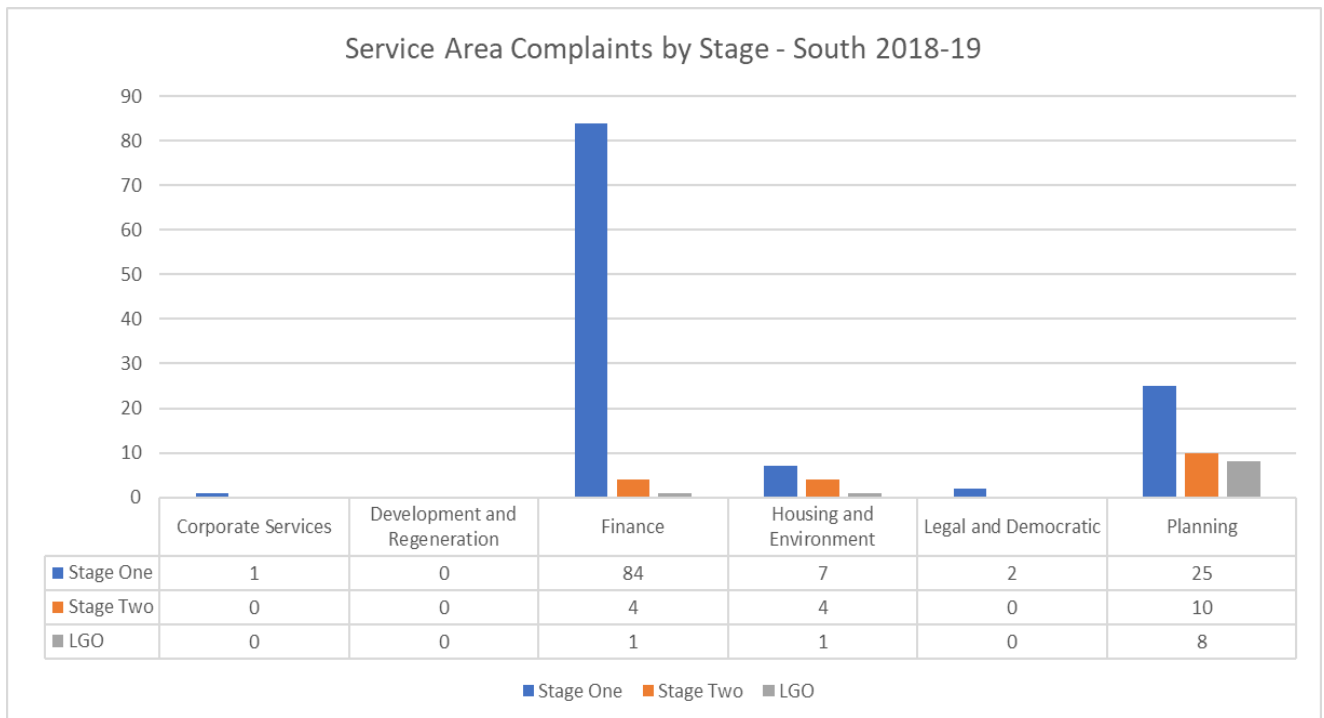
**South Oxfordshire District Council**

**Number of formal complaints received and performance against agreed timescales**

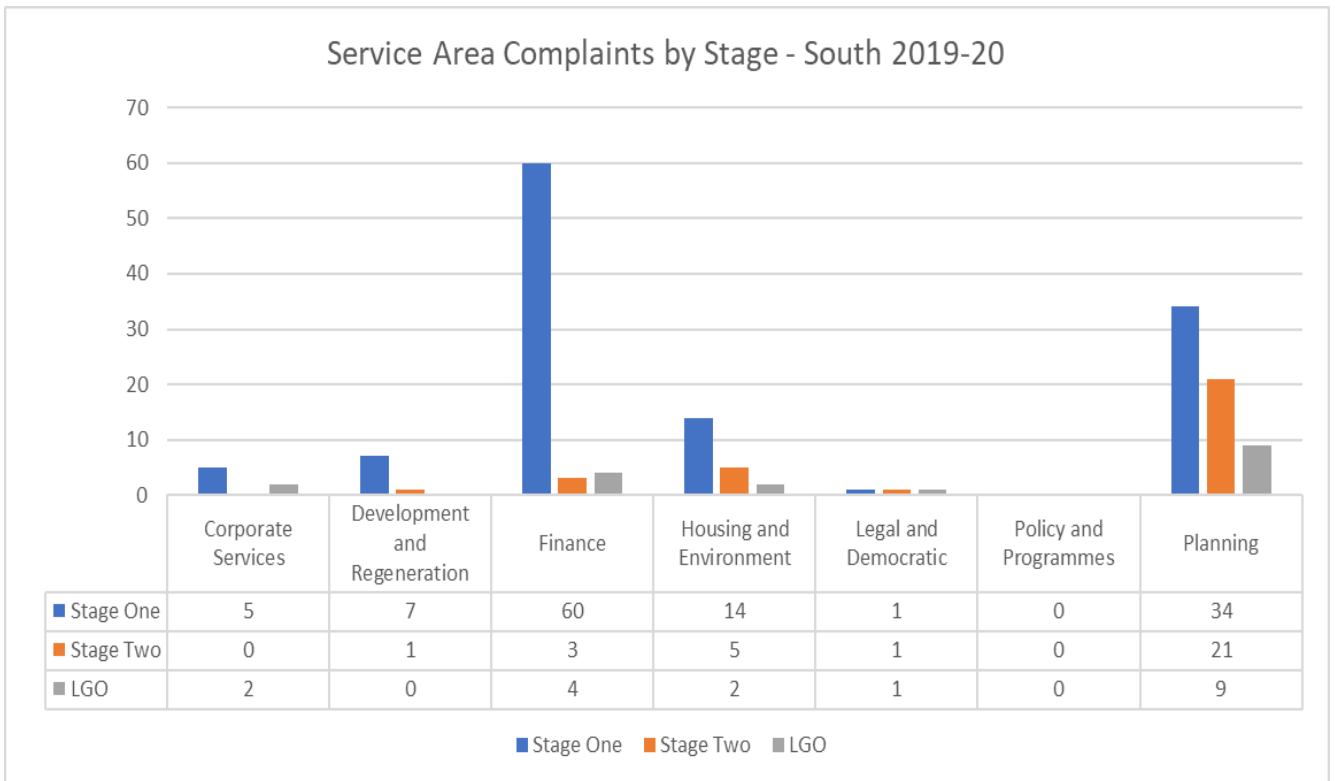
1. The following charts show the number of complaints received at each stage of the process



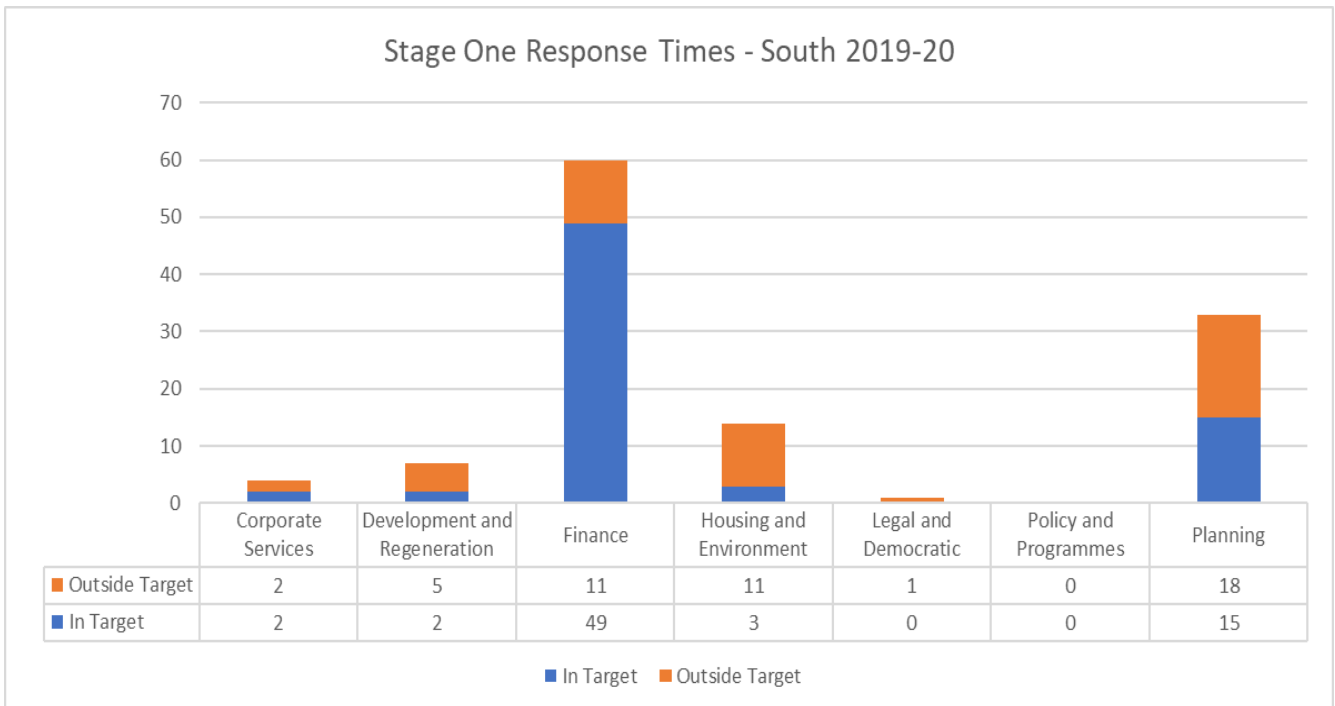
2. The following charts show the number of complaints received in 2018-19 for each service area at each stage of the complaints process.

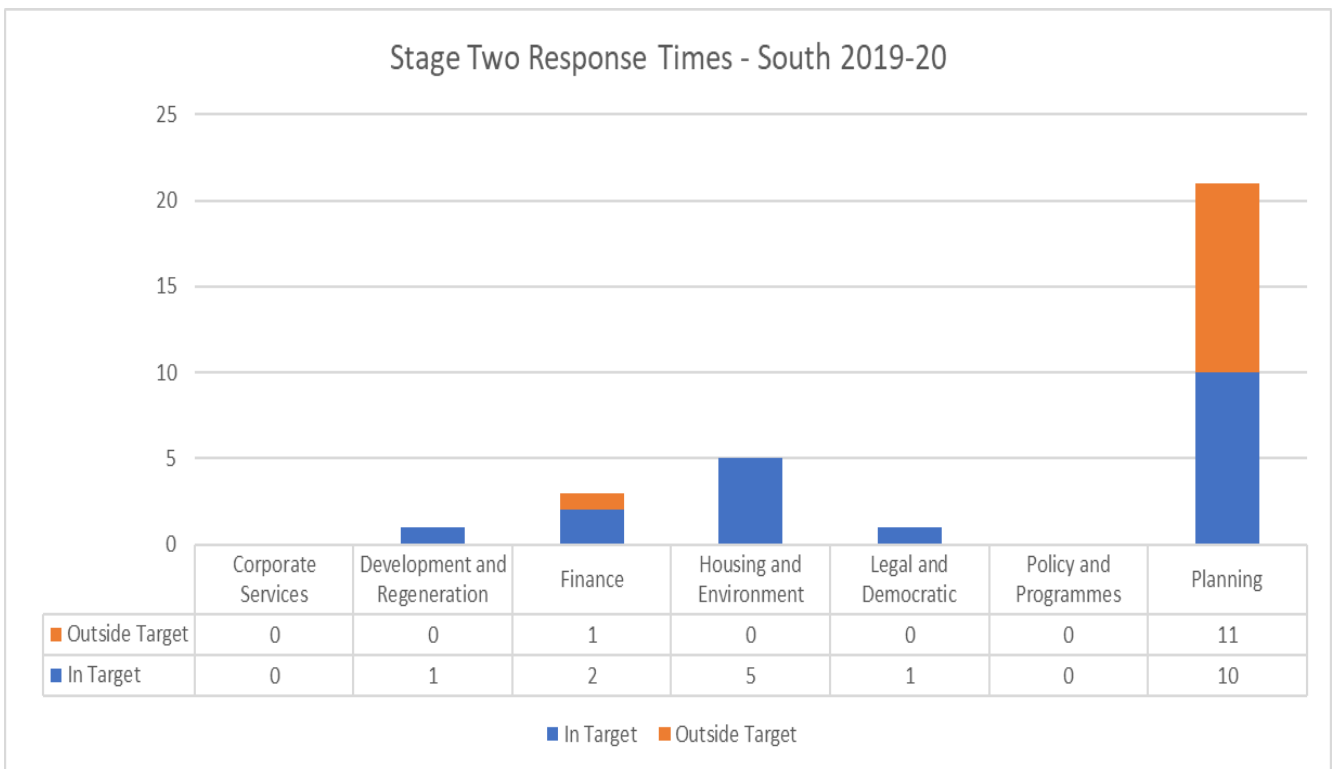


3. The following charts show the number of complaints received in 2019-20 for each service area at each stage of the complaints process.

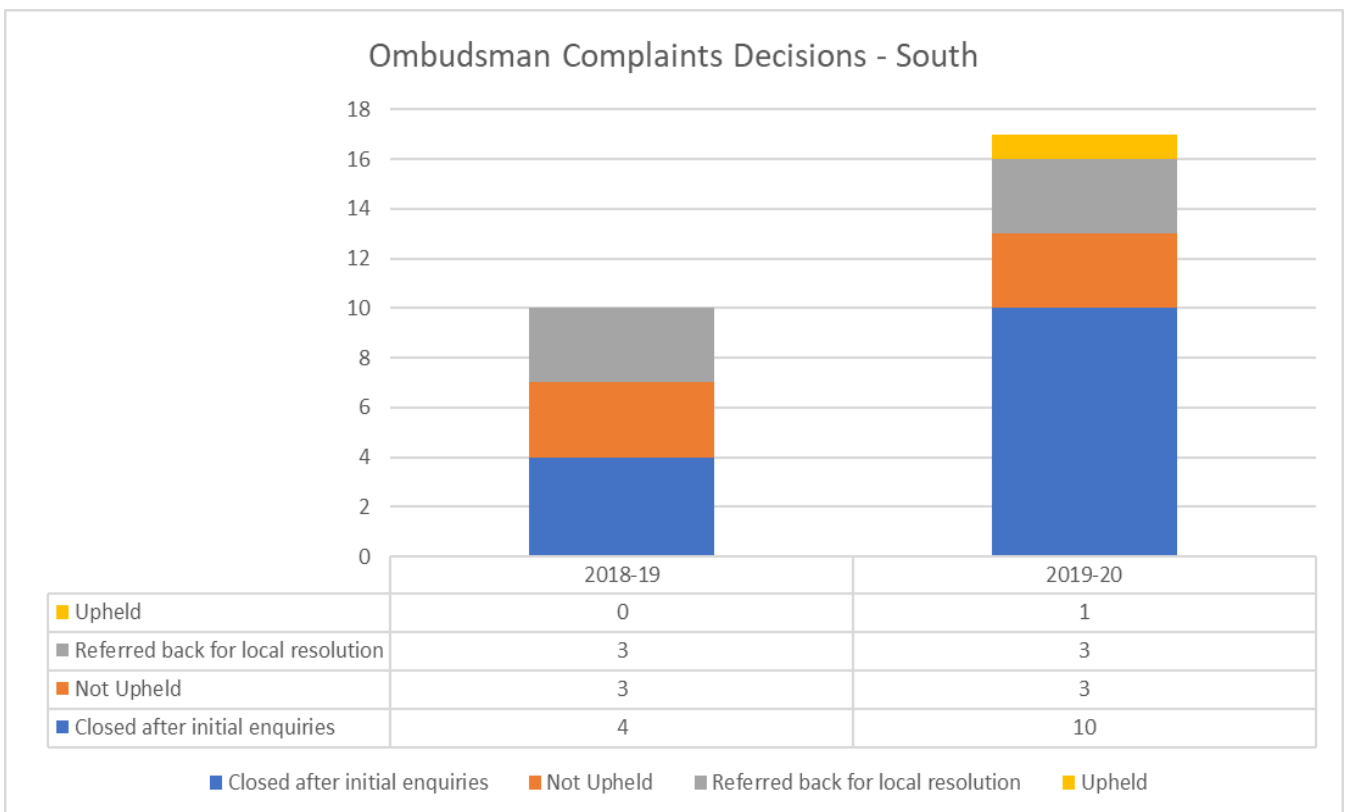


4. The following charts show service area performance against target in responding to complaints in 2019-20.





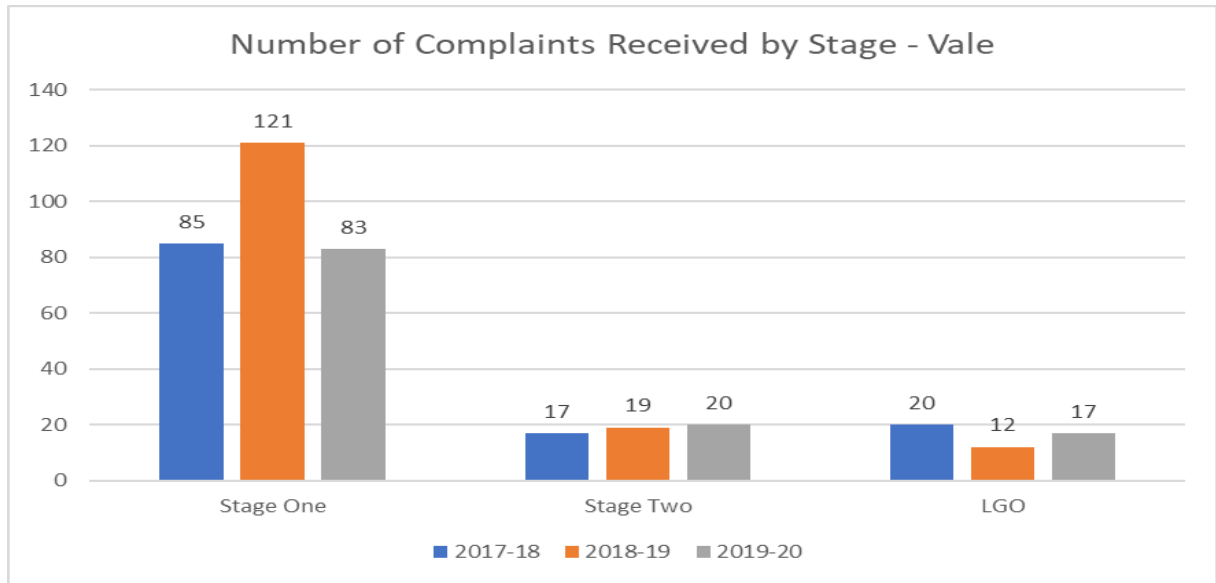
5. The following charts show the outcomes of Ombudsman complaints received in 2018-19 and 2019-20.



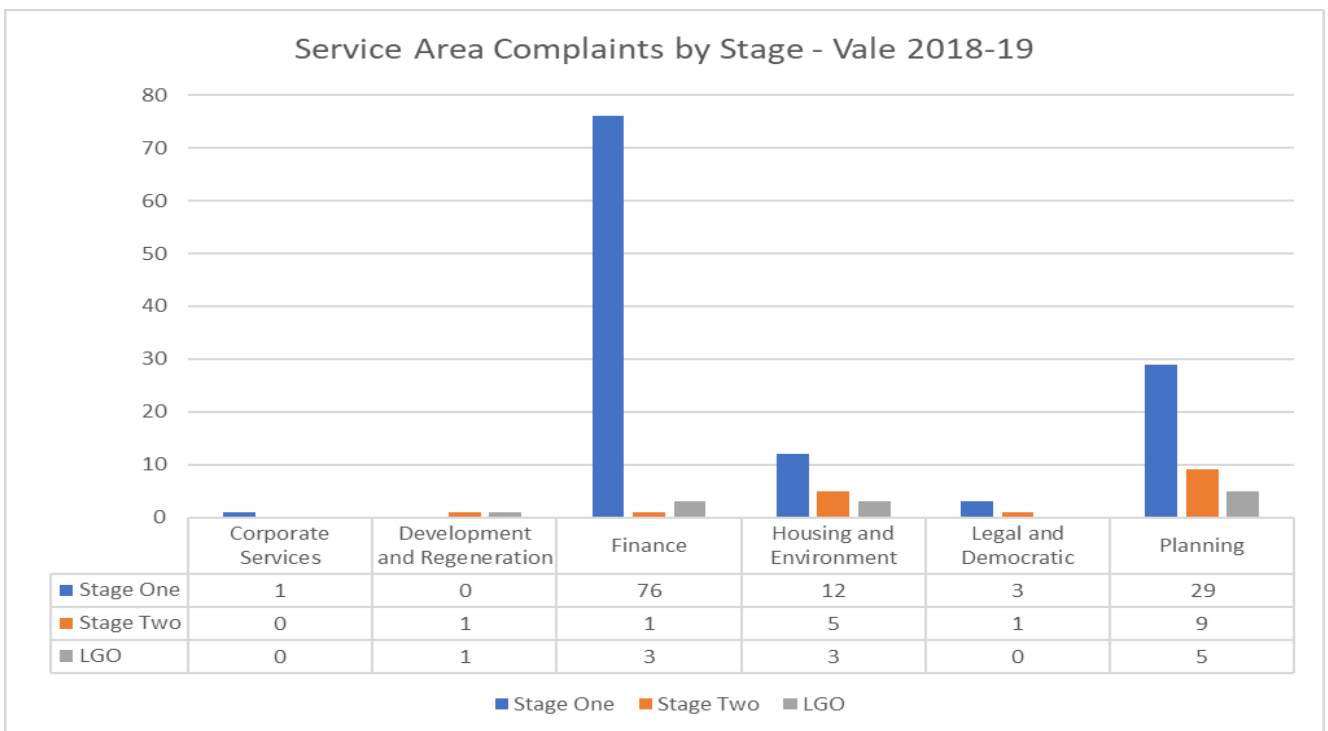
**Vale of the White Horse District Council**

**Number of formal complaints received and performance against agreed timescales**

6. The following charts show the number of complaints received at each stage of the process

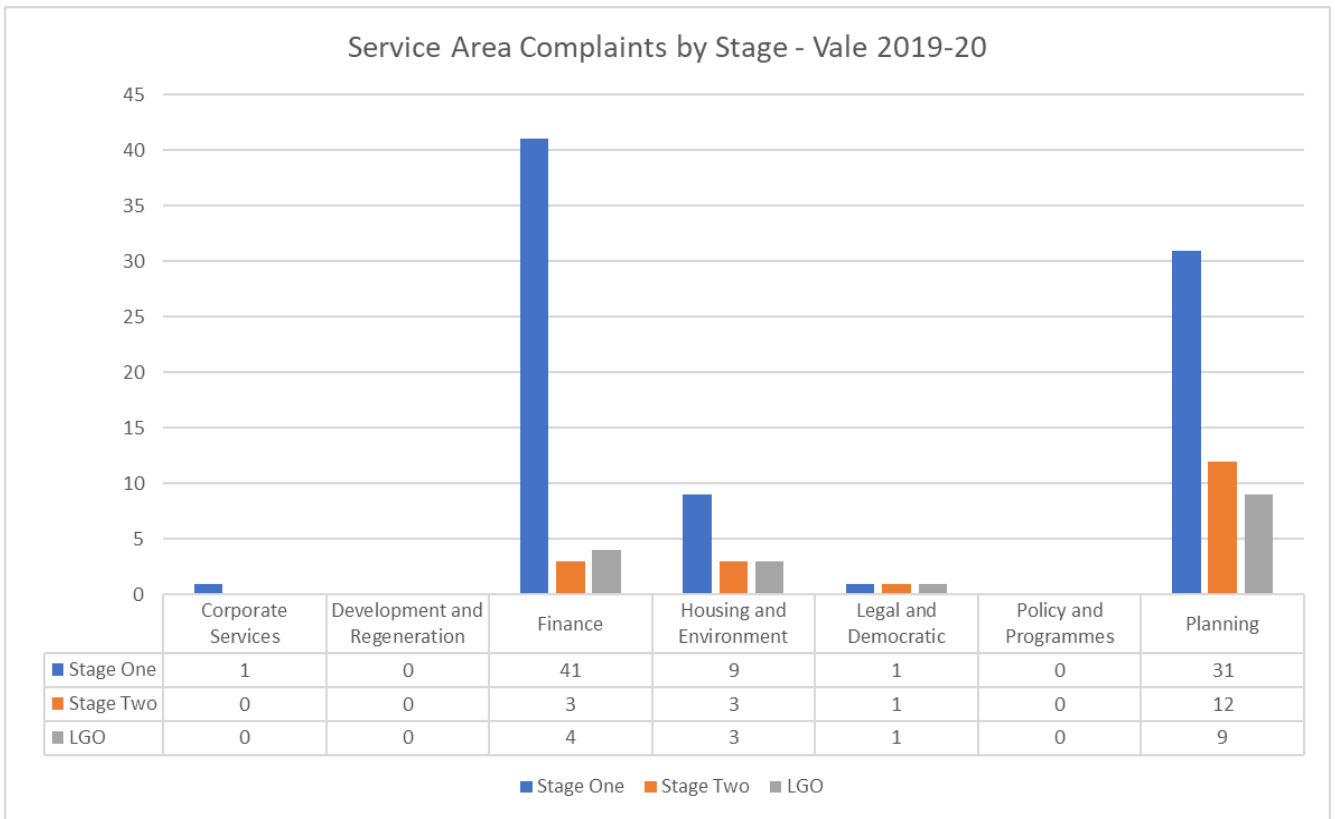


7. The following charts show the number of complaints received in 2018-19 for each service area at each stage of the complaints process.

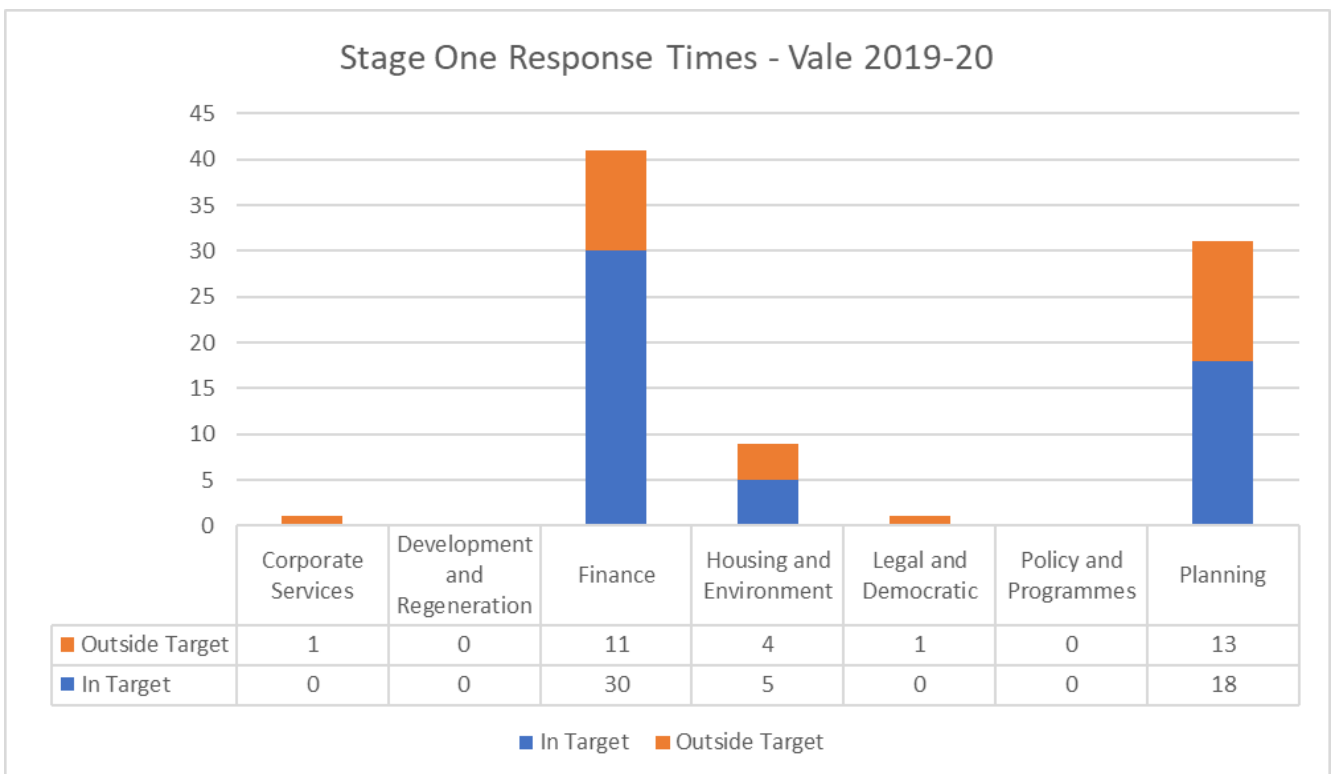


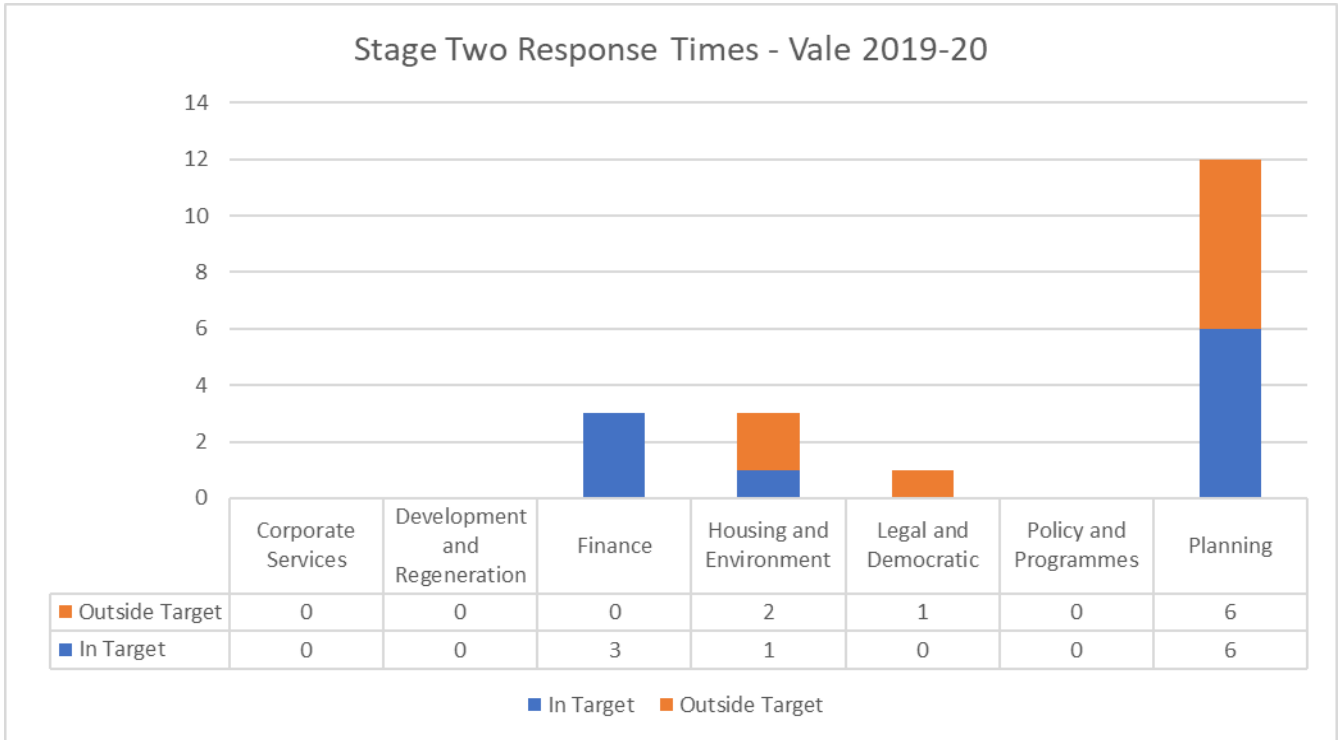


8. The following charts show the number of complaints received in 2019-20 for each service area at each stage of the complaints process.

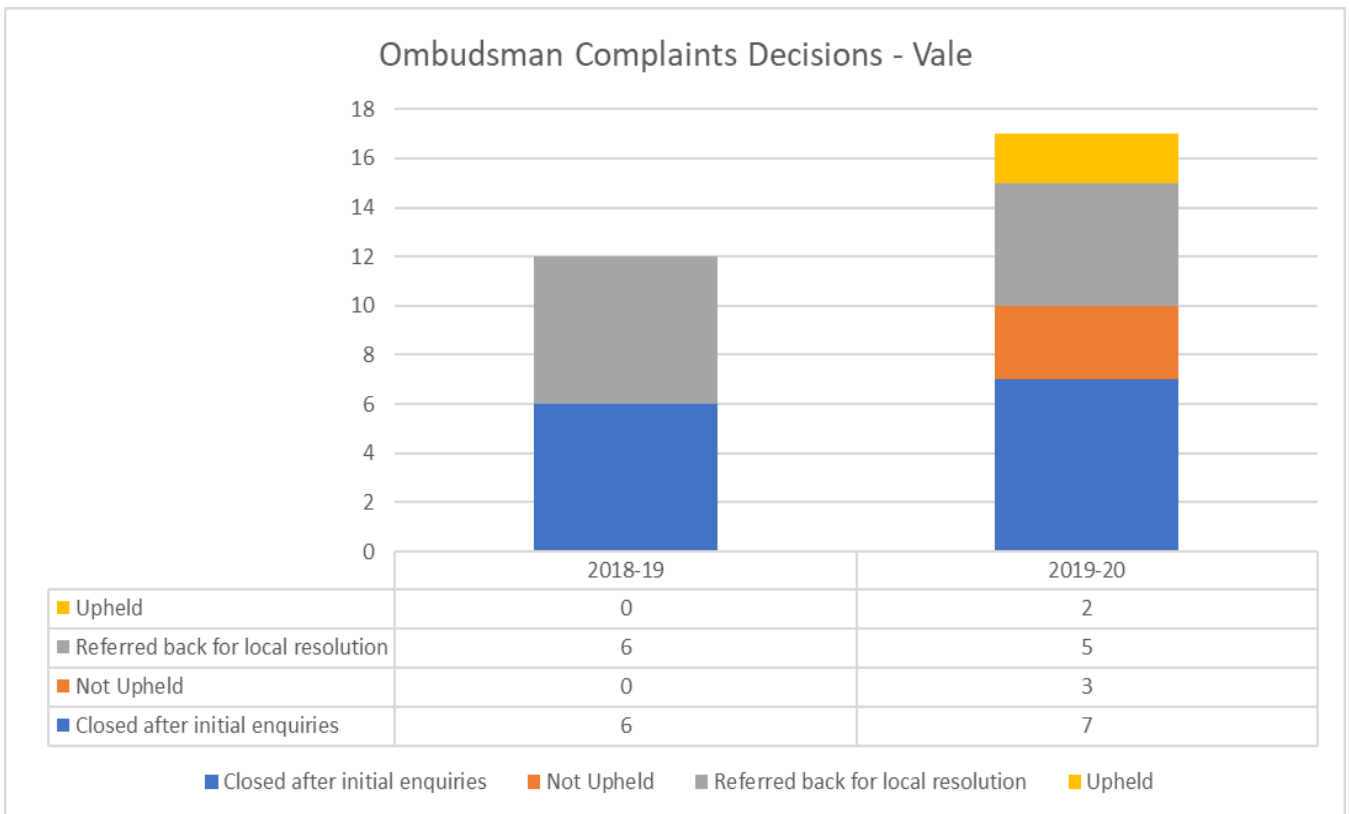


9. The following charts show service area performance against target in responding to complaints in 2019-20.





10. The following charts show the outcomes of Ombudsman complaints received in 2018-19 and 2019-20.

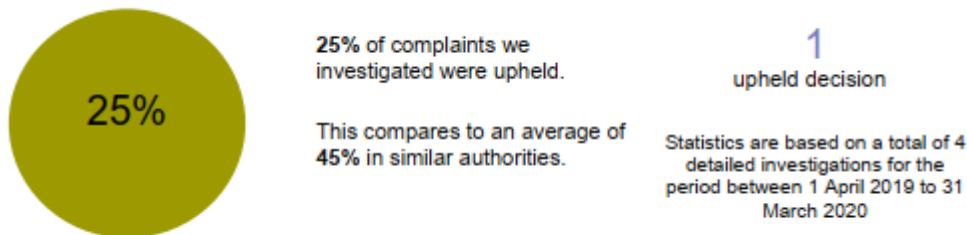


Appendix Two

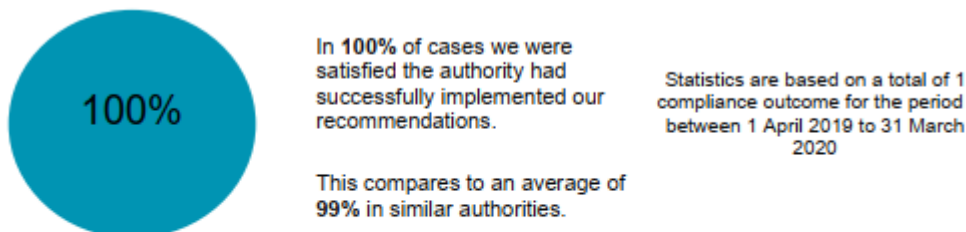
**Local Government and Social Care Ombudsman Summary 2019-20**

11. The following charts are an extract from the Ombudsmans report, and show the performance of Ombudsman complaints for **South Oxfordshire District Council**, compared with other District Councils.

Upheld Complaints

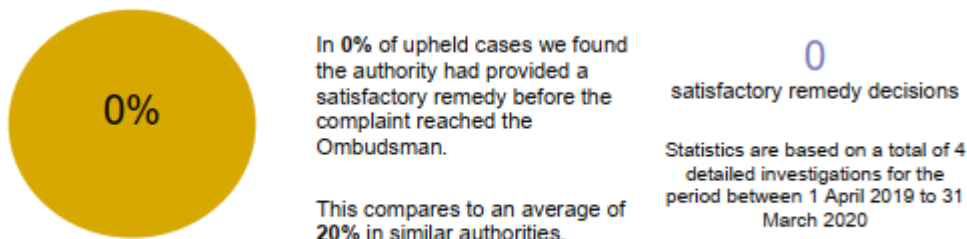


Compliance with Ombudsman recommendations



- Failure to comply with our recommendations is rare. An authority with a compliance rate below 100% should scrutinise those complaints where it failed to comply and identify any learning.

Satisfactory remedies provided by the authority



12. A summary of the South Upheld complaint:

*Ombudsman reference 18 019 249*

Resident X and six other residents complained that the Council delayed and failed to take appropriate enforcement action for breaches of planning control on the occupiers of four plots of land near their homes. The Council was not at fault for how it carried out its enforcement investigation. It was at fault for failing to adequately communicate timescales and decisions to the

complaints. It will apologise to Resident X and the six other residents for the uncertainty and time and trouble it caused.

### **What happened**

Resident X and the other residents live in a village near four plots of land, A, B, C and D.

The four plots are, for planning purposes, separate units of land. The four plots of land were used and occupied by gypsies and travellers from the same family.

### **The Council's complaint response to the residents**

The Council responded to the resident's stage one complaint. It said the case was complex and each plot of land required specific tailored action as it was individually owned. It acknowledged the enforcement process had taken a long time but said this was because it needed robust evidence to deal with the planning matters effectively. The Council said it was satisfied it had followed the correct processes in dealing with the matters. It said the planning enforcement manager had communicated with residents at a Parish Council meeting. It said the need for a multi-agency approach had added unforeseen delays.

The residents were unhappy with the Council's response and wrote to the Council again at stage two. They said the Parish Council meeting did not clarify anything. They said the Council promised a timetable of enforcement action which it had still not supplied. The residents said the Council may have followed processes but had taken no enforcement action at all. The residents said their amenity had suffered harm for three years. They said they wanted the Council to enforce the planning conditions set out on plot A and wanted the occupiers of plots B and C evicted.

The Council responded to the residents. It told them it was taking formal enforcement action against plots B and C and was continuing its investigation into plot A. The Council said it was satisfied there was no unnecessary delay and had made its decision in line with the relevant guidance. The Council did not uphold the complaint.

The residents remained unhappy and complained to the Ombudsman in March 2019.

### **The Council's communication with the residents**

The residents said the Council failed to adequately communicate its progress to them. The records show the Council communicated with Resident X and the other residents at regular intervals since 2016. Some information for reasons of confidentiality were correctly not shared with the residents. The Council acknowledged to the residents at the Parish Council meeting that some of the delay was down to staffing issues, however it should have procedures in place to deal with staff absences.

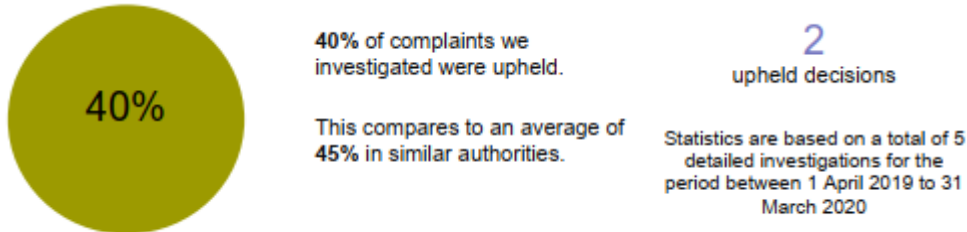
However, the Council's policy says it will keep persons who report breaches of planning control informed of timescales and any decision it makes. The records show the Council agreed to do that following the Parish Council meeting at the start of December 2018 by providing timetable of its intended action. However, it did not provide anything until February 2019 within the stage 2 complaint response. While the Council has explained to me the delay in serving the enforcement notices on plots B and C, I cannot see any evidence it was communicated to the residents. Given the lengthy investigation, I would have expected evidence of timescales and decisions being shared with the residents, in line with its policy. There is not, and that was fault. It caused the residents uncertainty and time and trouble.

### **Final decision and recommendation**

The Council issued an apology as per the Ombudsman's recommendation. Because the remedy was completed after the agreed date, they recorded a compliance outcome of *Remedy complete late*.

13. The following charts are an extract from the Ombudsmans report, and show the performance of Ombudsman complaints for **Vale of the White Horse District Council**, compared with other District Councils.

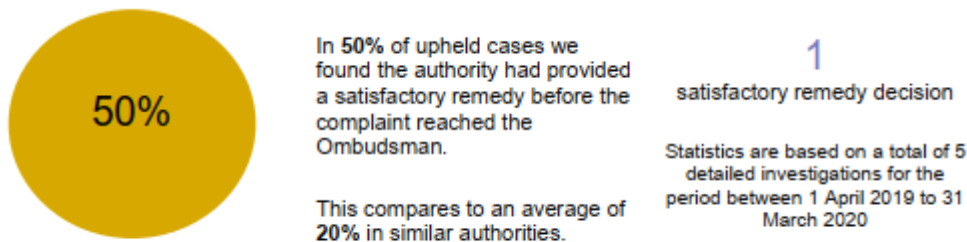
Upheld Complaints



Compliance with Ombudsman recommendations

No recommendations were due for compliance in this period

Satisfactory remedies provided by the authority



14. Summaries of the Vale Upheld complaints:

*Ombudsman reference 18 012 758* - This complaint is where we provided a satisfactory remedy

The Ombudsman has not found fault in how the Council handled a planning application for development at a property neighbouring the complainant’s home. He has found evidence of fault in the Council’s handling of the complainant’s complaint, but he considers the Council’s apology adequately addresses the injustice caused by this. For these reasons he has ended his consideration of this complaint.

**The Council’s handling of Mrs X’s complaint**

The Ombudsman was satisfied the Council received Mrs X’s initial complaint but did not reply to it. This was fault and put Mrs X to the time and trouble of chasing the matter up with the Council and resubmitting her complaint. The Council has apologised to Mrs X and the Ombudsman considers this adequately addressed the injustice caused to her.

**Final decision**

*I have ended my investigation of this complaint as I have not found any evidence of fault by the Council in its handling of the planning application. I found fault by the Council in its handling of Mrs X's complaint, but I consider the apology issued to her addressed the injustice caused to her.*

**Ombudsman reference 19 008 303**

Ms X complained that the Council sent her copies of building control site visit notes that were factually incorrect. Ms X says she relied on the notes before seeking legal advice, and this is a cost she might have avoided. Ms X would like the Council to pay her legal costs. The Council accepts the notes are incorrect and it apologised to Ms X, but refused to pay her legal costs. There was fault in the way the Council acted because its site visit notes were incorrect. However, we cannot show the fault caused Ms X to incur legal costs, so we do not recommend a remedy.

**What happened**

Several years ago, Ms X had planning and building control approval to build an extension to her home. The plans that were approved included trench foundations infilled with concrete to be laid under external and internal walls.

A few years after the extension was complete, cracks began to appear on its walls. Ms X sought advice from the architect who had designed the extension, the project manager she had employed to oversee works and the builder.

Ms X was advised to contact the Council to get copies of its building control officer's (BCO) notes. The Council provided a copy of its BCO's notes, which said the builder had been advised to construct a concrete raft foundation instead of standard trench foundations.

Ms X says that after reading the notes, she immediately spoke to the builder, who denied the BCO had advised him to build a concrete raft foundation. Ms X says she had previously had a dispute with the builder and this along with the contents of the BCO's note led her to conclude the builder was at fault.

A few months later there was an on-site meeting attended by all parties. Ms X had taken photos of different stages of the extension's construction, which were dated. There were photos of the foundations, which showed:

- there was no concrete raft foundation;
- the builder had not followed the original plans as there were not trench foundations under internal walls, which were built on concrete slabs laid on the ground.

The builder claimed the Council had instructed him to build the internal walls on slabs, but the Council denied this. The Council denied advising a concrete raft foundation and said that its notes were incorrect and probably related to an entirely different site. It pointed out that the dates within the notes did not tally with the dates on Ms X's photos, which showed when construction began. The Council said this proved its notes were incorrect.

Ms X complained to the Council. It accepted it was at fault and apologised to Ms X. However, it did not agree it should be held liable for her legal costs.

**My findings**

We are not an appeal body. Our role is to review the process by which the Council's decisions are made. Where we find fault in the decision-making process, we decide whether it caused an injustice to the complainant. To do this, we need evidence to show that, but for the fault, the outcome would have been different.

Our decisions are made on the civil burden of proof, which is sometimes described as the balance of probabilities. It means we need evidence that shows that any claimed injustice was more likely than not to result from the fault we find.

The Council's building control visit notes, that were sent to Ms X, were incorrect. They did not match the plans, fit with the recollections of the officers and builder or the dates on Ms X's photos. This is fault.

Ms X says that because of the fault, she would not have instructed the solicitor and incurred costs. To recommend that the Council now pays these costs, I need evidence to show that it is more likely than not that, if the fault had not occurred, Ms X would not have instructed the solicitor. I do not consider I can make this recommendation, for the following reasons.

Ms X went straight to the solicitor without checking with all other parties why the BCO appeared to be making a different recommendation to the approved plan. Once the architect, project manager, the structural engineer and the Council's BCOs had an opportunity to consider the evidence and what had happened, the circumstances changed.

Legal action always involves risk and recovering costs is never certain. Ms X says she had reasons, partly connected to her house insurance, why she acted so quickly, but I cannot say it was necessary for her to do so. We only rarely recommend councils pay professional fees and would only do so in circumstances where there was little choice other than to incur these costs. While I understand her reasons for seeking legal advice when she did, this was her choice and she might have acted differently and with less urgency. Ms X's chosen path, while not unreasonable, was nevertheless a choice she made when other choices were available.

It is worth noting that requiring details of a complaint and a response to the complaint is the first part of our investigations. For most of our investigations, this basic information is considered essential before deciding whether to spend public money. Ms X might have made similar checks before incurring costs.

Ms X asked the Council for the BCO's notes but she did not explain how she might use or rely on them. If the Council had notice of her intentions, it would have had the opportunity to check its records or to send the notes with a disclaimer to limit its liability.

The circumstances changed, but the cracks in the building remained. Even if the Council had acted without fault or if it had corrected its records before Ms X instructed her action, she may still have sought legal advice on what to do next. Because of this, the costs she incurred after reading the BCO's site visit notes might have been incurred later.

For these reasons, there was fault in the way the Council acted, but I cannot say Ms X's legal costs were caused by the fault.

### **Final decision**

There was fault in the way the Council acted, because the information it sent to Ms X was incorrect. I have not recommended a remedy because I have seen no evidence to show the fault caused the injustice that is claimed. For these reasons, I have completed my investigation.