Joint Audit and Governance Committee

Report of: Chief Executive

Author: Jeanette Cox

Contact: Kim Ashford

Telephone: 01235 540303

Textphone: 18001 01235 540303

E-mail: kim.ashford@southandvale.gov.uk

South Cabinet member: John Cotton

Tel: 01835 408105

E-mail: leader@southoxon.gov.uk

Vale Cabinet member: Matthew Barber

Tel: 07816 481452

E-mail: councillor@matthewbarber.co.uk

To: Joint Audit and Governance Committee

DATE: 25 January 2016

Review of complaints received during 2014/15

Purpose of report

1. The purpose of this report is to provide the committee with information and statistics about the complaints received during 2014/15.

Corporate 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 has two stages:

   Stage one

   The head of service responds, or arranges 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 our complaints database, which generates daily automatic reminder emails from three calendar days prior to the target date and continues to do so until details of the response have been entered.

   Stage two

   A member of the strategic management board, who is not responsible for the delivery of the service the complaint relates to, responds within 20 calendar days of receipt of the request to escalate the complaint to stage two. Again, the complaints database generates daily automatic reminder emails from three calendar days prior to the target date.

   We advise the relevant ward member(s) when we receive, and respond to, complaints at both stages.

   If, having followed our complaints procedure, the complainant remains dissatisfied; s/he has the right to ask the Local Government Ombudsman (LGO) to investigate their complaint.

COMPLAINTS PROCEDURE FEEDBACK

5. We are committed to handling all complaints in a thorough and professional manner. To help us understand whether we are achieving this we contact complainants six weeks after they have received a response to their complaint to seek their feedback on the complaints procedure. Although the majority of respondents find it very difficult to separate the outcome of their complaint from the procedure, we have received some useful comments:

Feedback	Response
Original and agreed extended timescale was not adhered to	We have reminded all officers who are responsible for responding to complaints of the need to keep to our published timescales. However, this should not be at the expense of a thorough investigation. We have therefore also reminded officers of the importance of ensuring they keep complainants fully informed of progress on their complaint and to agree extended, achievable, timescales when necessary.
I was told I could complain to the chief executive but no details were given as to who this person was	We have asked officers to ensure they include relevant contact details when responding to all correspondence, not just complaints.
It did not seem entirely clear when stage one began	The complaints page on the Vale website refers to informal and formal complaints, which is clearly confusing complainants. We have therefore removed all reference to informal complaints from the web page.

COMPLAINTS STATISTICS

6. Complaint statistics are reported in the March and September Board Reports each year, which is available to councillors via a web link in In Focus. The Board Report is also available to the public on our website.

7. Appendix One contains statistics and details relating to the number of complaints received and our performance against target for issuing responses.

LGO investigations

9. During 2014/15 the LGO received 24 complaints against South, compared to seven in 2013/14, and 15 against Vale, compared to 13 in 2013/14. The cumulative average for the other Oxfordshire district councils is 20.

10. Although the number of complaints against South appears to have increased significantly, only 12 of the 24 complaints received resulted in the LGO making formal enquiries. This is likely to be because, having contacted the LGO, the other 12 complainants decided not to pursue a complaint.

11. Not all LGO enquiries require us to make a formal response. This can be for a number of reasons including:

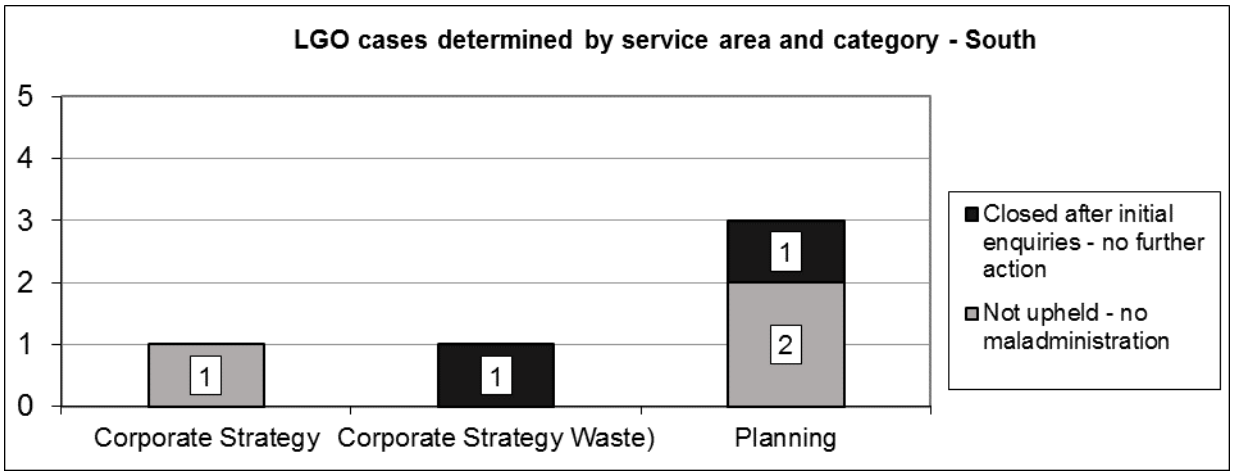
    - the LGO can reach a decision from seeing copies of the responses sent at the different stages of our complaints procedure

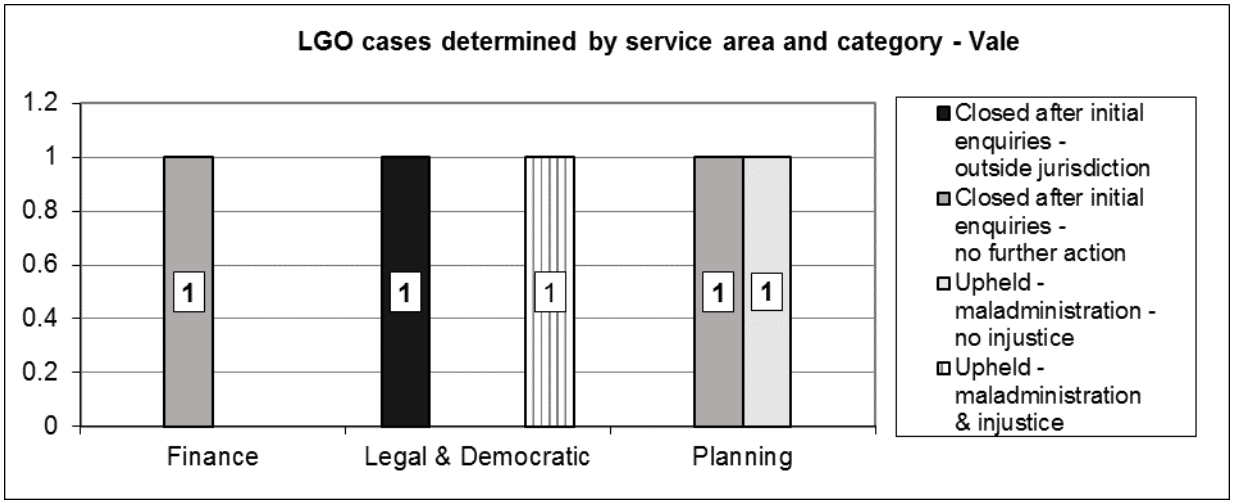
- the complaint is outside the LGO's jurisdiction and a response from us is therefore unnecessary

- the complainant has an alternative right of appeal and the LGO is therefore unable to investigate the complaint

12. Of the 12 complaints against South only three required a response; our average response time was 26 days. Of the 15 complaints against Vale only two required a response; our average response time was 21 days. Both are within the LGO's target for responses, which is 28 calendar days.

13. During 2014/15 the LGO determined five complaints against South, compared to six in 2013/14 and five against Vale, compared to six in 2013/14. The following tables provide details by service area of those complaints.





14. A summary of these complaints is attached at appendix two (South) and appendix three (Vale).

Financial Implications

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

Legal Implications

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

Risks

17. 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

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

Conclusion

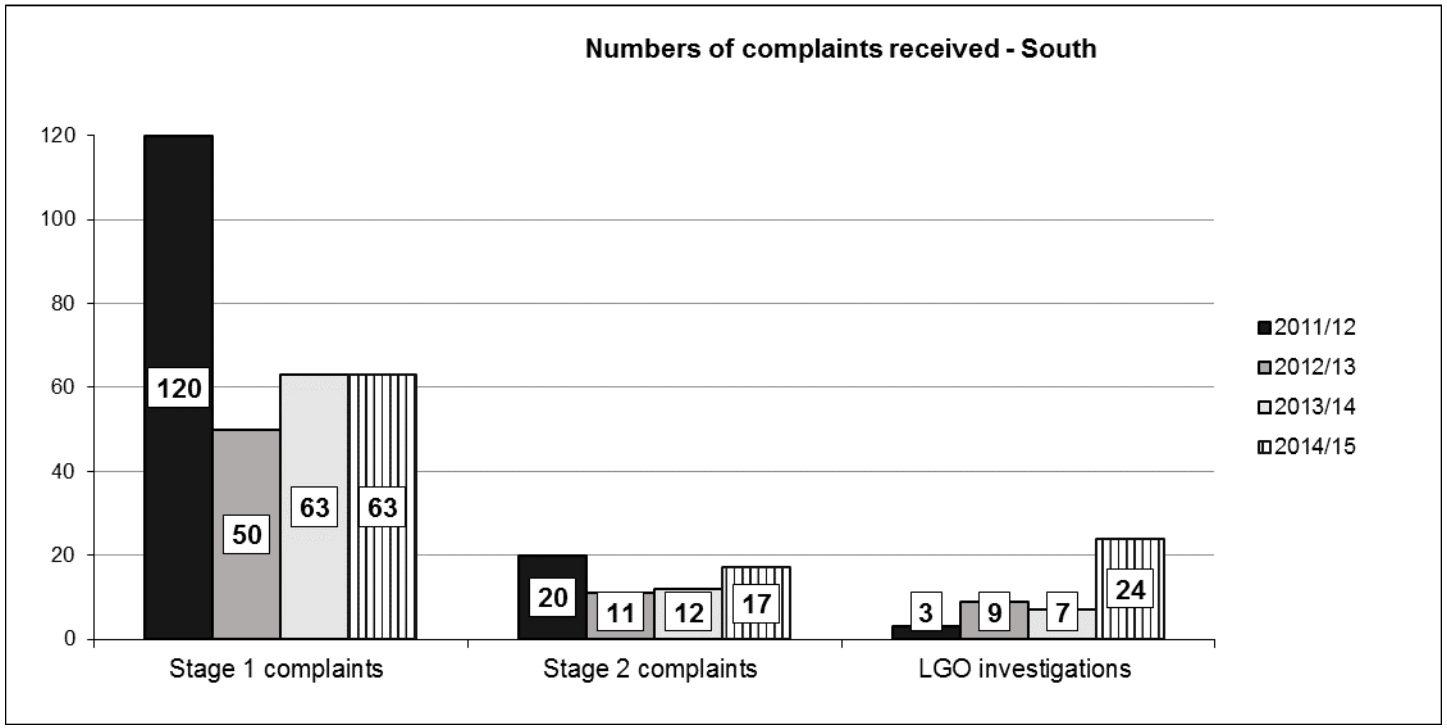
19. This report sets out the statistical data for complaints received during 2014/15.

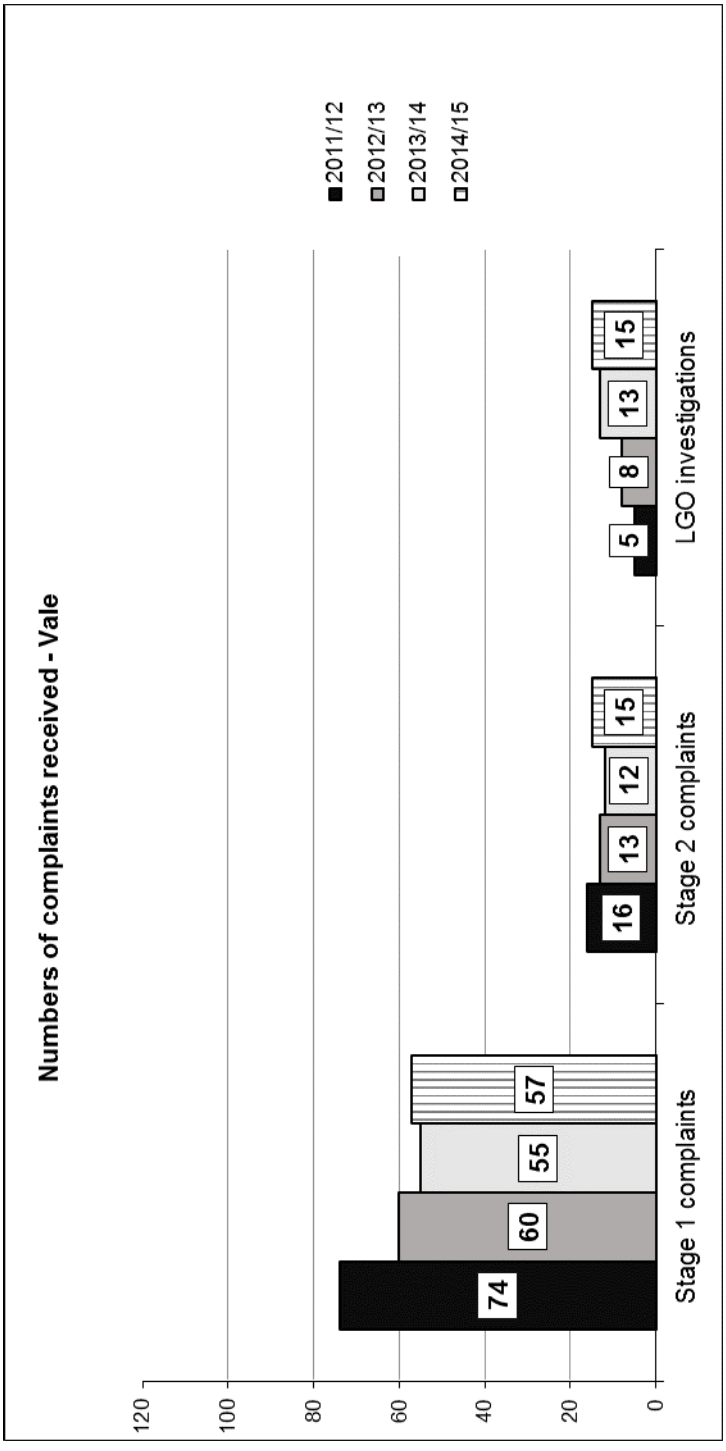
Background papers

20. None

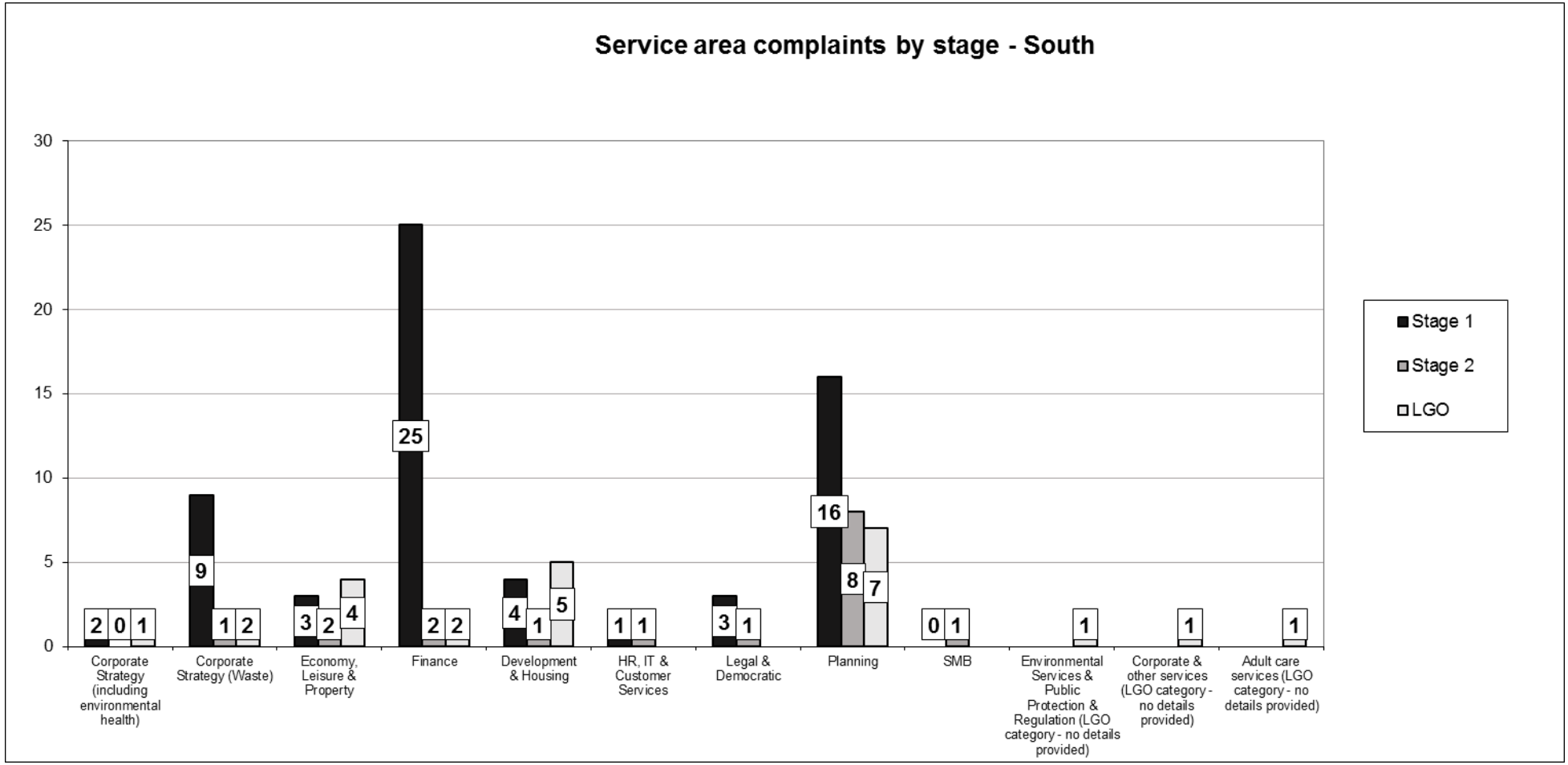
Complaints statistics

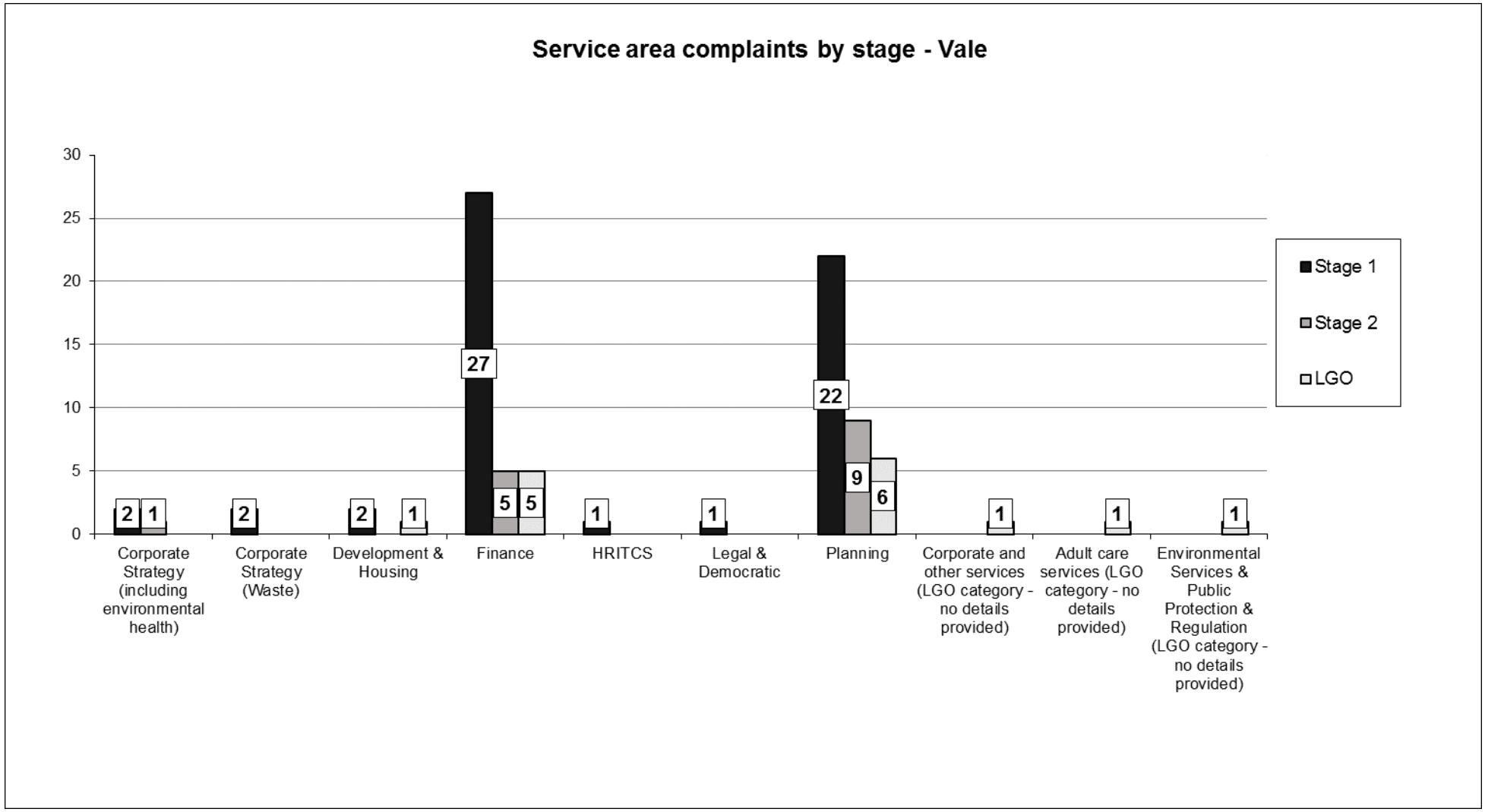
1. The following charts show the number of complaints received at each council, at each stage of the process, and compares them to numbers received in the previous three years.




Numbers of complaints received - Vale
2011/12
2012/13
2013/14
2014/15
120
100
80
60
40
20
0
74
60
55
57
16
13
12
15
5
8
13
15
Stage 1 complaints
Stage 2 complaints
LGO investigations

2. The following charts show the number of complaints received for each service at each stage of the complaints procedure.





3. The total number of complaints received is consistent with the number received last year. The only major increase is in the number of LGO investigations received at South; this is covered in more detail in paragraph 10 of the report to the Joint Audit and Governance Committee on 25 January 2016. However, the spread of stage one complaints across services has changed at the Vale, with finance receiving significantly more complaints this year (27) compared to last year (11).

4. Finance and planning received the highest number of complaints:

Finance: 25 stage one complaints received at South (compared to 26 last year). As mentioned above, the number of stage one complaints received at Vale has increased significantly from 11 last year to 27 this year. Complaints at both councils were mainly about bailiff action and summonses.

Although none of these complaints resulted in the need for a change in practice, the following three Vale complaints resulted in us making payments to the residents concerned

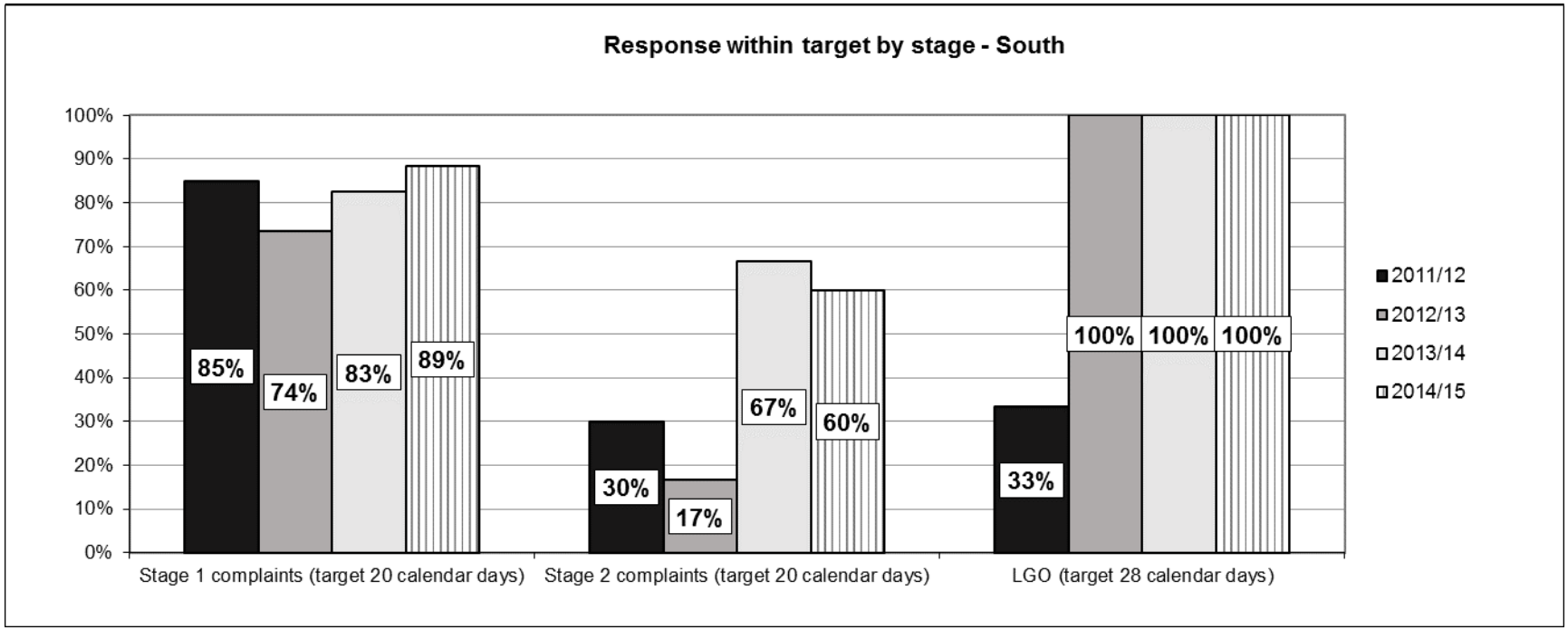
- Mr A received a final demand for a benefits overpayment invoice that had been paid 3½ years ago. Officers investigated and discovered that, when the payment details were input onto the system, digits had been transposed meaning the payment had not been registered against the correct invoice. We offered Mr A £100 compensation for this error, which he accepted.

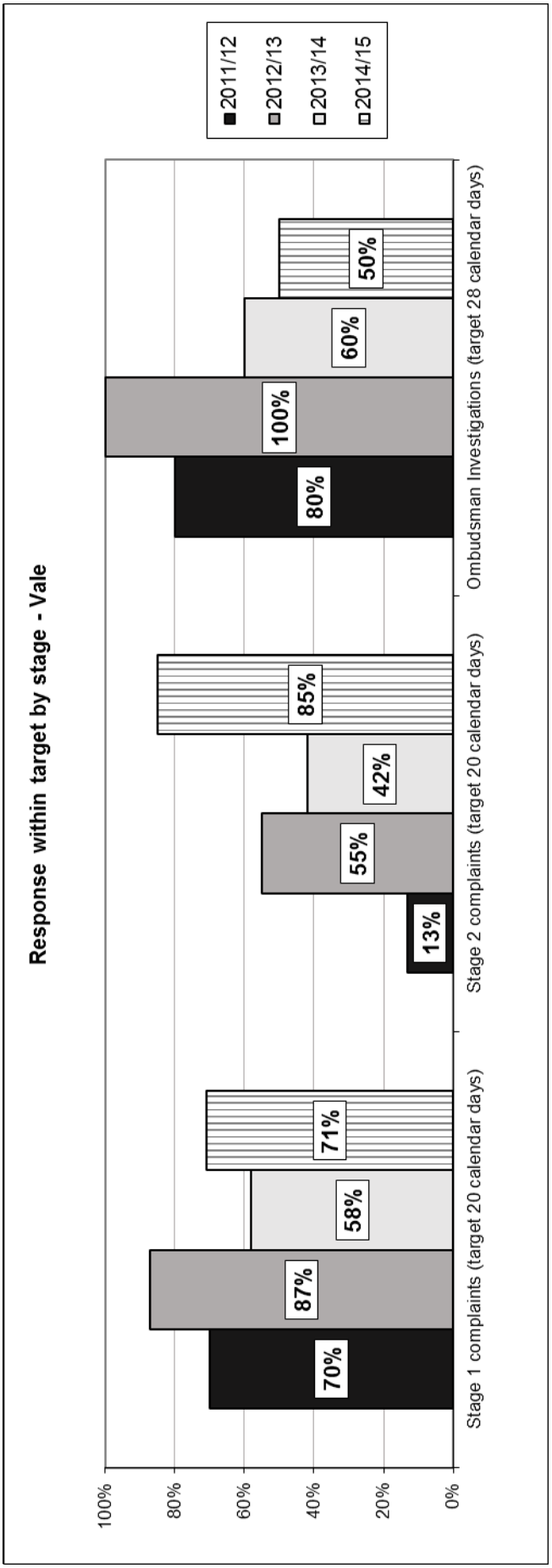
- Mr B received a letter from Equita on 17 April 2014 that was dated 6 April 2014. This letter gave Mr B a deadline of 15 April 2014. In view of this error we waived the £235 enforcement fee and the £75 compliance fee.

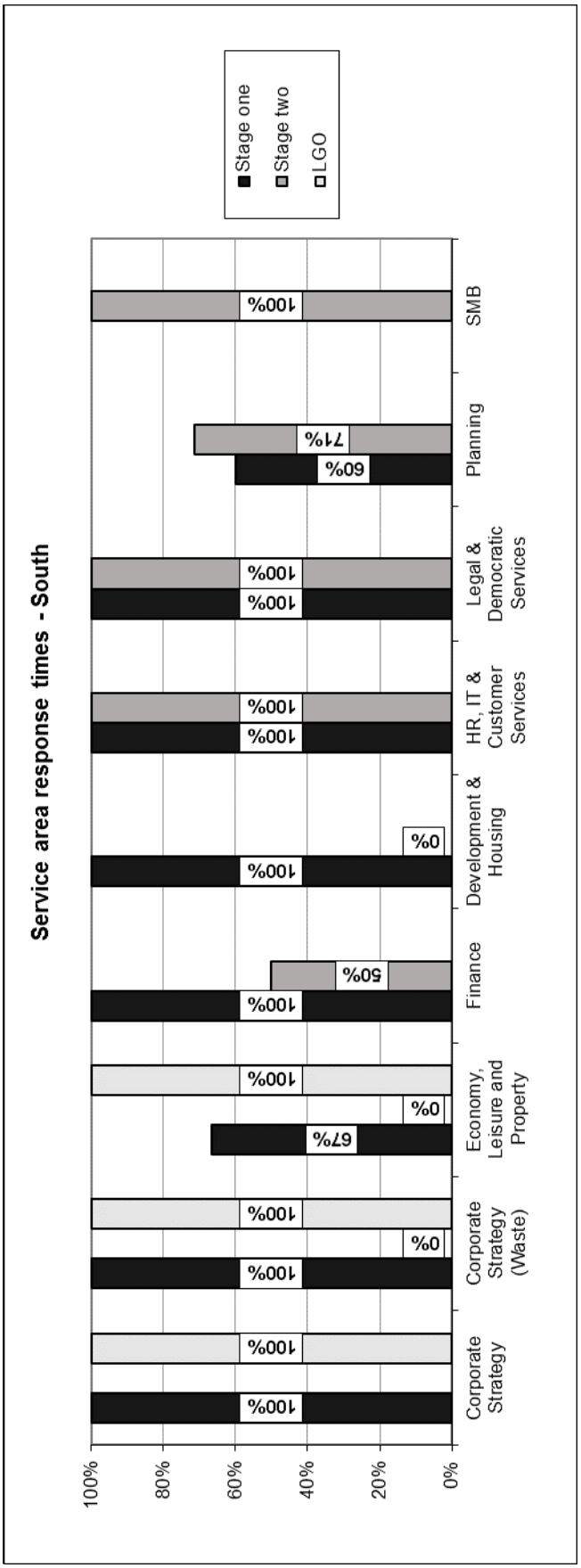
- Mr C advised us that his partner had moved in with him and he was therefore no longer entitled to a single person discount on his council tax. Unfortunately, the discount was removed in error from the account of Mr D, who has the same surname. Correcting this error led to one of Mr D's instalments not being taken from his bank account; we subsequently asked him to pay that instalment, which he did. However, his daughter disputed this and said that, because Capita had made the error, we should waive one month's council tax in recognition of the inconvenience and distress this had caused Mr D. The chief executive subsequently authorised a payment of £136 to Mr D.

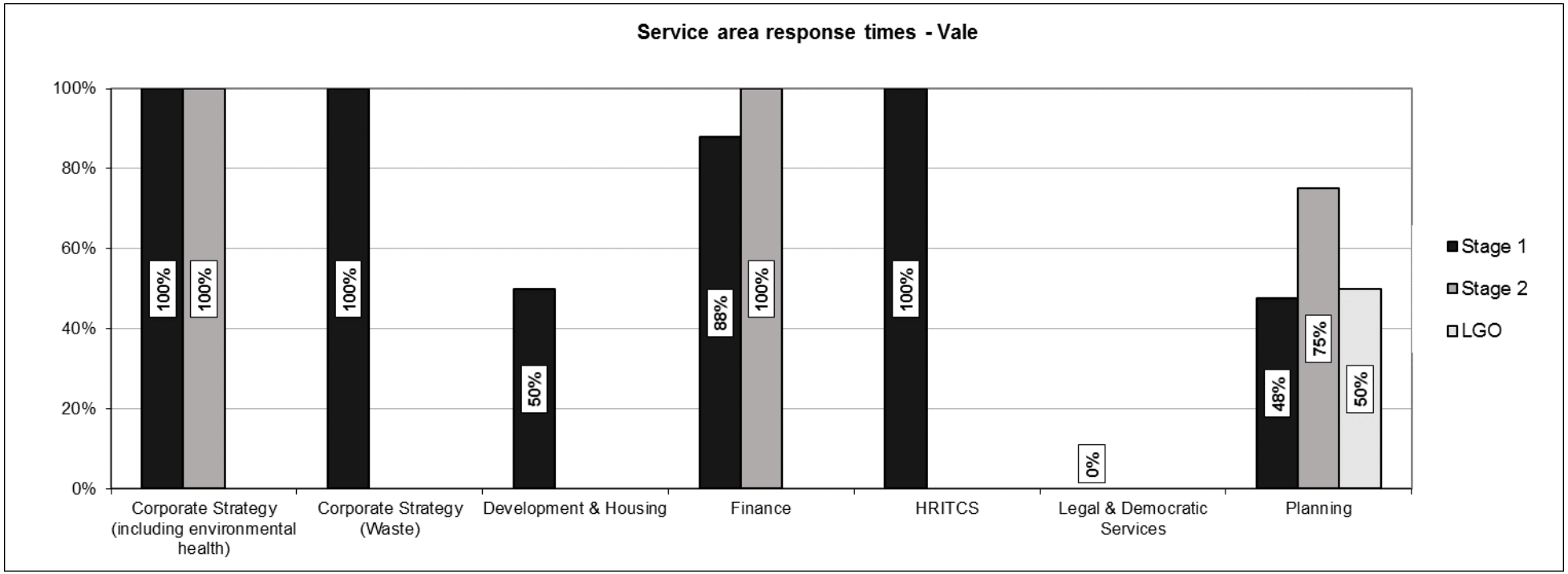
Planning: 16 stage one complaints received at South compared to 11 last year; 22 received at Vale compared to 20 last year. Complaints were mainly from residents unhappy about decisions we had made or about the lack of enforcement action. No changes in practice were required as a result of these complaints.

5. The following charts show our performance against target in responding to complaints.




Response within target by stage - Vale
2011/12
2012/13
2013/14
2014/15
100%
80%
60%
40%
20%
0%
70%
87%
58%
71%
13%
55%
42%
85%
80%
100%
60%
50%
Stage 1 complaints (target 20 calendar days)
Stage 2 complaints (target 20 calendar days)
Ombudsman Investigations (target 28 calendar days)


Service area response times - South
Stage one
Stage two
LGO
100%
80%
60%
40%
20%
0%
Corporate Strategy
Corporate Strategy (Waste)
Economy, Leisure and Property
Finance
Development & Housing
HR, IT & Customer Services
Legal & Democratic Services
Planning
SMB
100%
100%
100%
0%
100%
67%
0%
100%
50%
100%
0%
100%
100%
100%
100%
60%
71%
100%
100%



6. The percentage of complaints at stages one and two that were dealt with within target at South is fairly consistent with the previous year. The percentage dealt within within target at Vale has increased, particularly stage two complaints, which has increased significantly from 42 per cent to 85 per cent.

Appendix Two

LGO decisions – 1 April 2014 to 31 March 2015 – South

1. LGO decision – closed after initial enquiries – no further action

Decision date – 22 April 2014

LGO main subject area – environmental services and public protection and regulation

Complaint

That the council's contractors failed to collect Mr E's garden waste.

Background

Mr E complained in November 2013 because his garden waste had not been collected. Biffa's records indicated that the waste had not been left for collection, which Mr E disputed; the waste was collected five days later. The head of corporate strategy reminded Biffa of the level of service it should be providing.

Mr E's garden waste was not collected again in April 2014. He complained and the waste was collected the same afternoon. Officers apologised to Mr E and placed his property, and the neighbouring property, on the care list, which required a supervisor to monitor the garden waste team when they undertook collections in his location.

LGO's conclusion

The LGO's investigator closed the investigation because the council's actions did not cause Mr E significant enough injustice to warrant an investigation.

2. LGO decision – not upheld: no maladministration

Decision date – 24 October 2014

LGO main subject area – planning and development

Complaint

That the council:

- did not inform Mrs F of when the town council would discuss her neighbour's planning application so she was unable to attend the meeting
- relied on an inaccurate location plan and design and access statement when making its decision to approve the application
- did not consult her on the amended plans

- failed to properly consider the impact on her property when granting permission for the application.

Background

Mrs F owns a terraced property. Her neighbour submitted a planning application for a rear extension; her neighbour on the other side of her property had also constructed an extension previously.

Officers notified Mrs F of the application and she objected as she considered the extension would reduce light to her property. She was also concerned that it would leave her property in a tunnel between the proposed extension and the extension on the other side of her property.

The applicant subsequently submitted amended plans that reduced the size of the proposed extension. The planning case officer sent Mrs F an email to invite her comments on the amended plans, but she never received it. However, it us clear from subsequent emails that Mrs F was aware of the amended plans and she submitted an objection.

Mrs F wanted to attend the meeting at which the town council discussed the application so that she could explain why she considered the town council should object. She had understood that the case officer would let her know the date that the town council would meet. The case officer denied having made such a promise and, indeed, was not aware of the dates of town council meetings and would not have been able to discharge such a promise.

Mrs F was further concerned that the location plan accompanying the application did not accurately reflect the size of the extension to the property on the other side of hers. However the case officer visited the site, together with the development manager, and both were therefore fully aware of the size of this extension. The case officer set out her assessment in a report in which she noted this extension and considered that the proposed extension would have some impact on Mrs F's property in terms of light and outlook. However, she considered it would not be so significant as to have a detrimental impact on the living conditions of Mrs F's property. Both officers concluded that there was no case to refuse the application. The planning team leader also reviewed all the information submitted with the application, including photographs Mrs F had supplied, and also reached the conclusion that the application should be approved.

The application was approved under the head of planning's delegated powers. Mrs F was unhappy that neither the team leader nor the head of planning had visited the site prior to issuing the decision. However, they are not required to attend site as we operate a scheme of delegation whereby both officers can rely upon the professional judgement and attendance on site of other planning officers.

LGO's conclusion

The LGO's investigator concluded that there was no evidence that the case officer told Mrs F that she would keep her informed of when the town council would consider the planning application. The investigator could also find no evidence of fault in how officers made the decision to approve the application.

3. LGO decision – not upheld – no maladministration

Decision date – 3 December 2014

LGO main subject area – environmental services and public protection and regulation

Complaint

That the council:

- failed to take appropriate action in relation to noise nuisance and antisocial behaviour from his neighbour
- allowed the nuisance to continue for two years, which has had a detrimental effect on Mr G's health.

Background

Mr G lives in a ground floor housing association flat. In August 2012 he complained about noise nuisance from the tenant of the flat above (Mr H). Mr G complained he was being woken up every night by banging and thumping and that this had been going on for over a year.

An environmental protection officer contacted Mr G to discuss his concerns and asked him to keep a diary of the nuisance. The officer also wrote to Mr H to advise him that we had received a complaint about noise.

Mr G returned his completed diary sheets in October 2012 but the entries he had made did not suggest there was a noise nuisance. Mr G did not accept this and made further complaints about noise. He stated that he was unable to sleep due to the noise and this was affecting his wellbeing; he said he was sleeping in the shed to try and get some sleep.

In November 2012 Mr H complained about noise nuisance caused by Mr G. An environmental protection officer, an officer from the housing association and a police officer visited Mr G and Mr H to discuss the problem. Following this visit officers advised Mr G that they could not take any action as the noise was from everyday living activities. Our records state that the situation eased and neither Mr G nor Mr H reported any further problems.

In April 2013 we received a complaint from another local resident about Mr G's dog barking. Officers advised Mr G of the complaint and he disputed that it was his dog barking. Mr G believed that Mr H had made the complaint and would not accept that another resident had complained.

Both Mrs G and Mr H contacted us in May 2013 to complain about noise nuisance by the other. Mrs G questioned why officers had closed Mr G's earlier complaint and reiterated that the noise nuisance was having a detrimental impact on Mr G's health.

Later that month there was a fire at Mr G's flat. He was not allowed to return to the property and the housing association later served a notice seeking possession. Officers therefore closed the file on this matter.

In July 2014 Mrs G made a formal complaint. She stated that the council's lack of action had a significant impact on Mr G's health and wellbeing. In response, officers reiterated that they could only take action if they could establish a statutory nuisance and the noise in this instance could not be classified as such.

LGO's conclusion

The LGO's investigator stated that Mr and Mrs G disagreed with officers' decision that the noise they experienced did not amount to a statutory nuisance; however, this was a matter for the officers' professional judgement. The LGO would not generally question the merits of an officer's decision unless there was evidence of fault in the way it was taken. This was not the case in this instance.

The investigator considered that we had responded appropriately to this complaint. She concluded that there was no evidence of fault in the way we had dealt with Mr G's complaint.

4. LGO decision – not upheld – no further action

Decision date – 17 December 2014

LGO main subject area – planning and development

Complaint

That the council:

- did not follow procedures laid out by building regulations when issuing a completion certificate for Mr I's property
- made a number of mistakes when dealing with Mr I's enquiries and complaint
- proposed an unsatisfactory remedy for Mr I's complaint.

Background

Mr I bought a property in April 2012 and later found out that there were problems with the electrics. He submitted a formal complaint alleging a lack of evidence that officers had taken the appropriate steps regarding the oversight and sign off of the electrical installation at his property.

Mr I's primary cause for concern was his belief that our building control service failed to discharge its statutory duties in checking the electrical works carried out on his home before he purchased it. He specifically suggested that the service failed to comply with paragraph 1.21 of the building regulations. This states that, where electrical installation work is carried out by a person not registered with a Part P competent person self certification, the work should be notified to a building control body before work commences. The electrical contractor who carried out the work at Mr I's property was

not registered as a Part P competent person but there is no evidence that officers required him to notify us in advance of the electrical works commencing, which appears to be in breach of paragraph 1.21. However, officers assert that this was not the industry's interpretation of the regulations at the time. They suggest that paragraph 1.21 was considered alongside paragraph 1.22 and that a person could be deemed to be competent but without being Part P registered, and in those instances the person would not be expected to give the council advance notice of the works commencing. This was officers' assessment in respect of the contractor who carried out the works at Mr I's property, and why they believe there was no breach of regulations. Paragraph 1.22 states:

"*Where installers are qualified to carry out inspection and testing and completing the appropriate BS 7671 installation certificate, they should do so. A copy of the certificate should then be given to the building control body. The building control body will take this certificate into account in deciding what further action (if any) needs to be taken to make sure that the work is safe and complies fully with all relevant requirements. Building control bodies may ask for evidence that installers are qualified in this case*."

Mr I asked for evidence that building control had been given a copy of the installation certificate (prior to the completion certificate being issued) and evidence that building control had confirmed the electrical contractor was appropriately qualified. However, the only copy on file is one provided by Mr I in April 2014 that has a handwritten note at the top "Submitted to BC 15/6/11". When carrying out his investigation at stage two of our complaints procedure the strategic director did not believe the council had been given, or retained, a copy of the certificate. Instead, he shared building control officers' belief, which we cannot prove, that in 2011 the building surveyor (who has since left the council) saw the certificate on site prior to issuing his building control completion certificate.

A number of mistakes were made during the investigation into Mr I's complaint. None of these had any impact on the final decision on his complaint and the strategic director acknowledged these errors, and apologised to Mr I, in his stage two complaint response.

As he acknowledged that mistakes had been made, the strategic director concluded that some form of redress was appropriate, in addition to the apologies already offered. He therefore offered to commission, at our expense, an independent full survey of Mr I's electrical system. He offered to share the resulting report, unabridged by us, with Mr I. Furthermore, depending upon the contents of that report, he stated that we may choose to make a financial contribution to any rectification works identified that appeared to be due to poor design or installation in 2011. As, legally, the competent person would ordinarily be accountable and liable for any design/ installation defects, we would involve the contractor concerned before any contribution was agreed.

Mr I did not agree with this remedy because he did not want us to disclose details of his complaint, or the survey, to the contractor.

LGO's conclusion

The LGO's investigator closed the complaint because she did not consider she could achieve anything for Mr I. She said that the courts had held that councils cannot be held liable for economic loss for the cost of putting right a defect which resulted from the council's failure to ensure a building complied with building regulations. As the courts

would not order a council to remedy an economic loss, the LGO would not normally do so either. She added that she could not recommend that we contributed to the costs of the electrical installation survey and any works to put the defects right.

Finally, she said that she understood Mr I considered we had made mistakes but could not investigate this because it was not separable from the complaint that we wrongly issued a completion certificate.

Her final decision was not to investigate Mr I's complaint as the LGO could not achieve a worthwhile outcome for him.

5. LGO decision – closed after initial enquiries – no further action

Decision date – 27 March 2015

LGO main subject area – planning and development

Complaint

That the council reneged on its offer to remedy his complaint.

Background

Mr I made a further complaint because we withdrew our offer to commission an independent survey.

We offered to commission a survey on a without prejudice basis and agreed to consult Mr I on the terms of reference and to consider any requests he made for changes and/or additions. If any of Mr I's requests fell outside what we considered it reasonable to survey, we would ask him to pay for the extra work. We also agreed to share any questions raised, and the final outcome, with Mr I. Mr I rejected this because he did not want us to share the report with the competent person. Mr I subsequently commissioned his own condition report and asked us to pay for it, which we refused.

LGO's conclusion

The LGO had previously decided not to recommend that we made a contribution to the costs of the electrical installation survey and any remedial works. As such, there was nothing the LGO could achieve for Mr I by investigating this complaint.

The LGO's investigator closed the complaint because she could not achieve the outcome Mr I wanted.

Appendix Three

LGO decisions – 1 April 2014 to 31 March 2015 – Vale

1. LGO decision – closed after initial enquiries – out of jurisdiction

Decision date – 8 May 2014

LGO main subject area – corporate and other services

Complaint

That the council issued a notice of vacancy for three parish councillors to a district councillor ahead of the official published date of the notice.

Background

Vacancies for three parish councillors arose. Mr J complained because officers sent a notice advertising those vacancies to a district councillor before the relevant parish clerk had posted it. The returning officer accepted that this was a mistake, apologised to Mr J and reminded staff involved in the electoral process of the proper procedures.

LGO's conclusion

As officers involved in the local election process are not carrying out functions on behalf of the council, the LGO could not investigate Mr J's complaint.

2. LGO decision – upheld – maladministration and injustice

Decision date – 23 May 2014

LGO main subject area – corporate and other services

Complaint

That there were faults in the way the council ran a tender process for a taxi compliance testing contract. Had there been no faults Ms K's company would have been awarded one of the contracts.

Background

Officers intended to increase the number of garages approved to carry out taxi compliance testing. They obtained a list of all VOSA approved MoT stations from the VOSA website and then undertook further research to ensure all of the MoT stations in the two districts were on the list. Officers also cross referenced the list of garages, whose proprietors had expressed an interest prior to the start of the procurement process, with the final mailing list. Unfortunately, they did not carry over the contact details as part of this exercise. Ms K had previously expressed an interest on behalf of her company.

As the VOSA list did not include email addresses for most of the garages a work experience student contacted all the garages on the list without an email address by telephone to obtain email addresses. Ms K asserted categorically that her company did not receive a phone call. It seems likely, therefore, that Ms K's company was one of those where officers obtained the information from the VOSA download.

Notwithstanding how officers obtained the incorrect email address, as Ms K had previous email contact with the council, officers already possessed her correct email address but failed to use it. In his response to Ms K's stage two complaint the strategic director stated that, although the work experience student would not have been aware that officers had Ms K's correct email address, the manager of the process should have checked. The strategic director apologised for this error.

Officers sent the proposal documents to 86 garages by email on 14 June 2013. A number of those messages were 'bounced back' as incorrect and officers contacted those garages to clarify email addresses and subsequently sent the proposal documents again. No 'bounce back' message was received to indicate there was a problem with the email address used for Ms K's company. Officers sent a further email to all the garages on 24 June 2013 with answers to questions that some proprietors had asked. Again, there was no 'bounce back' message from Ms K's company.

Ms K expressed concern that officers failed to use their initiative and did not follow up the fact that Ms K had not responded having previously expressed an interest. However, officers had to be very careful to treat all companies fairly and equally. To avoid any perception of favouritism or bias they therefore did not contact any companies that failed to tender.

It was not certain that Ms K's company would have been successful had it been invited to bid. Once the other contracts had been awarded, and those bidders' prices were available, it was not possible to accept a late tender from Ms K as she had an unfair advantage.

The strategic director considered whether to terminate the existing contracts and retender from scratch, thereby enabling Ms K to compete alongside other companies. However, this could have exposed us to early contract termination claims from other garages who would potentially lose out through no fault of their own.

Therefore, whilst accepting that Ms K's company had potentially suffered because of our error, the strategic director could not sanction a retender as that would compound the problem and increase the number of businesses adversely impacted by this situation.

The strategic director acknowledged that our error prevented Ms K from participating in the tender exercise and that, potentially, had her company been successful (which was a matter of speculation) the error may have denied her the opportunity to generate additional turnover and profit. In recognition of this, he offered Ms K compensation of £500, which she declined.

LGO's conclusion

Ms K provided evidence and reasoning explaining how she had decided on the amount she would have submitted had her company been able to tender. This was based on

information that was already known publicly about the amounts charged by one of the garages that already held one of the contracts. The LGO's investigator was persuaded by Ms K's arguments and looked at the other information Ms K would have submitted as part of the tender process. The investigator concluded that, on the balance of probabilities, had Ms K's company tendered it would have been awarded one of the contracts.

Officers argued that it would be unfair to the other garages for a further contract to be let. The investigator stated that the contract provided that the agreement was not exclusive and we were entitled to procure services of the same or similar nature from any third party or carry them out ourselves. The investigator recognised the other garages may be aggrieved that there would be more competition by us letting a further contract to Ms K's company but pointed out that other garages entered into the contract knowing there were no guarantees as to the amount of business.

The investigated concluded that a fair a suitable remedy was for us to offer a further contract to Ms K's company, which we agreed to do.

3. LGO decision – closed after initial enquiries – no further action

Decision date – 22 January 2015

LGO main subject area – benefits and tax

Complaint

That the council;

- instructed bailiffs for council tax arrears of 83p
- involved bailiffs for a second time even though Mr L had no council tax arrears.

Background

Mr L received a council tax bill, dated 13 December 2013, asking him to make payments on 1 January and 1 February 2014. We issued a reminder in January because he had not paid £109 by 1 January. Mr L paid £100 on 5 February, which left him with arrears of £118 because he had not paid the payment due on 1 February. Officers served a summons and asked him to pay £183 to avoid legal action; this included costs of £65. Mr L paid £118, which did not clear the arrears and costs so the magistrates issued a liability order in March. Mr L cleared the arrears for 2013/14 in June; we did not ask bailiffs to collect the debt.

During 2014/15 Mr L was again required to pay his council tax on the first day of the month, which he did not do. Officers applied for a liability order which the magistrates granted in June. They wrote to Mr L asking for details of his income; he did not reply. Officers therefore instructed bailiffs in August. Mr L made some payments but still owed the bailiffs £327.

Mr L started legal action against us to recover the court costs. Whilst they did not uphold his complaint, officers offered to waive the costs if he agreed by pay by direct

debit and withdrew the legal action. He did not withdraw the action and did not agree to pay by direct debit.

LGO's conclusion

The LGO's investigator did not investigate this complaint as there was no evidence of fault. She said that we served a summons in February because Mr L had arrears of £118 and had not paid the instalments due on 1 January and 1 February. Mr L claimed he did not receive the bill until after 1 January; however, the investigator had seen a letter from Mr L to the council saying he received it on 29 December. In addition, she pointed out that we would not have served a summons if Mr L had paid the February instalment on time. She could not comment on the £65 costs because Mr L had started legal action and the laws says the LGO cannot investigate any matter once legal action has started.

She would not investigate the complaint that we had involved bailiffs when Mr L had no arrears. This was because we were entitled to get a liability order for 2014/15 because Mr L paid late every month. There was nothing to suggest Mr L had no arears when we asked bailiffs to collect the debt.

In addition, whilst there was no suggestion of fault, officers had offered to help Mr L by waiving the costs for 2014/15 if he agreed to pay by direct debit and withdraw the legal action.

4. LGO decision – closed after initial enquiries – no further action

Decision date – 10 February 2015

LGO main subject area – planning and development

Complaint

That the council:

- did not handle consideration of a planning application well
- sent out confusing letters and arranged meetings without informing all interested neighbours
- scheduled a meeting of the Planning Committee on the last day for consultation leaving little time to consider late comments
- delayed unreasonably in responding to queries Mr M had about the application.

Background

Mr M complained that officers did not carry out a proper consultation process during the processing of a planning application because two errors were made, namely:

- they failed to consult interested parties when the third amendment to the application was received. This was due to human error for which the head of planning apologised. In practice there was no disadvantage caused by this error

because that amendment was superseded by a fourth amendment, which officers fully consulted on.

- they sent out an unnecessary emailed consultation that should not have been sent; again this was due to human error and the head of planning apologised.

Mr M also complained that officers failed to contact all the necessary current neighbours with adequate notice ahead of a site meeting. The standard consultation process is to write to the neighbours using neighbour contact details held on the planning database, which is only as accurate as the addressee details notified to them. Letters regarding the original site visit were sent out in good faith on 5 November. Following the site meeting officers were made aware that affected neighbours had not received the letter in a timely fashion. In addition, officers had not been advised that one of the properties had changed hands and had therefore not updated the database. A further site visit was therefore held on 27 November, and proper notification was sent by email to the affected neighbours on 24 November.

Planning Committee was due to consider the application on 12 November; however, in view of the errors highlighted above, it was withdrawn from the agenda. Planning Committee subsequently considered it at their meeting on 1 December when it resolved to authorise the head of planning, in consultation with the chairman of the committee, to grant planning permission subject to the completion of a Section 106 agreement. The decision notice was issued on 12 February 2015.

Mr M also complained because he emailed queries to the head of planning on 15 September but did not receive a response until 5 November. The head of planning apologised for the delay.

LGO's conclusion

When the LGO issued its decision we had not issued the planning decision notice. The LGO's investigator acknowledged that Mr M may have been frustrated by what he considered to be poor communication. However, she but did not consider he had suffered significant personal injustice or that any useful purpose would be served by commencing an investigation.

4. LGO decision – upheld - maladministration, no injustice

Decision date – 30 March 2015

LGO main subject area – planning and development

Complaint

That the council:

- failed to properly consider a planning application for two houses in 2011 and the appeal to the planning inspector in 2012. It did not notice the plans did not specify ground levels or slab heights or that images in the Design and Access Statement (DACS) did not match those on the plans. This meant it did not tell the planning

inspector of this in its representation, so the inspector did not impose relevant conditions. This led to the properties being 2.5m higher than residents expected

- delayed in taking enforcement action against the developer for breaches to permitted plans. Breaches included the houses being the wrong distance from the road and unapproved basements in both properties

- wrongly validated a second planning application as a minor material change even though it did not meet Government criteria for this

- failed to take material planning considerations into account when deciding this second planning application as it did not consider the houses were not in the right position on the plot.

Background

The head of planning refused planning permission in early 2012, under his delegated powers, to demolish an existing house and build two new houses on a plot of land next to Mr and Mrs M's house. Mr and Mrs M had objected to the proposals.

The development was subsequently allowed on appeal subject to conditions. One of those conditions removed some of the permitted development rights for the properties. In addition the developer needed to discharge some conditions before building work started, such as agreeing landscaping plans and protecting trees.

In December 2012 another neighbour contacted us to say that work had started on site without all the conditions having been discharged. He contacted us again in February 2013 to say that the developer was excavating two large, deep holes close to the boundary that looked like preparation for basement rooms, which were not on the approved plans. Officers opened a planning enforcement case five days later. An enforcement officer visited the site seven days later and the developer confirmed the holes were for basements.

The enforcement officer advised the developer to stop work immediately and invited him to apply for retrospective planning permission so that officers could consider if the basements were acceptable in planning terms. The developer continued work.

Officers opened a second enforcement case in early March 2013 following further reports from the neighbour; they closed this case eight days later as they considered it repeated the original enforcement case. Mr M also contacted officers in March. He discovered the enforcement case only concerned the basements, not other alleged breaches including the setback from the road, site levels and the apparent extension of the buildings' footprints.

Officers continued to press the developer for more information about what he planned. In April 2013 they again told the developer that the works were unlawful, breached several pre-commencement planning conditions and needed planning permission. They advised the developer to stop work until they had discharged all the pre-commencement conditions and considered a retrospective planning application for the basements. They told the developer that they would consider issuing a breach of condition notice if he did not do this.

Officers considered whether to issue a stop notice or an enforcement notice but decided not to take formal action as, at that stage, there was no material planning harm as the development was still all below ground.

An enforcement officer told Mr and Mrs M that the developer could appeal against an enforcement notice. If we lost the appeal costs could be awarded against us, which might be high. The LGO's investigator did not consider it fault to take those potential adverse costs into account.

Mr and Mrs M carried out their own research and concluded that the risk of costs being awarded against us was low. The LGO's investigator stated that Mr and Mrs M are not qualified planning officers. She added that officers did not have to take Mr and Mrs M's research into account when making their decision not to take formal action. She said it was not fault for the council to make its decision based on the experience and advice of qualified officers and its legal team.

Mr and Mrs M asked officers to obtain the plans the building inspector was using as they believed these would show the developer's true intentions. However, the developer was using an independent building control company and officers could not force him to give them access to the plans. In any event, officers could tell the works were not compliant with the planning permission without the plans and took proper action.

The developer submitted an application to discharge the conditions in early June 2013.

On 2 June, Mrs M reported that the foundations for the new houses extended six metres further back than on permitted plans and were two metres closer to the road at the front. She also said that the basements meant the house nearest to them was higher than the plans suggested.

The enforcement officer wrote to the developer again telling him to submit a new planning application or officers would consider formal enforcement action. Officers also concluded again that they could not justify issuing a stop notice or breach of condition notice; they advised Mr and Mrs M of this.

Mr and Mrs M complained about the delay in in taking action against the developer and the failure to stop the developer from continuing work on site. An officer wrote to Mr and Mrs M to advise that the developer had said that the buildings' footprints had not changed and that the extra hardstanding at the back of the building was for a patio. Mr and Mrs M disputed this.

The developer submitted a retrospective planning application for the basements on 26 June 2013. Officers validated this application as a minor material amendment, rather than a full planning application. Mr and Mrs M objected to this application.

Officers asked the developer to provide further details of the plans and commissioned a survey of land levels on the site at the end of July 2013.

Mr and Mrs M continued to report their concerns in the following weeks. Officers advised them, in September 2013, that they had suspended any enforcement action until the outcome of the planning application was known.

The survey commissioned by officers showed the slab for the house nearest to Mr and Mrs M was about 0.7 metres higher than shown in the submitted section plan in the retrospective application. The slab for the other house was lower than the original land level. However, the ground levels for the development were consistent with the average levels expected for a construction of this type. There were no ground levels in the original approved plans. The survey found the submitted plan layouts and distance to neighbouring houses was 'broadly accurate'.

Mr and Mrs M stated that officers had not instructed the surveyor to investigate the setback from the road. However, the surveyor did measure the building as being 14.87 metres from the front boundary.

In his report on the retrospective planning application the case officer stated that the Planning Inspector had already given planning permission in principle for the two houses. The planning committee therefore needed to consider the impact of the basements only, rather than whether the houses should be built at all. The LGO's investigator confirmed this was correct.

In his report the case officer covered the relevant objections he had received, including those from Mr and Mrs M. He stated that the only impact of the basements would be balustrades around the lightwells and ground level concrete slabs that would also be patio areas in the back gardens of each house. As the original planning permission did not contain any conditions on ground levels, and the original plans did not include existing or proposed levels, there could be no definite evidence the height of the development had increased.

Mr and Mrs M said that officers should have noticed there were no ground levels marked on the plans. However, the LGO's investigator said there was no statutory requirement for planning authorities to check applicants have submitted details of existing and finished ground levels when validating a planning application. She also pointed out that, when considering an application, planning authorities should consider material planning considerations such as overlooking, privacy and drainage. This often means applicants do not need to supply details of the ground and building levels.

The investigator added that, if we had approved the application, officers' failure to notice the missing levels could have resulted in injustice to Mr and Mrs M. However, we had refused the planning application so, even if we had acted with fault in not noticing the lack of ground levels on the plans, no injustice to Mr and Mrs M resulted.

The investigator said that officers did not comment on the ground or slab levels in their representation to the Planning Inspectorate. However, the Planning Inspectorate also failed to notice no details of ground or slab heights was shown on the plans. So, even if we had included a condition about finished heights in our submission, we had no power to insist the inspector included it.

The investigator found no injustice to Mr and Mrs M arising from our submission to the Planning Inspectorate.

However, we have reviewed the way planning officers consider submitted plans to ensure they check relevant levels are included where there are relevant to material planning considerations.

The case officer recommended approval, subject to conditions including landscaping and planting and removing spoil to reduce overlooking into Mr and Mrs M's property. He also recommended a condition removing permitted development rights on extensions and outbuilding to the properties. This meant that any future owner would have to apply for planning permission to build on the patio areas.

Mr and Mrs M complained that the case officer had stated the permitted plans allowed a setback of 16.5 metres from the road, when this should have been measured from the front boundary of the property. This meant the houses were nearly two metres closer to the road than they should have been.

Planning committee approved planning permission, subject to conditions, in October 2013. Mr and Mrs M complained almost immediately that the houses were in breach as they were closer to the road than on the site plan and the house on one of the plots was 70cm higher than on the approved plans. They also reported changes to the internal layout of the house.

Officers considered these breaches and decided it was not expedient to take enforcement action. They considered it was not clear where the front boundary of the property was and that the development was 1.5 metres closer to the road than it should have been as most. Given that the houses were about 15 metres from the road, officers considered they were still well set back and consistent with other properties in the area.

Mr and Mrs M said that the surveyor measured the setback from the front boundary so it was clear where the boundary was. They were also concerned that a draft of the case officer's report stated the measurement should be taken from the front boundary but this changed in the final version submitted to the planning committee.

LGO's conclusion

The LGO's investigator carried out a detailed analysis of all the issues outlined above. She concluded that:

- we did not act with fault in the way we considered either the original or the restrospective planning application for the two houses or in our submission to the Planning Inspectorate. She also could not say we were at fault for validating the retrospective application as a minor material amendment

- Mr and Mrs M disagreed with the decisions we had reached, rather than the way in which they were made. The investigator could not comment on whether she thinks a decision is right or wrong if it has not been made with fault.

- we did not delay in taking enforcement action in relation to the unauthorised basements. We did delay in considering enforcement action in relation to the setback from the road. However, this did not cause significant injustice to Mr and Mrs M as our decision not to take enforcement action was unlikely to have been different even if it had been taken without delay.

The investigator's final decision was not to uphold Mr and Mrs M's complaint.