

To: **The Executive**
19 October 2021

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN
ANNUAL REVIEW LETTER
Chief Executive

1 Purpose of Report

- 1.1 To provide an overview and commentary of the Local Government and Social Care Ombudsman (LGSCO) annual review letter, received July 2021.

2 Recommendation

- 2.1 **To note the Local Government and Social Care Ombudsman's annual review letter 2021.**

3 Reasons for Recommendation

- 3.1 The annual review letter provides the council with information to help assess the council's performance in handling complaints.

4 Alternative Options Considered

- 4.1 None considered.

5 Supporting Information

- 5.1 The annual review letter from the LGSCO provides local authorities with an overview of the council's performance in complaint handling, covering the financial year, April 2020 to March 2021 in this case. In addition, the review provides a general update on resources to support councils with complaints handling.
- 5.2 During the period covered in this letter, the pandemic has significantly affected operations in all councils. Indeed, the LGSCO even paused its operations at the end of March 2020 until later in June. This will have reduced the number of complaints investigated and decided during the year.
- 5.3 The overriding message from the LGSCO report is that there were only five findings of fault by the LGSCO against the council in the year. Given that the organisation is involved in, literally, millions of interactions with residents and businesses each year this is a strikingly low number. Nonetheless, it is important to look seriously at those cases where mistakes may have been made so that we can improve further in the future. This report is a part of that process.
- 5.4 The data provided in the review letter is available publicly on the online interactive map [‘Your Council's Performance’](#). This information also allows comparison against other councils. Given that the report is published, it is regrettable that the LGSCO has decided to comment on a number of private challenges that were made to their

approach during the year. There is little to be gained from entering into a public dispute with the LGSCO, but the various statements made about the council's approach represents a one-sided view and masks fundamental concerns about the way a small number of investigations were managed. As one example, the case in which the LGSCO's approach "was questioned at every stage of the investigation", related to events that occurred in 2017 and 2018 - which took the complaint well outside of the LGSCO's published guidelines for the timescales within which it will accept complaints for review. All staff involved had left the authority and the complainant had made serious and ongoing threats to previous and present members of staff. Other challenges were based upon equivalent issues and none were frivolous or vexatious and none of our comments were inappropriate.

- 5.5 That said, the LGSCO does have an important role. In 2020/21 the LGSCO conducted detailed investigations into eight cases at Bracknell Forest Council, which is two more than the previous year. This number is, however, amongst the lowest compared to the council's CIPFA neighbours, as illustrated in figure 1. It should be noted that due to the relatively low number of complaints, the figures can be skewed significantly and can fluctuate year on year. The number of complaints a council receives can vary significantly, for example in 2019/20 Bath and North East Somerset Council had 12 complaints investigations (three this year) and Milton Keynes Council had 13 (25 this year).

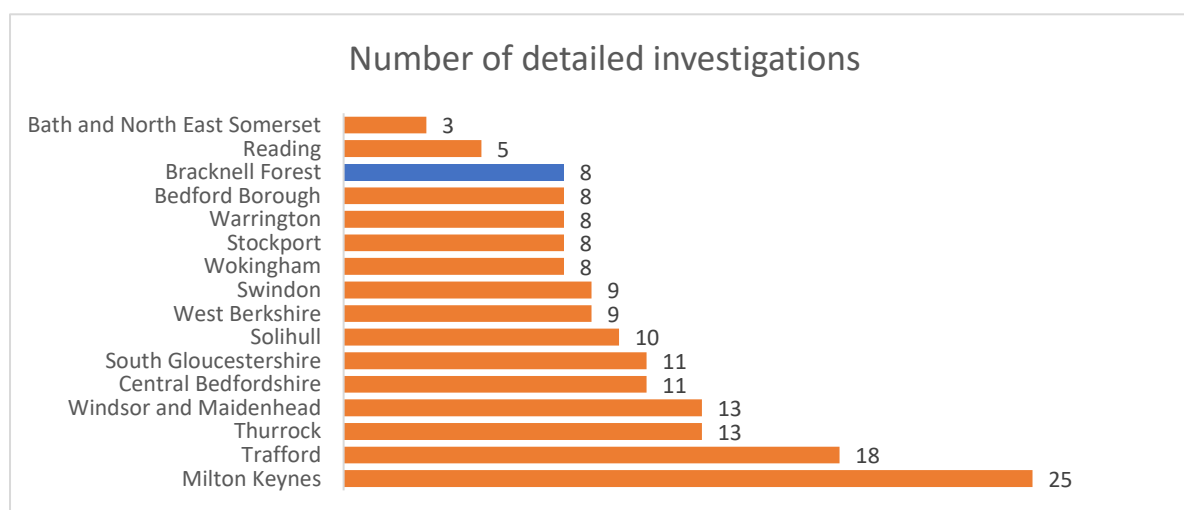


Figure 1. Number of detailed investigations conducted by the LGSCO, comparison of CIPFA neighbours.

- 5.6 In 2020/21, five of the detailed investigations (63%) resulted in the decision to uphold the complaint. This has reduced since the previous year (83%) and is now aligned with the average (63%) and is lower than the average amongst CIPFA neighbours as illustrated in figure 2. There is no correlation between the number of cases and the rate they are upheld across other authorities, nor a correlation between percentage upheld last year compared to this year.

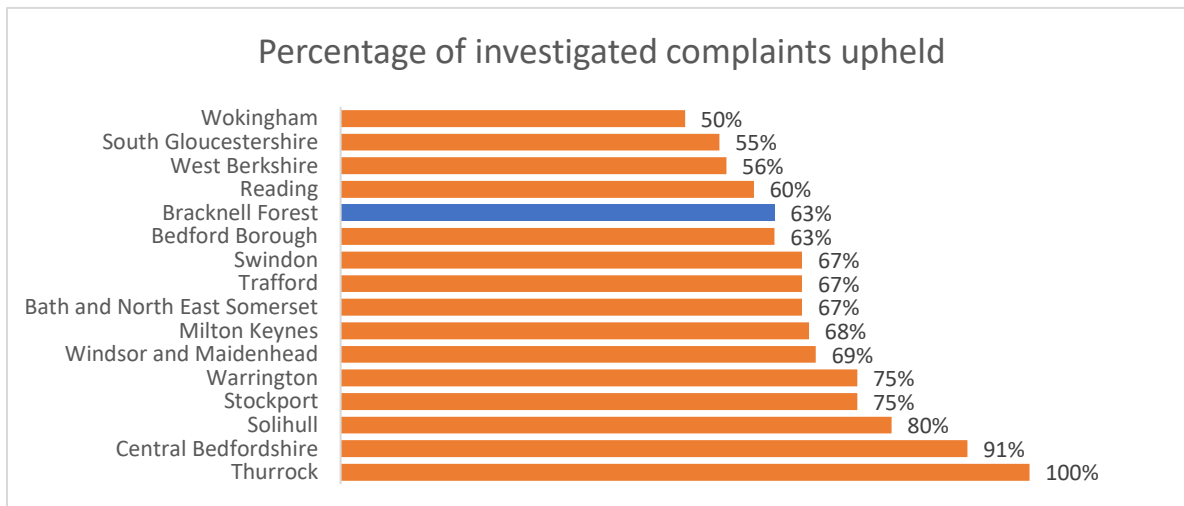


Figure 2. Proportion of detailed investigations with upheld complaints, comparison of CIPFA neighbours.

- 5.7 The majority of the upheld complaints were linked to education and children's services which is the case for most upper tier authorities. Two detailed investigations took place outside the People Directorate, in Place, Planning & Regeneration, however these were not upheld, one further from adult care services was not upheld. This is illustrated in figure 3.

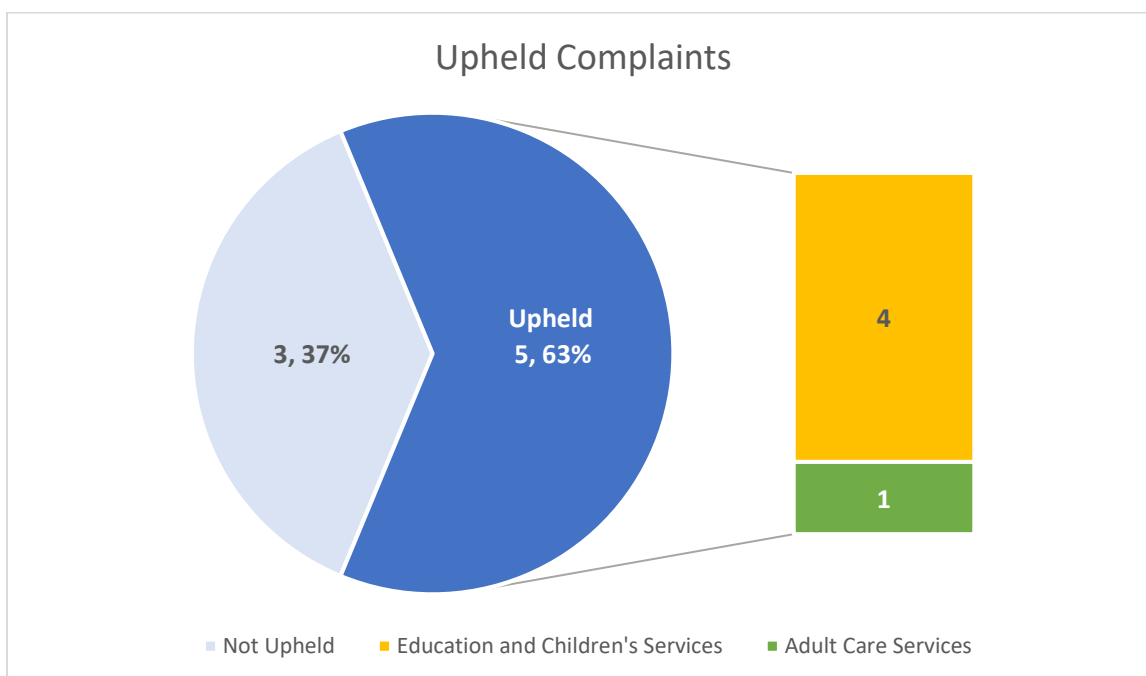


Figure 3. Services related to upheld complaints.

- 5.8 A summary of the upheld decisions is included in annex A, please note that one decision is not published by the LGSCO due to confidentiality and has therefore not been included.
- 5.9 The summaries illustrate that there are several services that have received multiple complaints, related to blue badges and Special Educational Needs (SEN). However, the majority of complaints to these services are not upheld. Lessons have been

taken from the findings and both services have put in place improvements to address conclusions where there has been the opportunity to develop the service.

- 5.10 In three cases, the outcome of the investigation required implementation of the LGSCO's recommendations. Bracknell Forest Council complied in 100% of these cases.
- 5.11 The LGSCO encourages councils to use these figures as the start of a conversation, and not an absolute measure of the health of the organisation. The council is currently reviewing the approach to managing corporate complaints, including taking consideration for the findings within the LGSCO's letter.
- 5.12 The LGSCO are unsighted on Stage 1 and 2 complaints so the Executive are reminded that Bracknell Forest Council takes all complaints seriously and looks to resolve complaints at stage 1 or 2 of the complaints process wherever possible to prevent them escalating any further. Complaints and their outcomes are monitored through the Quarterly Service Reports (QSRs).

6 Consultation and Other Considerations

Legal Advice

- 6.1 The Local Government and Social Care Ombudsman (LGSCO) is the independent body responsible for investigating complaints made against public bodies where it is alleged that there has been maladministration causing injustice.

The LGSCO can only investigate claims where there has been an allegation of **maladministration** by a public body that has **caused personal injustice** to the complainant.

There is no specific definition of "maladministration", but it can include cases where a public body has taken, or has failed to take, action. If there has been no maladministration, the LGSCO cannot investigate; it is only allowed to investigate the procedure behind the decision-making. This means that the LGSCO will not investigate cases where the complainant merely disagrees with a decision that a public body has made. Maladministration is concerned with the manner in which public body decisions were reached and the ways that they were or were not implemented; it is not concerned with the decision itself.

Once maladministration has been established, it must be confirmed that it has led to personal injustice for the complainant. Injustice can include:

- The time and trouble involved in pursuing a complaint against a public body.
- The loss of a right or service, which the complainant is legitimately entitled to.
- Costs associated with pursuing the complaint.
- Inconvenience, worry, distress, and hurt feelings.

It must also be proved that the injustice was caused by the public body and was not merely incidental.

Financial Advice

- 6.2 There are no financial implications arising from this report.

- 6.3 Other Consultation Responses
None

Equalities Impact Assessment

- 6.4 There are no direct impact issues to be considered.

Strategic Risk Management Issues

- 6.5 The information the LGSCO reports to the council in its annual letter is publicly available. This year, the LGSCO includes narrative that negatively impacts the council's reputation. The narrative includes subjectivity, and the council does not agree that this reflects the overall position for complaints handling.

It is imperative that the council continues to review complaints management information and has in place a robust complaint handling procedure to resolve complaints and ensure procedures are complied to.

Background Papers

LGSCO Annual Review Letter 2021

Contact for further information

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Annex A – Summary of upheld decisions 1 April 2020 to 31 March 2021

Service area: School Transport	11 August 2020
The Ombudsman has discontinued his investigation into Mrs X's complaint about the Council's decision not to provide school transport for her son. The Council offered to pay Mrs X £500 to cover the costs of school transport which has resolved the outstanding issue and no further action by the Ombudsman is needed.	
Service area: Alternative Provision	12 November 2020
Mrs X complained that the Council failed to recognise it had a duty to provide alternative education for her son when he was out of school for health reasons and failed to ensure he received the support set out in his Education Health and Care Plan. The Council was at fault in failing to recognise its duties, failing to have proper policies and procedures in place, and failing to provide education. The Council has offered a suitable remedy including an apology, a payment for lost education and a review of policies and procedures.	
Service area: Transport	18 December 2020
Mr X complains the Council failed to properly assess his application for a Blue Badge. He says the Council's handling of his application caused him distress and inconvenience. The Ombudsman finds the Council at fault for the way it explained its decision to Mr X and for failing to have an appeals process. To remedy the injustice this caused Mr X, the Council has agreed to apologise and make Mr X a payment for the distress and uncertainty. It has also introduced service improvements, including a Blue Badge review process.	
Service area: Special educational needs	26 February 2021
Mrs X complains the Council delayed in issuing the final Education, Health and Care (ECH) plan for her son. She also complains the Council failed to provide suitable full-time education for her son after she stopped home education. We find fault with the Council. We have made recommendations.	