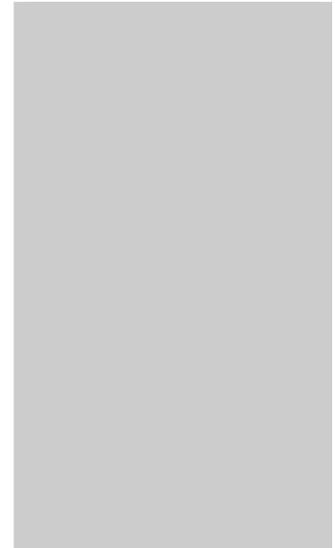


Audit and Corporate Governance Committee



Report of: Chief Executive
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To: Audit and Corporate Governance Committee
Date: 26 September 2013



Review of complaints received during 2012/13

Purpose of report

1. The purpose of this report is to provide the committee with information and statistics about the complaints received during 2012/13.

Strategic objectives

2. By analysing complaints we can identify any trends and introduce service improvements, where necessary, thereby supporting the corporate objective to put residents at the heart of service delivery and seek to provide an excellent customer experience.

Background

THE COMPLAINTS PROCEDURE

3. The main benefits of having a council-wide procedure for dealing with complaints are that:
 - members of the public know what to do if they have a complaint and how we will deal with it

- staff can be confident about what to do when they get a complaint
 - everyone is treated fairly and equally
 - by analysing complaints we can improve our services.
4. A good complaints procedure gives us the opportunity to show that we want to be open and honest; that we care about providing a good service and that we value feedback on problems that need attention. Our procedure from 1 April 2012 to 30 September 2012 had three stages:

Stage one

The head of service responded, or arranged for a member of their team to respond on their behalf, within 15 working days of receipt of the complaint. All complaints are logged on our complaints database, which generates daily automatic reminder emails from two working days prior to the target date and continues to do so until details of the response have been entered.

Stage two

The relevant strategic director responded within 15 working days of receipt of the request to escalate the complaint to stage two. Again, the complaints database generates daily automatic reminder emails from two working days prior to the target date.

Stage three

The complainant wrote to the chief executive, within six weeks of the strategic director's response, asking for district councillors to consider their complaint. The chief executive decided whether or not there was merit in referring the complaint to a panel of councillors. The procedure did not specify a response time; however, the chief executive aimed to advise the complainant of his decision in accordance with our published service standards, i.e. within ten working days of receipt of the request. If, in his view, there was merit in referring the complaint to councillors, we convened a special complaints panel made up from members of the Audit and Corporate Governance Committee.

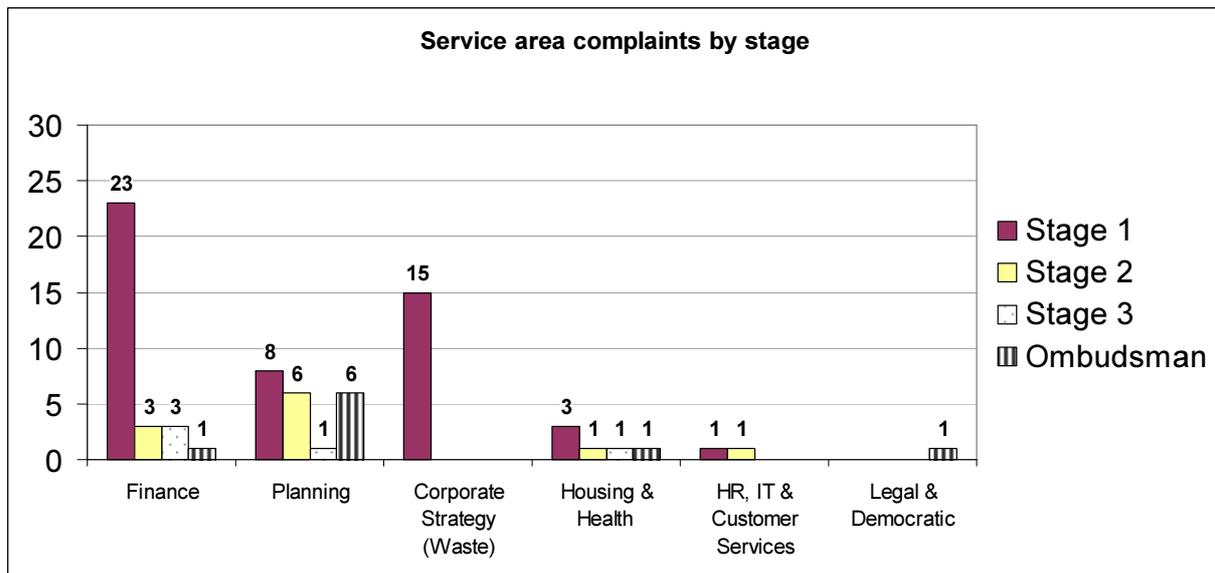
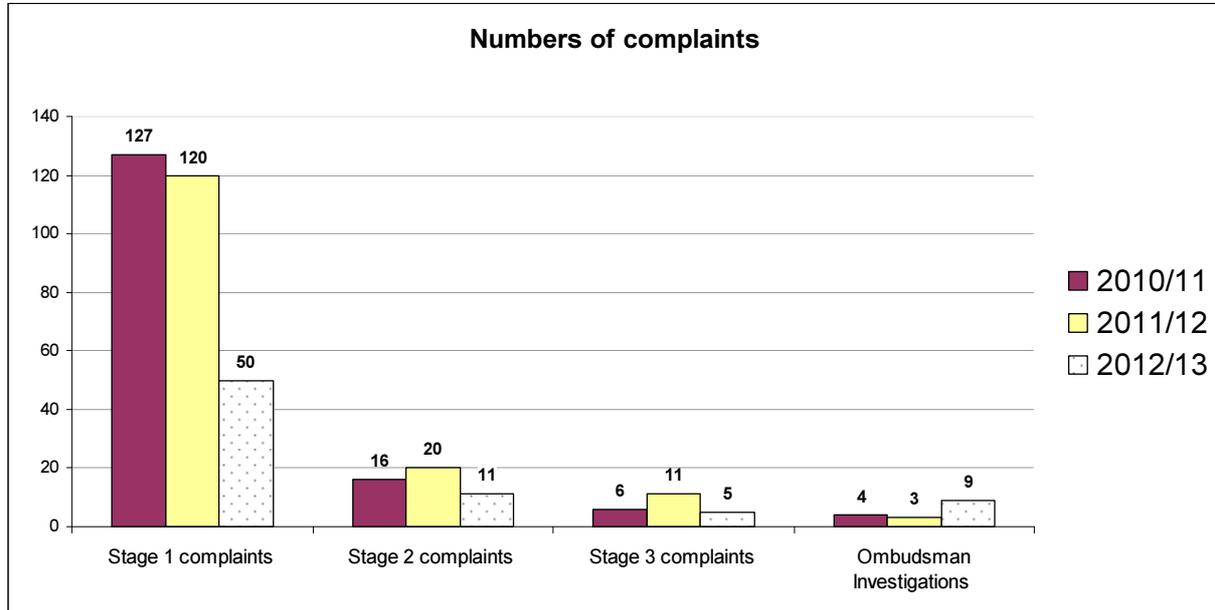
If, having followed our complaints procedure, the complainant remains dissatisfied; s/he has the right to ask the local government ombudsman to investigate their complaint.

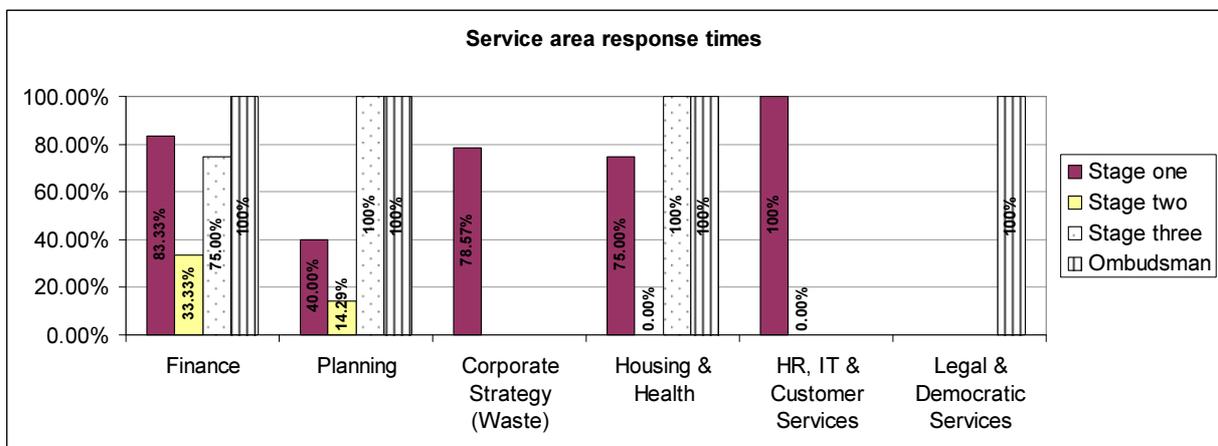
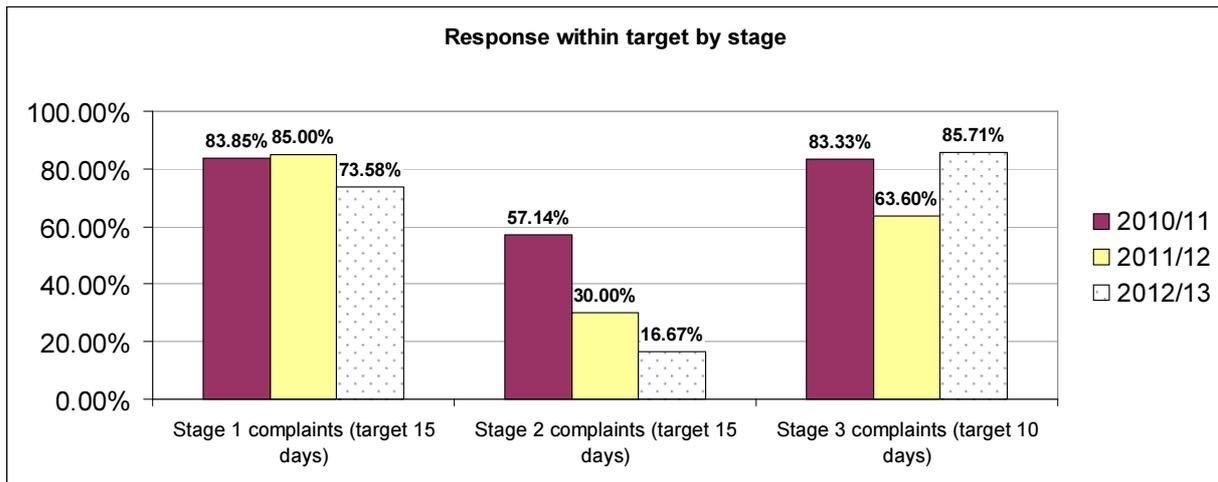
5. At its meeting on 10 July 2012 this committee agreed to introduce a revised complaints procedure. The changes included:
- the time limit for responding to complaints was amended to 20 calendar days
 - an independent member of the strategic management board deals with complaints at stage two (i.e. not the director whose portfolio the complaint relates to)
 - the deletion of stage three from the process.

We introduced the revised procedure on 1 October 2012.

COMPLAINTS STATISTICS

Statistics





Summary of complaint details

6. The number of complaints received at stage one has reduced significantly from 120 last year to 50 in 2012/13. Complaints have reduced across all services apart from waste, which has increased from ten to 15.
7. Finance and waste received the highest number of complaints.
 - Finance: 23 complaints received this year compared to 64 last year mainly around receipt of summonses, bailiff action and inaccuracy/delay in dealing with benefit payments. No changes in practice were required as a result of these complaints.
 - Waste: 15 complaints received this year compared to 10 last year mainly about the behaviour of the crews and missed collections. None resulted in the need for a change in practice.
9. The percentage of stage one and stage two complaints dealt with within target has worsened compared to last year; in particular the response time for stage two complaints about the planning service is very poor. The chief executive is addressing this.

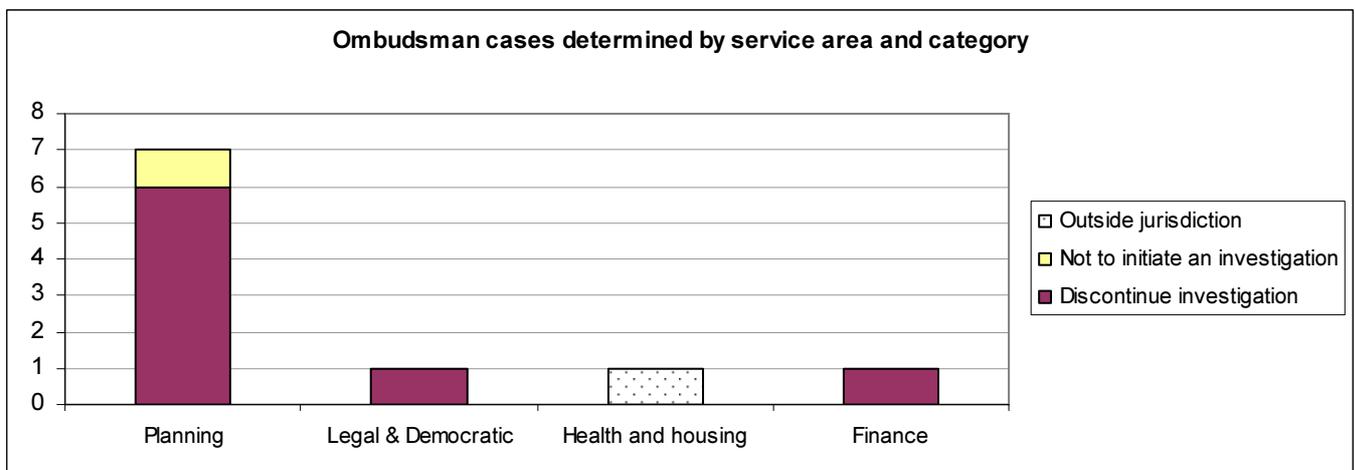
10. Unfortunately, in one instance, the date of receipt of a stage two complaint about a benefit claim was entered incorrectly on the complaints database (the year was entered as 0012 instead of 2012). This resulted in no automatic reminder emails being generated and no response being issued. The complainant did not contact us regarding the lack of a response and the complaint has since been referred to, and is being dealt with by, the appeals tribunal. All officers with access to the complaints database have been reminded of the importance of ensuring they enter accurate data. In addition, the IT team is revising the complaints database so that it will not accept invalid dates. These two actions should ensure there are no recurrences.

Local Government Ombudsman investigations

11. The LGO changed its business processes during the course of 2012/13 and was therefore not able to provide a consistent set of data for the entire year. As it has been unable to provide the detailed information received in previous years, we have taken the data below from our own records.

12. We responded to investigations within an average of 21.6 days, an improvement on last year's average of 25.7 and well inside the target of 28 calendar days set by the LGO.

13. During 2012/13 the LGO determined ten complaints, the same as during the previous year. The following table provides details by service area of those complaints.



14. A summary of these complaints is attached at appendix one.

Categories of Ombudsman Complaints:

The LGO categories are:

Not to initiate an investigation:

Where the LGO has decided not to investigate for one of the following reasons:

No power to investigate – complaints that the law does not allow the LGO to investigate

No reason to use exceptional power to investigate – complaints that the law says the LGOs should generally not investigate but gives an exceptional power to do so

Investigation not justified and other – complaints where the LGO has used her general power and not pursued the complaint. This can be for a variety of reasons, including that the injustice claimed does not warrant the public expense of the LGO's involvement or that another organisation could deal with the matter better.

Discontinue Investigation:

Where the LGO has discontinued an investigation for one of the following reasons:

Not enough evidence of fault – decisions where the LGO found insufficient evidence that the council was at fault.

Injustice remedied during enquiries – decisions where the council remedied or agreed to remedy any injustice to the LGO's satisfaction during the investigation.

No or minor in injustice and other – decisions where we have used the LGO's general power to discontinue the investigation. This can be for a variety of reasons, but the most common is that any injustice caused does not justify the public expense of pursuing the matter further.

Outside jurisdiction: These are cases which are outside the LGO's jurisdiction.

Financial implications

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

Legal implications

17. There are no legal implications arising from this report.

Risks

18. Having a formal complaints procedure allows us to analyse complaints and improve services where necessary; it also gives members of the public clarity about what to do if they have a complaint, and how we will deal with it. If we did not have a formal procedure, we would be unable to carry out such analysis, with the risk that we would fail to make service improvements.

Other implications

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

Conclusion

20. This report sets out the statistical data for complaints received during 2012/13.

21. Last year saw a significant reduction in the number of complaints received, compared to the previous two years, which is encouraging. We do try to learn from complaints and adjust our working practices where necessary and this may be paying dividends. It will need more than one year to confirm that there is downward trend but the signs from the current year to date are promising.

Background papers

None

OMBUDSMAN DECISIONS – 1 APRIL 2012 TO 31 MARCH 2013

1. Ombudsman decision – discontinue investigation

Decision date – 7 August 2012

Ombudsman main subject area – planning and development

Complaint

That:

- the council failed to follow procedure
- there were factual errors in the case officer's report
- the council granted planning permission contrary to the South Oxfordshire Local Plan and the South Oxfordshire Design Guide
- the council disregarded the town council and highway authority's objections.

Background

In September 2011 Mrs A's neighbours submitted a planning application to demolish a garage and build a single and two-storey side and rear extension.

Mrs A objected to the application on 15 October 2011 as she was concerned that the extension would be overbearing and result in a loss of light and privacy; she was also concerned about the parking provisions. The town council and highways authority also objected to the application.

In response to the concerns about lack of on-site parking, the applicant submitted revised plans on 9 November 2011 and officers invited further representations by 24 November 2011 and Mrs A responded on 15 November 2011 raising further concerns over the parking provisions.

The case officer prepared a report recommending approval and permission was granted on 21 November 2011. Officers acknowledge their error in approving the application within the consultation period and have apologised to Mrs A. In addition, an incorrect date for receipt of the amended parking plan was given in the report. An earlier version of that plan was received on 24 October 2011, but the version sent out for consultation and published on our website was a later version received on 9 November 2011. The officer's report should have referred to the plans received on 9 November 2011; officers also acknowledge this error and have apologised for any confusion this error caused.

Mrs A also raised concerns about other errors in the report. In the planning history section the report states there were no extensions to the property; Mrs A stated that this was incorrect as the garage was an extension. There are no planning history records showing an extension to the property; any extension must therefore have been built under permitted development rights. The officer's report

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refers to “relevant planning history” and is used only to provide information on previous planning applications; the report is therefore factually correct.

The case officer’s report referred to a bedroom window in Mrs A’s property as being a secondary source of light. This was incorrect as it is the only window in the bedroom. Officers acknowledged this mistake but stated that the recommendation would have been the same even if the report had accurately reflected the situation.

Mrs A made a formal complaint in which she claimed that officers did not follow the South Oxfordshire Local Plan (SOLP) or the South Oxfordshire Design Guide (SODG). However, both the case officer and authorising manager considered that the application was in line with SOLP and SODG and there were no clear planning reasons to refuse the application. The case officer considered that the application would not result in an overdevelopment of the site, would appear in keeping with the scale and design of the property and would have little adverse impact upon the original character. She also considered that the proposals would have little detrimental impact on the surrounding street scene. In addition, the case officer had visited the properties on either side of the application site. She considered that, although there would be some loss of light and outlook to a landing window and a bedroom in Mrs A’s property, it would not be so significant as to have a detrimental impact upon Mrs A’s living conditions.

Mrs A also raised concerns about the proximity of the extension to the boundary with her property. She claimed it contravened the SODG as it did not leave a gap of one metre to the boundary. There was no existing access at the side of the application site as the garage occupied that space; the proposal was therefore similar at ground level, in relation to the common boundary, as the current garage.

Mrs A, the town council and the highway authority raised concerns about the parking provision. The revised plans showed the two parking spaces at the site would overhang onto the footway. Mrs A was concerned this would obstruct the footway and entry into her property. The highway authority did not consider the application met current standards as the site could not accommodate two parking spaces so vehicles would overhang the footway.

The position is complicated, however, by the fact that the applicant’s property is on a private road and has no public highway rights attached to it. So, although the highway authority considered the proposal was not acceptable, it has no jurisdiction over the drive and footway. The highway authority was concerned that a refusal based solely on the parking arrangements would be difficult to sustain at appeal.

The officer’s report acknowledges all the concerns raised regarding parking. The officer stated that the plans showed access and egress from Mrs A’s property would be unobstructed and, given the layout of the street, vehicles were unlikely to be travelling at speed. The officer therefore concluded that, as the form of development was acceptable, a refusal based on parking arrangements and the impact on the highway would be difficult to sustain at appeal.

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In addition, the officer did not consider the town council's objections held sufficient weight to justify a refusal of planning permission. There were no clear planning grounds for refusing the application that could have been defended at appeal.

Finally, Mrs A considered the application should have been referred to planning committee, rather than dealt with under delegated powers. The only instance when this type of householder application is referred to planning committee is when a district councillor specifically requests it; no such request was received in respect of this application.

Ombudsman's conclusions

The ombudsman's investigator acknowledged that officers had apologised for the errors made during the processing of the application. She did not consider there was any evidence to suggest the outcome would have been any different if those errors had not been made.

The investigator said that the grant of planning permission was a matter of officers' professional judgement and the ombudsman would not consider complaints about officers' judgment and the merits of their decisions unless she believed they were utterly unreasonable. She did not consider this to be the case in this instance.

The investigator said that the case officer's report showed that the officer had considered the objections made by neighbours, the town council and the highway authority. It also showed consideration of the SOLP and SODG. She pointed out that the case officer's manager had considered and endorsed her recommendation and that neither had considered there were clear planning reasons to refuse the application. She finished by saying that, although the parking provisions contravened the SODG, officers did not consider a refusal solely on this basis could be sustained at appeal. The head of planning had delegated authority to determine the application as he had not received a request to refer the application to planning committee.

In light of the above, the investigator discontinued her investigation.

2. Ombudsman decision – discontinue investigation

Decision date – 17 July 2012

Ombudsman main subject area – planning and development

Complaint

That the council:

- in approving a planning application, failed to take account of the impact on Mr B's amenity
- based its decision on accurate information
- failed to ensure Mr B had an opportunity to address the town council.

Appendix one

Background

Officers received a planning application for a single and two-storey rear extension adjacent to Mr B's property on 20 October 2011. They issued consultation letters on 3 November 2011 and the case officer visited on the site on 4 November 2011. The town council recommended approval of the application on 16 November 2011.

Mr B submitted objections on 23 November 2011 and the case officer carried out a further site visit on 8 December 2011, including a visit to Mr B's property. The application was granted under delegated powers on 15 December 2011.

Ombudsman's conclusions

The ombudsman's investigator could find no evidence of fault in how officers had considered the impact of the development on Mr B's amenity. She noted that the case officer had visited Mr B's property to view the relationship between the two sites. The investigator was therefore satisfied that the case officer had a good understanding of how the development would impact on Mr B's amenity. She added that it is not the role of the ombudsman to comment on the merits of an officer's judgement.

The investigator could not consider Mr B's concerns about how the town council considered the application. She added that the actions of the town council are outside the ombudsman's jurisdiction and that this council did not have any control over how the town council handled consultation responses.

The investigator could find no grounds on which to criticise the council and discontinued her investigation.

3. Ombudsman decision – discontinue investigation

Decision date – 3 August 2012

Ombudsman main subject area – planning and development

Complaint

That the council did not consider building control matters adequately when Mr C's flat was refurbished.

Background

Mr C purchased a flat in August 2010. The flat is part of a larger property which had been sub-divided by a developer; the works were subject to building regulation approval.

Mr C experienced considerable damp and noise at the property and carried out works to try to improve the damp problem. He submitted a complaint in March 2011 as he considered that officers had wrongly approved the property as complying with the building regulations. He considered that:

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- adequate background ventilation had not been provided, in particular the living room does not have any windows so there was no ventilation

During construction the developer revised the specification to provide background ventilation and the building control surveyor considered it met the functional requirements of the building regulations.

- an extractor fan serving the bathroom was too long

Mr C did not provide any evidence that the duct was 20 metres long. At the completion stage officers had carried out a visual inspection. As the bath and shower room are located close to external walls there was no reason to believe that any of the ventilation ducts were excessively long. Officers provided photographs of the external extractor vents on the front of the building, which means that the ducts would be about seven metres from the internal bathroom. This does not mean they did not comply with the building regulations. It would have been for the developer to ensure compliance by calculating approximate fan size and duct type. At the time there was no requirement for any commissioning or mechanical ventilation flow rate testing.

- the property did not comply with the relevant standards for noise transference.

Sound testing is a requirement of the building regulations and the government has laid down the relevant criteria and who should undertake tests. The testing is carried out on a sample of separating elements and is not required between all dwellings (flats). In this case the sound tests did not include the party wall or floor to Mr C's property. An accredited company carried out the sound tests and submitted the results to building control officers. The results indicated that one airborne test was below the minimum standard; however, the floor specification was the same as other tested floors which all passed. The building control surveyor considered the overall test results, in the context of conversion of an existing building, as meeting the requirements of the building regulations.

Ombudsman's conclusion

The ombudsman's investigator said it was for Mr C to satisfy himself on the condition of the property when he bought it. If he considered he was not properly advised that he should seek redress from his advisers or agents.

The investigator concluded that officers had inspected the works and exercised their professional judgement in deciding whether they were satisfactory. She was sympathetic to the position in which Mr C found himself but did not consider this was as a result of administrative fault by the council.

In light of the above the investigator discontinued the investigation.

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4. Ombudsman decision – discontinue investigation**Decision date – 10 September 2012****Ombudsman main subject area – corporate and other services****Complaint**

That the council failed to properly investigate a complaint about a parish councillor.

Background

Ms D complained about the conduct of a parish councillor following an incident on 3 May 2012. Ms D was taking photographs near her business property, which is one of several units. She heard a disturbance and realised the parish councillor was shouting at her. Ms D claims the councillor was hostile and said she had planning issues with the site as a whole. The councillor acknowledged she had a prejudicial interest in planning applications as she lived near the site. Ms D alleges that the councillor took her phone and would not return it; after some time Ms D managed to retrieve the phone. Ms D claims the police have issued a warning for harassment to the councillor and her partner.

Prior to this incident, in February 2012, Ms D had invited the councillor to meet with her with a view to developing a positive relationship as a neighbour and to foster parish council support for her business. A short while after the invitation, Ms D claims the councillor's partner visited her studio and said that the councillor was upset about issues at the site and did not want increased traffic on the country road. Ms D stated that the partner confirmed that he and the councillor were responsible for pushing over signs when Ms D held events at her studio and said they would continue to do so in the future. Ms D said a customer witnessed some of this exchange.

In 2011 the councillor objected to a planning application concerning the site. Ms D alleged the councillor attended parish council meetings in January and August 2011 at which this planning application was discussed and that the councillor had declared a personal interest and remained in the room during discussions. In March 2012 the councillor is stated to have left the room during discussions on the item and had declared a personal interest. Ms D claims that the parish council chairman had spoken with the councillor about her interest before the meeting took place but the minutes do not record a prejudicial interest.

An assessment panel of the council's Standards Committee considered Ms D's complaint on 26 June 2012. The panel decided that no further action should be taken and considered it was not in the public's interest to conduct an investigation as the code of conduct rules were changing from 1 July.

However, the panel expressed concern at the alleged incidents and considered that, should this kind of behaviour escalate, it may result in action under the new code should a further complaint be made.

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As the rules changed, Ms D had no right of review against the panel's decision. Under the new arrangements the monitoring officer would consider such a complaint. However, the monitoring officer would not expect to refer such a case for investigation because the significant expenditure of public money, including officer and councillor time, could not be justified for a complaint which, although distressing for Ms D, was not significant enough to pursue an investigation.

Ombudsman's conclusions

The ombudsman's investigator said that the key issue was whether Ms D's complaint had been properly considered. Ms D considered she had been denied her right of review of the decision but the investigator accepted officers' argument that changes to the law meant that there was no longer any provision for a review.

The investigator considered there could be an argument that the reasoning used by the panel for not investigating the complaint was flawed as it appeared the panel had relied on the change of rules to decide that the complaint should not be investigated. She did not consider that should be relevant to the decision, which should be made on the facts of the case. However, the investigator did not consider this of any practical consequence. She said the monitoring officer had explained that, under the new arrangements, she would not investigate the complaint and that was a decision the monitoring officer was entitled to make. The investigator could only question if it she considered it was not properly considered or utterly unreasonable, which she did not. She recognised that Ms D would disagree with the monitoring officer's decision, but the investigator could not say that decision was flawed.

The investigator concluded that, even if the complaint had been reconsidered under the new arrangements, the outcome would have been the same. As there was nothing more she could achieve she closed the investigation.

5. Ombudsman decision – not to initiate an investigation**Decision date – 11 February 2013****Ombudsman main subject area – planning and development****Complaint**

That the council had not considered a planning application for extensions to the adjoining semi-detached property properly.

Background

Mr E lives in a link semi-detached property. A planning application was submitted to build a porch on the front of the adjoining property and a first floor extension of the garage. The first floor extension projected beyond the main part of the house at the rear but was separated from Mr E's property by the main part of the neighbouring house. It would link to the neighbouring property on the other side at first floor level. Mr E complained that this would have the effect of making his property an end of terrace rather than a link semi-detached.

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The application was approved under delegated powers. The delegated report referred to similar porches and first floor developments that had been permitted. Mr E said that all those developments were original and not later additions.

Ombudsman's conclusions

The ombudsman can only consider the way in which officers considered an application, not the merits of an application. In deciding whether to pursue a complaint, the ombudsman must also consider how the complainant is affected and whether they have sustained sufficient injustice to warrant her involvement.

In this case, the ombudsman's investigator had no reason to doubt Mr E's comments that other porches and infill first floor developments were original rather than later extensions; however, this was not a key point in her view. The investigator said that, in deciding whether the application was acceptable, the officer had to consider the impact on neighbours, on the wider area and generally whether it was acceptable in planning terms. The fact that there were other similar forms of development in the street were relevant considerations, regardless of whether they were original or later additions. She did not consider there was any error here that called into question the decision reached.

She acknowledged that Mr E was aggrieved because he considered the effect of the first floor extension would make his property end of terrace rather than a link semi-detached. She also acknowledged that Mr E considered it would affect the amount of light reaching his conservatory and that the porch would have an adverse impact on him as the side of it would face his front door. However, the investigator considered that officers had properly considered the impact of the development on the amenity of neighbours and generally in planning terms.

The investigator said that she realised Mr E was unhappy with the approved developments but did not consider they would have sufficient impact on him to warrant an investigation. She did not therefore investigate the complaint.

6. Ombudsman decision – discontinue investigation

Decision date – 13 March 2013

Ombudsman main subject area – planning and development

Complaint

That the council failed to effectively control the hours of use of a neighbouring coffee shop. As a result Mr F suffered from noise made by events late at night.

Background

Mr F lives in a mixed residential and retail area next to a coffee shop. In 2010 the planning committee granted planning permission for a change of use from a shop to a coffee house with an outdoor courtyard (with room for two tables) through which customers access the main eatery barn at the rear of the site. At the time officers understood the café would close at 5.30pm with occasional evening use of the barn for community groups, such as knitting clubs. They therefore did not

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attach any planning conditions to control the hours of use and did not consult the environmental health team.

In the committee report officers made it clear that the property was not within a primary shopping frontage; they also described the surrounding properties. Officers set out their assessment of the impact of the building on neighbours based on it closing at 5.30pm and added that the current use had not given rise to complaints. They explained that the courtyard was surrounded by commercial properties and its use for additional seating would not be likely to disturb the nearest neighbour (Mr F).

In April 2012 the owner started to put on evening events at the café. These went on past 11pm, sometimes with loud music and the associated noise of people coming and going. There were five events that month and the advertising said these would happen regularly. In addition to the noise from the music, Mr F suffered noise from use of the courtyard area, even when this was just by customers or staff walking through the courtyard to access the eatery barn.

Following Mr F's complaint officers met with the owner to advise her how to avoid creating a nuisance. They installed noise monitoring equipment for four weeks and during this time identified one event that it might consider to be a noise nuisance if it happened regularly. Officers did not consider that one event on its own to be a statutory nuisance.

Officers met with the owner again and made an informal agreement that meant customers would not be outside after 8pm, there would only be acoustic music and no other events than those already discussed. Officers again installed noise monitoring equipment for a further three weeks but there was no excessive noise in that period. Shortly after that period a private party was held at the coffee house until late on a weekday night. Mr F again complained and officers visited the owner to warn her that she had breached the informal agreement

Officers offered to install noise monitoring equipment again but Mr F refused. Officers have received one third party complaint about noise from the coffee house but have not had any more complaints from the public about the private party.

The business does not need a licence unless it plans to hold an evening event, with alcohol, for more than 200 people.

Planning and environmental health officers have not received any further noise complaints in connection with the coffee house. Planning officers are satisfied, for the present, that conditions of the planning permission are being adhered to and there is no current breach of planning control.

Ombudsman's conclusions

The ombudsman's investigator considered whether officers should have imposed a condition controlling hours of use or assessed the impact of increased hours in case that happened. She said that the council had to consider the application before it, including the hours of use. Officers said that the coffee house was not in

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a predominantly residential area and that there were takeaway outlets directly opposite with no restriction on hours, as well as various businesses in the locality. Mr F had pointed out that there is only one takeaway outlet and 43 residential properties compared to 12 retail premises. Despite these differences, the investigator said that officers' description of a mixed use of the properties was not wrong. She said that, crucially, the committee report was clear that residential properties adjoin the coffee house.

The investigator did not consider the council should have anticipated the increased opening hours.

The investigator said that the case officer had considered the impact on residents of noise from the courtyard. She said that noise from the courtyard would be heard from Mr F's home and that the officer had to consider whether that was likely to be at an acceptable level and had decided it would not. She added that the officer based his decision on a visit to the premises and his professional judgement. The way in which he reached his decision was not flawed or based on wrong information and the investigator had no basis to criticise his assessment.

She added that officers had considered whether a change of use had occurred and had decided that it had not.

The investigator concluded that there was no evidence of fault in how officers investigated complaints about noise from the coffee house or how they reached the decision that they could not take enforcement action. She therefore discontinued her investigation.

7. Ombudsman decision – discontinue investigation**Decision date – 9 October 2012****Ombudsman main subject area – planning and development****Complaint**

That the council wrongly approved planning permission in respect of an area of land directly in front of Mr G's property.

Background

In February 2011 officers received a planning application to revise the parking layout directly in front of Mr G's property and a change of use of the land to private car parking. The application site included part of the public highway, ten parking bays and a grassed area.

Officers notified Mr G of the application and he made representations objecting to the proposals. Mr G's primary concern was safety; he said that under the existing arrangements cars had to drive along the pavement in order to pass parked cars. As the properties in the street are not set back from the pavement, this presented a serious risk to residents and anyone using the pavement.

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The town council also objected to the application. It was concerned the development was unneighbourly, out of character in a conservation area and would lead to the degradation of green space.

The case officer assessed the application and prepared a report recommending approval. In that report the officer set out the consultation responses and representations made by local residents. He also confirmed that a large number of local residents and organisations objected to the application but that the highways liaison officer and the forestry officer had no objections.

As the officer's view conflicted with that of the town council, the officer referred the application to the planning committee. Members of the committee visited the site before considering the application and subsequently decided unanimously to grant planning permission.

Mr G was unhappy with the committee's decision and did not consider members gave adequate consideration to the issues. He believed the committee summarily dismissed local residents' concerns. Mr G attended the meeting and registered to speak; two other people also registered to speak against the proposal. Mr G asserted that they were harassed and interrupted by the chairman on several occasions; he believed the chairman had decided from the outset to approve the application.

Committee members receive the agenda papers and all relevant material a week in advance of a meeting. They are therefore able to consider all relevant material planning considerations before making a decision.

As far as conduct of the meeting is concerned, a recording of that meeting (which the ombudsman's investigator has viewed) shows that Mr G and the other objectors were given a total of five minutes to speak. The chairman interrupted the first speaker to advise there were only two minutes left and Mr G and the third objector would need to speak before the end of the five minutes. If they did not, the committee members would be unable to ask them any questions. Mr G raised his objections but the third objector was unable to complete her representations within the time limit.

The chairman also allowed those speaking in support of the application a total of five minutes and interrupted them after five minutes. As a result one of the supporters was unable to speak.

Given the concerns over highway safety, the chairman also asked the highways liaison officer from Oxfordshire County Council (OCC) to present his views on the application. He confirmed that it was his role to compare the situation before and after the proposed development and that, at the time, the road was not stopped up so was open to traffic. He requested that, if the committee approved the application, it imposed a condition that the highway was stopped up at the developer's expense. He considered the proposed situation would be safer than that existing. The officer added that, once the road had been stopped up, there would be a shared surface and he suggested manoeuvres would be at a slow pace. He felt the proposal was sufficiently safe that he did not need to raise an objection. He also felt an objection would not be sustainable at appeal.

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Mr G claimed that too much weight was given to the highway officer's view. He did not consider it sufficient to say the proposals would be no worse than the current situation but considered that the council must show the application was safe. He claimed that OCC had a conflict of interest as the developer had threatened the council and OCC with legal action on a related matter.

The highway authority, as part of OCC, comments on all planning applications with the potential to affect the public highway. Officers consider it was appropriate to consult the OCC in this instance. They also consider that the planning committee gave considerable, but not excessive, weight to the highway's officer's view.

The officer's report to the committee concentrated on the material planning issues relating to the proposed development, and all advice given to that committee was that their decision must be reached based on the planning merits of the proposal. Our senior solicitor reiterated that advice during the meeting, who advised that the matter of land ownership was not a material planning consideration. Officers are not aware of any evidence that indicates the committee's decision was influenced by the threat of legal action.

Ombudsman's conclusions

The ombudsman's investigator said that there was not a great deal of debate by the committee members during the meeting, but she had not seen any evidence to suggest they had predetermined the application.

The officer's report showed consideration of the consultation responses and representations as well as the material planning considerations. Committee members visited the site and had the officer's report and all relevant information in advance of the meeting. She therefore expected the members to have had a good understanding of the application. She noted that the committee had listened to, and asked questions of, all speakers.

Having viewed a recording of the committee the investigator did not consider the chairman harassed objectors. She said the chairman's interruptions were to remind speakers of the time limit and to ensure they all had an opportunity to speak. The chairman had also reminded those speaking in support of the application of the time limit and the need for all of them to speak.

The investigator said it was normal practice to obtain the highway authority's views on applications that may affect the highway. She said it was the highway liaison officer's professional judgement that the proposed amendments to the layout would be safer than the existing situation. The investigator had not received any evidence to suggest his professional judgement had been influenced by any other correspondence OCC may have had with the developer.

The investigator therefore discontinued her investigation.

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8. Ombudsman decision – discontinue investigation**Decision date – 28 August 2012****Ombudsman main subject area – planning and development****Complaint**

That the council:

- failed to remove permitted development rights when granting planning permission for a side extension at a neighbouring property
- failed to notify the parish council and neighbours of the applicant's intention to build rear and loft extensions when it consulted on the application for a side extension
- wrongly informed the applicant and neighbours that the rear extension was permitted development
- failed to follow its enforcement policy when deciding that it was not expedient to take enforcement action.

Background

In June 2009 we granted planning permission for a two-storey side extension at a property on the road in which Mr H lives. Mr H lives several houses away from the property but the bend in the road means he can see the rear of the property from a communal yard. The properties lie within the green belt.

In August 2009 the applicant's architect sought officers' advice on whether single and two-storey rear extensions and a dormer extension would constitute permitted development. An officer advised that the extensions would amount to permitted development and would therefore not require planning permission. The officer further advised that the dormer extension may not require planning permission, but that the materials used should be similar to those on the existing dwelling. In providing this advice the officer warned that it did not bind the council should a planning application be submitted.

In March 2010 Mr H and his neighbours contacted officers to enquire whether the roof extension required planning permission; an officer advised that it was likely it was permitted development.

As a result of further contact from Mr H and his neighbours officers investigated whether there had been a breach of planning control. An officer visited the site and made contact with the architect to request plans. The architect did not submit the plans for the dormer extension.

A planning officer set out her assessment in a delegated report, signed by the chair of planning committee. The officer concluded that, based on its appearance, the dormer extension was permitted development. She made this decision as it did not appear to be larger than the cubic capacity permitted under permitted

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development. However, the officer considered that the single and two-storey extensions exceeded permitted development rights.

The officer considered that the materials used were not identical to the original dwelling but were not so different as to conflict with the planning permission granted in 2009 and the requirements of the General Permitted Development Order.

Planning officers considered that the extensions were out of scale, proportion and character with the original dwelling and impacted on the character of the area, the amenity of the nearest neighbour and the green belt. They considered that any retrospective planning application to modify the extension to improve the design, or to bring it within the parameters of permitted development, would be refused because the extensions far exceeded 40 per cent of the original volume of the dwelling and would therefore be contrary to the council's planning policies.

Officers considered whether to serve a notice requiring the demolition of the extensions. However, the owner could use their permitted development rights to substantially rebuild the extensions up to the limits of those rights, which would still be disproportionate to the original dwelling. They also considered whether to require partial demolition in order to remove the pitched roof, but concluded that the owner could rebuild it using a flat roof, which would be more detrimental in terms of appearance. They therefore concluded that it was not expedient to take enforcement action as it would not necessarily overcome the harm caused by the developments. Officers considered that the fact that the owner could rebuild under permitted development rights in a way that would not address the harm was a special circumstance for departing from the council's green belt policy.

In 2008 the Government made amendments to the General Permitted development Order that removed the volume limitations on household extensions. Officers acknowledge their advice that the rear extension was permitted development was incorrect but they only established this when the Government provided clarification on the interpretation of the permitted development rules in 2010.

Mr H questioned why officers had not removed permitted development rights when permission was granted for the side extension in 2009. Officers only consider removing permitted development rights in exceptional circumstances, which accords with national planning guidance. It would have been out of kilter with our general approach to the consideration of house extensions in this type of location/ character of area to have imposed such a restriction. However, officers acknowledged that, with the benefit of hindsight, they could have justified the removal of permitted development rights for this property. This was the first case in the area to make full use of the permitted development rights since the amendment to the General Permitted Development Order and brought to light how significantly a property could be extended without requiring planning permission.

Mr H also questioned why officers did not notify the local parish council or neighbours that the owner of intended to carry out further work under permitted development when they made their planning application for a side extension. The reason for this is that officers were not aware of the owner's intentions and,

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additionally, there is no legal requirement to inform third parties of work that might be carried out by a house owner as permitted development.

Ombudsman's conclusions

The ombudsman's investigator said that, when considering the planning application for the side extension in 2009, officers should have been aware of the consequences of the amendment to the General Permitted Development Order and the possibility of harm to the green belt if the owners used their permitted development rights to the maximum. She added that she could not know for certain what the outcome would have been if officers had removed permitted development rights, but they would have had more control over the development of the site. She therefore considered that it was likely that a more sympathetic development could have been achieved. The investigator considered that Mr H had been caused some uncertainty as what the outcome could have been and this should be remedied.

The investigator said she could not criticise officers for not notifying the parish council and neighbours when the owner's architect sought advice on whether the extensions would be permitted development. She added that, whilst officers now consider that the rear extensions required planning permission, she could not conclude that this was likely to amount to maladministration as officers gave their advice based on the information they had in 2009.

The investigator said that, whilst Mr H felt officers should take enforcement action, it was not her role to come to a view on whether the unauthorised development merited enforcement action; she could only consider how officers made their decision. She did not consider there was any evidence of fault in the way officers made their decision not to take enforcement action.

She acknowledged that Mr H wanted officers to request a retrospective planning application to include planting to screen the development. However, she was satisfied that officers had considered this and she had no grounds to criticise their professional judgement that this was not a realistic option.

Mr H considered that officers should have taken informal action to try to resolve the breach of planning control. However, the investigator said that councils would generally only seek to resolve a matter by informal means if it had decided it should take enforcement action. As officers had decided not to take enforcement action in this case they could not compel the owner to take any action to address the breach of planning control.

The investigator also said that she could not criticise officers' professional judgement that the materials used were within the spirit of the condition of the 2009 planning permission and had no grounds to question the merits of their decision.

The investigator initially had some concerns that officers had decided the roof extension was permitted development without measuring the development. However, officers explained that they had access to scaled plans; the investigator was therefore satisfied that their decision was properly made.

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Finally, the investigator noted that officers had agreed to Mr H's request that they write to the owners to ask them to consider installing planting to soften the appearance of the extension. She added that it was important to note that they could not compel the owner to take this action.

In conclusion, the investigator said that it was reasonable for the council to make a compensation payment of £150 to Mr H to acknowledge that he had been caused some uncertainty. Officers sent a cheque for that amount to Mr H, but he returned it because he wanted the council to use the money to pay for a senior officer's time to negotiate a planting scheme with the owner; the strategic director advised Mr H that we could not do that. Officers sent the cheque to Mr H again on 20 February 2013, and he cashed it on 6 March 2013.

9. Ombudsman decision – discontinue investigation

Decision date – 20 September 2012

Ombudsman main subject area – benefits and tax

Complaint

That the council did not handle Mr I's liability for council tax correctly.

Background

Mr I disputed the council's assessment of his council tax in respect of a property he owns. He appealed to the Valuation Tribunal twice and the tribunal upheld the council's decisions.

Mr I said that the Valuation Tribunal had ruled the property was not his sole or main residence, which meant it qualified for a ten per cent discount. Officers awarded the discount from 5 October 2011, that being the date Mr I said he moved back into the property from a different property that he owns. Officers considered that date to be significant because if Mr I was living in the property (which officers did not accept) then it would be likely to be furnished, thus meeting the requirement for a ten per cent second property discount.

Ombudsman's conclusions

The ombudsman's investigator did not consider there was anything she could investigate. She said that the matter had, and could be in the future, been determined by the Valuation Tribunal; it was not a matter for the ombudsman. She said that, if Mr I wished to challenge the date from which the ten per cent property discount should be applied then he could take that to the Valuation Tribunal; it was for the Valuation Tribunal to decide if it wished to consider the matter.

The investigator said that Mr I had gone to the ombudsman because he considered the council was not competent to consider the issues. There had been lengthy and protracted exchanges of correspondence between the council and Mr I but the investigator said it was not for her to come to any view on Mr I's concerns. The substantive issue, and the only possible cause of significant

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injustice to Mr I, were the decisions about his liability for council tax. There were no separate matters that the ombudsman should investigate and the investigator therefore closed the complaint.

10. Ombudsman decision – not in jurisdiction

Decision date – 18 June 2012

Ombudsman main subject area – corporate and other services

Complaint

That the council failed to properly investigate a complaint about an accident that took place in a local gymnasium.

Background

Mr J had an accident in a local gymnasium in February 2010 in which his leg was broken in two places. He claimed that the accident occurred due to a cable from a hairdryer on the floor. He reported the matter to the environmental health team but was concerned that the officer investigating his complaint did not contact the paramedic for corroborating evidence about the cause of the accident. Mr J said that, if the officer had done so, the paramedic would have been able to confirm that he saw a cable on the floor. He stated that, when he contacted officers again in 2012, they made contact with the paramedic but that he was unable to recall the incident or provide any clarification on whether the cable was trailing on the floor, as Mr J had alleged.

Ombudsman's conclusions

The ombudsman will not normally investigate a complaint about matters which occurred more than 12 months ago. In this case, the investigator was satisfied that this restriction applied to Mr J's complaint given that the events complained of occurred in February 2010. In addition, Mr J had confirmed that he was aware that officers did not intend to pursue the matter any further, and had not made contact with the paramedic, within a couple of months of that date. As Mr J did not contact the ombudsman within 12 months of that decision, the investigator saw no reason to pursue the complaint.

In reaching that view the investigator considered whether to exercise the ombudsman's discretion to investigate the complaint. However, given the passage of time, she did not consider that any investigation could produce any worthwhile outcome for Mr J. She reached that conclusion because officers were not able to verify the situation on the ground in February 2010 and had confirmed that the paramedic in question had been unable to recall the incident. As there was no reason why Mr J could not have contacted the ombudsman within 12 months, and given the difficulty of carrying out an investigation so far removed from the events complained of, the investigator did not exercise the ombudsman's discretion to investigate and closed the complaint.