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Standards Committee Members

Members of the committee, listed below, are summoned to attend the meeting to be held on Wednesday, 7 December 2011.

Barry Quirk, Chief Executive
November 29 2011

Councillor Duwayne Brooks	Gill Butler
Councillor Julia Fletcher	Sally Hawkins
Councillor Alan Hall	David Roper- Newman
Councillor Stella Jeffrey	Cathy Sullivan
Councillor Pauline Morrison	Leslie Thomas
Councillor Sam Owolabi-Oluyole	1 vacancy

Standards Committee Agenda

Wednesday, 7 December 2011

7.30 pm, Civic Suite, Town Hall, Catford, SE6 4RU

Civic Suite

Lewisham Town Hall

London SE6 4RU

For more information contact: Troy Robinson 0208 3149365 (Tel:)

Part 1

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Agenda Item 1

STANDARDS COMMITTEE		
Report Title	DECLARATIONS OF INTERESTS	
Key Decision		Item No. 1
Ward		
Contributors	Chief Executive	
Class	Part 1	Date: 7 December 2011

Declaration of interests

Members are asked to declare any personal interest they have in any item on the agenda.

Personal interests

There are two types of personal interest :-

- (a) an interest which you must enter in the Register of Members' Interests*
- (b) an interest where the wellbeing or financial position of you, (or a "relevant person") is likely to be affected by a matter more than it would affect the majority of inhabitants of the ward or electoral division affected by the decision.

*Full details of registerable interests appear on the Council's website.

("Relevant" person includes you, a member of your family, a close associate, and their employer, a firm in which they are a partner, a company where they are a director, any body in which they have securities with a nominal value of £25,000 and (i) any body of which they are a member, or in a position of general control or management to which they were appointed or nominated by the Council, and (ii) any body exercising functions of a public nature, or directed to charitable purposes or one of whose principal purpose includes the influence of public opinion or policy, including any trade union or political party) where they hold a position of general management or control,

If you have a personal interest you must declare the nature and extent of it before the matter is discussed or as soon as it becomes apparent, except in limited circumstances. Even if the interest is in the Register of Interests, you must declare it in meetings where matters relating to it are under discussion, unless an exemption applies.

Exemptions to the need to declare personal interest to the meeting

You do not need to declare a personal interest where it arises solely from membership of, or position of control or management on:

- (a) any other body to which you were appointed or nominated by the Council
- (b) any other body exercising functions of a public nature.

In these exceptional cases, unless your interest is also prejudicial, you only need to declare your interest if and when you speak on the matter .

Sensitive information

If the entry of a personal interest in the Register of Interests would lead to the disclosure of information whose availability for inspection creates or is likely to create a serious risk of violence to you or a person living with you, the interest need not be entered in the Register of Interests, provided the Monitoring Officer accepts that the information is sensitive. Where this is the case, if such an interest arises at a meeting, it must be declared but you need not disclose the sensitive information.

Prejudicial interests

Your personal interest will also be prejudicial if all of the following conditions are met:

- (a) it does not fall into an exempt category (see below)
- (b) the matter affects either your financial interests or relates to regulatory matters - the determining of any consent, approval, licence, permission or registration
- (c) a member of the public who knows the relevant facts would reasonably think your personal interest so significant that it is likely to prejudice your judgement of the public interest.

Categories exempt from being prejudicial interest

- (a) Housing – holding a tenancy or lease with the Council unless the matter relates to your particular tenancy or lease; (subject to arrears exception)
- (b) School meals, school transport and travelling expenses; if you are a parent or guardian of a child in full time education, or a school governor unless the matter relates particularly to the school your child attends or of which you are a governor;
- (c) Statutory sick pay; if you are in receipt
- (d) Allowances, payment or indemnity for members
- (e) Ceremonial honours for members
- (f) Setting Council Tax or precept (subject to arrears exception)

Effect of having a prejudicial interest

If your personal interest is also prejudicial, you must not speak on the matter. Subject to the exception below, you must leave the room when it is being discussed and not seek to influence the decision improperly in any way.

Exception

The exception to this general rule applies to allow a member to act as a community advocate notwithstanding the existence of a prejudicial interest. It

only applies where members of the public also have a right to attend to make representation, give evidence or answer questions about the matter. Where this is the case, the member with a prejudicial interest may also attend the meeting for that purpose. However the member must still declare the prejudicial interest, and must leave the room once they have finished making representations, or when the meeting decides they have finished, if that is earlier. The member cannot vote on the matter, nor remain in the public gallery to observe the vote.

Prejudicial interests and overview and scrutiny

In addition, members also have a prejudicial interest in any matter before an Overview and Scrutiny body where the business relates to a decision by the Executive or by a committee or sub-committee of the Council if at the time the decision was made the member was on the Executive/Council committee or sub-committee and was present when the decision was taken. In short, members are not allowed to scrutinise decisions to which they were party.

Agenda Item 2

STANDARDS COMMITTEE		
Report Title	Minutes	
Key Decision		Item No.
Ward		
Contributors	CHIEF EXECUTIVE	
Class	Part 1	Date: 7 December 2011

Recommendation

It is recommended that the Minutes of the meeting of the Committee, which was open to the press and public, held on 21 June 2011 (copy attached) be confirmed and signed.

LONDON BOROUGH OF LEWISHAM

Minutes of the meeting of the STANDARDS COMMITTEE which was open to the press and public, held at LEWISHAM TOWN HALL, CATFORD, SE6 4RU on TUESDAY 21 JUNE 2011 at 7:30 p.m.

Present

Independent members: Gill Butler , Sally Hawkins, David Roper-Newman, Cathy Sullivan and Leslie Thomas.

Councillors Alan Hall, Stella Jeffrey, Pauline Morrison and Sam Owalabi Oluyole.

<u>Minute No.</u>	<u>Action</u>
1	<u>APPOINTMENT OF CHAIR</u> RESOLVED that Sally Hawkins be appointed as the chair for the remainder of the municipal year.
2	<u>APPOINTMENT OF VICE CHAIR</u> RESOLVED that Gill Butler be appointed as vice chair for the remainder of the municipal year.
3	<u>MINUTES</u> RESOLVED that the minutes of the meeting held on 8 th March 2011 be approved as a correct record and signed by the Chair..
4	<u>DECLARATIONS OF INTEREST</u> None was declared.
5	<u>REVIEW OF THE LOCAL CODE OF CORPORATE GOVERNANCE</u>

Kath Nicholson, Head of Law and Monitoring Officer introduced the report and explained that this is a standard report that is presented to the

Committee on an annual basis. It was further explained that the detailed results of the review are at Appendix 2 to the report.

RESOLVED that the report be noted.

6 UPDATE ON LOCALISM BILL

Kath Nicholson, Head of Law and Monitoring Officer gave a presentation on the passage of the Localism Bill through Parliament , which is anticipated to receive Royal Assent in late 2011.

DATE OF NEXT MEETING

To be arranged

The meeting ended at 8:00pm

Agenda Item 3

STANDARDS COMMITTEE			
Title	Annual Complaints Report		
Key decision	No	Item no	3
Wards	All wards		
Contributors	Executive Director for Customer Services		
Class	Part 1	7 December 2011	

1. Executive Summary

- 1.1. The report provides performance information on complaints dealt with by the Council at stages 1 and 2 of the Corporate Complaints procedure as well as complaints and enquiries to the Mayor and Councillors and complaints and enquiries from MP's during 2010/11. There were a total of 5,031 complaints and enquiries received in 2010/11, this represents a 24% decrease when compared to 2009/10. The biggest decrease was in the number of Stage 1 complaints. However there was slight increase in the number of Mayor complaints and enquiries which rose by 8% from 538 to 579.
- 1.2. The report does not include complaints about the provision of adult and children's social care both of which are reported and publicised according to statutory guidance.
- 1.3. The Independent Adjudicator's (IA) report is attached at Appendix 1. The IA dealt with 74 complaints between 1 April 2010 and 31 March 2011 of which she partially or fully upheld 40 (56%). The IA responded to 79% within the 30-day response standard, a decrease in performance of 10% against the 2009/10 performance. The IA identified a number of issues from the complaints and makes recommendations for improvement.
- 1.4. The IA has also raised a concern that there has been one case in which the Council didn't follow the advice that supported her recommendations.
- 1.5. The Local Government Ombudsman (LGO) report is attached at Appendix 2. In 2010/11, the LGO made decisions in a total of 89 cases, a decrease of 2 cases on the previous year. Lewisham received no public reports.

2. Purpose of Report

- 2.1. To update the Standards Committee on the Council's complaints performance for 2010/11 at all stages including the Independent Adjudicator's report and the Local Government Ombudsman Annual Review.

3. Policy Context

- 3.1. Lewisham's Sustainable Community Strategy 2008-2020 contains the shared priorities for the borough. It sets out a framework for improving the quality of life and life chances for all who live in the borough. This approach works towards meeting the 'Empowered and Responsible' priority where people take responsibility for the well-being of their area and those who live there. Informing the Council where it has gone wrong or commenting on what it has done right means that local services can respond quickly and effectively.
- 3.2. The Council has outlined ten corporate priorities which enables the delivery of the Sustainable Community strategy. Access to the Council's complaints system and the annual review of complaints and enquiries to the Council addresses the 'Community Leadership and Empowerment' corporate priority to develop opportunities for active participation and engagement of people in the life of the community.

4. Recommendations

Members are recommended to:

- 4.1. Note the contents of the report.

5. Introduction

- 5.1. This report summarises how the Council and its partners performed when dealing with complaints and how it is using the feedback from complaints to improve services. The report does not cover statutory complaints received for adult and children's social care that are subject to a separate report.
- 5.2. The report includes a summary of the Independent Adjudicator's report and a summary of the Local Government Ombudsman's Annual Review with the full reports attached as appendices.

6. Stage 1, 2 complaints , MP, Mayor and Councillor enquiries

- 6.1. The standard response times and responsibility for responding to complaints at each stage are:

Stage 1 – 10 days by the Service Manager

Stage 2 – 20 days by the Head of Service or Executive Director

Stage 3 – 30 days by the Independent Adjudicator

MP/Mayor/Councillor – 10 days by the Head of Service or Executive Director

- 6.2. The tables below show the number of representations the Council and each directorate dealt with in the year and the percentage dealt with in the standard response time. The statistics are for cases logged onto iCasework between 1 April 2010 and 31 March 2011 compared with performance over the same period in 2009/10. This does not include general enquiries to services only

those that are received via the Mayor, Members and MPs. Please note, these figures do not include enquiries made by the general public directly to the Council.

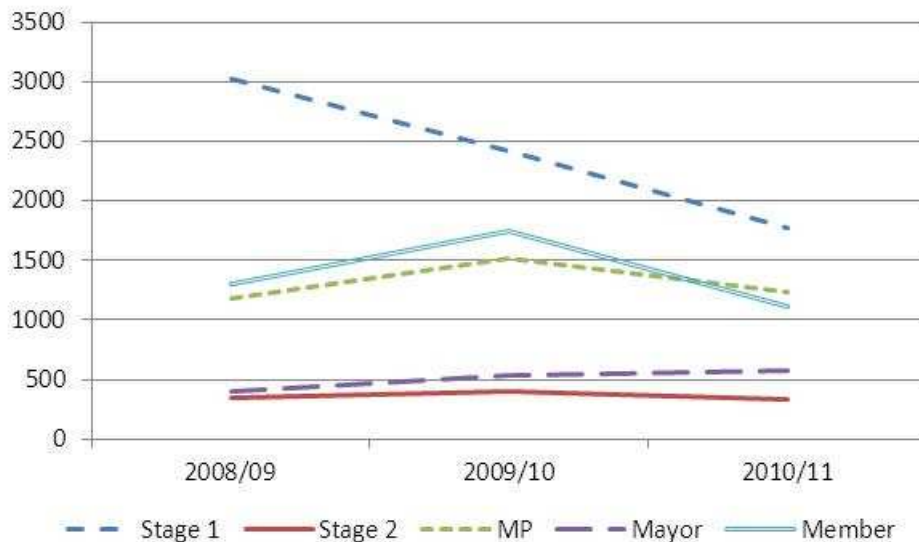
	Total Complaints and Enquiries		
Directorate	2009/10	2010/11	Variance
Children and Young People	281	329	48
Community Services	271	319	48
Customer Services	2770	2333	-437
Lewisham Homes	2063	1325	-738
Regeneration	1200	700	-500
Resources	37	25	-12
Total	6622	5031	-1591

	Stage 1			Stage 2		
Directorate	2009/10	2010/11	Variance	2009/10	2010/11	Variance
CYP	66	64	-2	6	9	3
Community Services	81	83	2	4	6	2
Customer Services	1103	895	-208	163	170	7
Lewisham Homes	978	572	-406	199	118	-81
Regeneration	174	149	-25	28	34	6
Resources	21	10	-11	1	1	0
Total	2423	1773	-650	401	338	-63

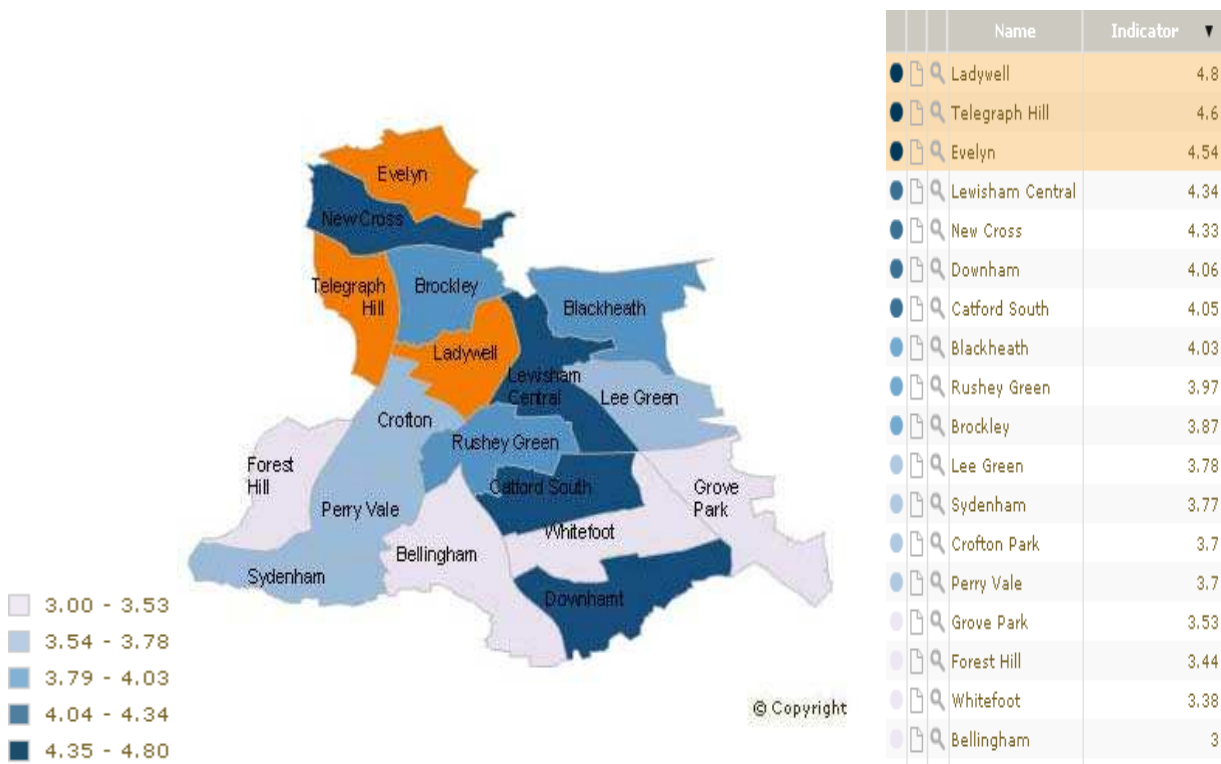
Directorate	MP			Mayor			Members		
	2009/10	2010/11	Variance	2009/10	2010/11	Variance	2009/10	2010/11	Variance
CYP	123	143	20	19	42	23	67	71	4
Community Services	83	73	-10	32	47	15	71	110	39
Customer Services	694	540	-154	206	257	51	604	471	-133
Lewisham Homes	443	336	-107	91	100	9	352	199	-153
Regeneration	168	136	-32	186	130	-56	644	251	-393
Resources	3	3	0	4	3	-1	8	8	0
Total	1514	1231	-283	538	579	41	1746	1110	-636

- 6.3. The number of complaints and enquiries received in 2010/11 was 5031. This was a significant decrease (24%) on the previous year when a total of 6662 were received. This reflects the impact of decisions and consultations which took place in 2009/10, for example that year Regeneration received a significantly higher number of complaints and enquiries due to the introduction of new Controlled Parking Zones (CPZs) and consultation on Lewisham Town Centre.
- 6.4. Overall the number of Stage 1 and Stage 2 complaints has continued to decrease however there was an increase in the number of enquiries received by the Mayor which rose by 41 from 538 in 2009/10 to 579 in 2010/11.
- 6.5. Lewisham Homes have worked to reduce the number of complaints received at Stage 1 by effectively dealing with cases earlier through the introduction of an informal stage and also reviewed the escalation process to ensure that wherever possible all complaints are investigated at Stage 1 instead of being escalated to Stage 2 from another enquiry – to councillors, the Mayor, MP or via the Local Government Ombudsman.

The chart below shows the trend in performance by stage over the last three years.

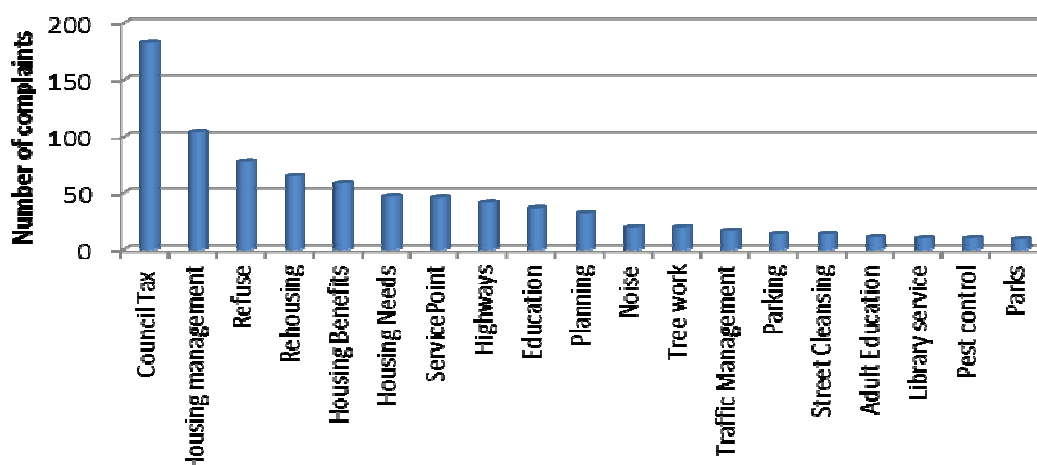


6.6. The distribution of complaints received by Ward is shown on the map below. This shows that the highest number of complaints received per 1,000 population was received from residents in Ladywell Ward.



6.7. As in previous years overall the largest proportion of complaints received relate to council tax and housing management. A table at Appendix 3 sets out the top 3 types of complaint by Ward as this does vary across the borough.

Complaints received by Issue 2010-11



6.8. The reason for the complaint also varies across the directorates. The table below shows the top areas by directorate, excluding Resources who do not have sufficient complaints to establish trends. The main reasons for complaints were:

- ◇ Service not provided or not of expected standard
- ◇ Disagree with decision
- ◇ Failure to take/complete action

CYP	Community Services	Customer Services	Regeneration	Lewisham Homes
Primary Schools: Education Access	Community Education Service: Curriculum team	Rehousing: Development	Highways: Street Works	Maintenance service: responsive repairs
Secondary School and Colleges: Education Access	Sport and Leisure: Contractor	Council Tax: Bailiff action	Development Control: Planning Applications	Plumbing: responsive repairs
SEN provision	Crime Reduction Service: Anti-social Behaviour	Council Tax: Summons	Parking enforcement	Technical team; inspections

Complaints and service improvement

6.9. Each directorate has responsibility for managing complaints and this process is overseen by the Corporate Complaints team. Directorate representatives meet regularly to raise and resolve common issues and exchange best practice. Throughout the year directorates have worked to improve the quality of the complaints handling. Actions include:

- ◇ Offering on the spot resolution to avoid complaints escalating
- ◇ Scanning all documents onto iCasework to enable a complete view of the investigation to be available to others

- ◇ Introduction of a response template at stage 2 to gather information and ensure all aspects of a customer's complaint have been addressed
 - ◇ Introduction of an informal complaints stage by Lewisham Homes prior to Stage 1.
- 6.10. As well as ensuring that the complaints process is as efficient and effective as possible, utilising the complaints received to inform and drive service improvement is seen as a key function for those dealing with complaints.
- 6.11. Each directorate has used complaints received to identify areas of concern and make changes to improve the way the service is delivered.

For example:

- ◇ CYP are developing a more robust monitoring system to ensure that formal Statement of Special Educational Need (SEN) review meetings take place when scheduled
 - ◇ Concerns raised by a customer have informed the way in which the Council communicates with service users about Direct Payments and individual Budgets
 - ◇ Planning are reviewing their enforcement processes to ensure that where actions have been agreed they are monitored
 - ◇ In response to the number of complaints received about repairs Lewisham Homes have revised their procedures to minimise delays and achieve more 'first fix' repairs.
- 6.12. More detailed information on the actions undertaken by directorates to improve the quality of complaints handling and the lessons learnt are set out in Appendix 4.

7. Independent Adjudicator

- 7.1. The Independent Adjudicator (IA) deals with stage 3 complaints on behalf of the Council. This section summarises the IA's report and the action being taken in response to the issues raised. The report covers the period 1 April 2010 to 31 March 2011, but does include one case resolved in 2011/12 where the IA has raised concerns that her recommendations were not implemented.
- 7.2. The IA dealt with 72 cases (2 cases were withdrawn) and upheld, in full or part, 40 cases. This is a 28% decrease in the number received in 2009/10. The percentage of cases partially or fully upheld remained the same at 56%.
- 7.3. The IA has commented positively in her report on the fact that only a small percentage of Stage 1 complaints (3.5%) progress to Stage 3. In addition the percentage moving from Stage 2 to Stage 3, which was raised as a concern in the 2010 report, has decreased from 25% to 22%. She also felt that

Lewisham's complaints process is clear and accessible and therefore does not see the decrease in numbers being the result of poor signposting.

7.4. The IA responded to 79% of cases within the 30 day standard, below the 85% target. This was mainly due to the complexity of the cases and in all instances complainants were notified of the delay.

7.5. Cases by directorate

The table below sets out the number of Stage 3 complaints against each directorate and each partner (withdrawn cases in brackets). Though the number of Stage 3 complaints decreased overall there was an increase in Regeneration where the number increased from 5 to 9. This was mainly due to the increase in the number of planning complaints which increased from 3 to 5.

Directorate	2009/10	2010/11
Children and Young People	1	2
Community Services	2	2
Customer Services	44 (2)	22 (1)
Lewisham Homes	41 (2)	31
Regenter B3	6	7
Regeneration	5	9
Resources	1	1
Total	100 (4)	74 (1)

Note: 1 case received in 2010/11 was withdrawn after 1st April 2011

7.6. Compensation

Compensation was awarded in 27 cases ranging from £50 to £4,000. The total amount of compensation paid was £11,559. This compares to 26 cases in 2009/10 with the total amount being £8,745.

	Up to and including £100		£100-£500		More than £500		TOTAL	
2009/10	12	£1,025	13	£4,350	2	£2,785	27	£8,159
2010/11	5	£400	19	£4,945	2	£6,250	26	£11,559

7.7. Key issues highlighted by the IA

7.8. Compliance

In previous years the IA has been happy with the compliance with her recommendations. However this year she comments that for the first time the Council has failed to implement her recommendations. Though the resolution of this case falls into 2010/11 it has been raised in this year's report as under the IA protocol instances of non-compliance are to be reported in the annual report.

7.9. The outgoing IA partially upheld a complaint that related to properties that were identified as empty and recommended that an apology was sent to the complainant and that compensation of £500 was paid. In addition, the IA asked the Council to review its Empty Dwelling Management Order (EDMO) procedure and ensure that it follows the good practice guidance available on the www.emptyhomes.com/usefulresources/edmos.html website at www.emptyhomes.com/usefulresources/edmos.html. Also to review its website information on empty homes to ensure that it is balanced and fair.

7.10. The Council did make an apology and award £500 compensation. The IA's concerns relate to the fact that the monies owed for building control fees were deducted from the compensation and conflating this issue in the apology letter was not helpful.

7.11. Timeliness of information

Though the IA states that there has been improvements in the timeliness of the information submitted she is concerned that the case file notes or a case file analysis is not consistently provided. This is an issue that has been highlighted in previous years but still causes concern. The difficulty for the IA is that it is often only once the investigation has begun that it becomes clear what evidence is missing and this can result in a delay in responding.

7.12. Apologies

A well-drafted and genuine apology can go a long way to reassuring a complainant that their concerns have been taken seriously. The IA raises concerns about the standard of apologies that are being sent to complainants and recommends that the guidance on producing these is reviewed as where reluctance is conveyed in poor wording in an apology, this can exacerbate the issue.

7.13. The IA's report for the Council is attached at Appendix 1. The IA has prepared a separate annual report for Lewisham Homes which deals specifically with any issues relating to them. The IA will attend their management team to present the report and the Council will monitor any actions arising from it.

8. Local Government Ombudsman Annual Letter 2010/11

8.1. The Local Government Ombudsman (LGO) produces an annual review for all councils. The review provides statistics on complaints received over the past year by the Ombudsman against local authorities. This year's annual review letter is an overview of the work of the LGO and does not include any

commentary specific to Lewisham cases. The Local Government Ombudsman's Annual Letter is attached at Appendix 2.

- 8.2. Enquiries received from the Ombudsman are managed, on behalf of the Chief Executive, by the head of his office. During 2010/11 the powers of the LGO were extended to include complaints about independent providers of adult social care received from individual's funding their own care services.
- 8.3. For the year ended 31 March 2011, the LGO made decisions in a total of 89 cases. This is a decrease of 2 from the 91 cases in the previous year. It does not include 2 adult social care decisions made after 1st October 2010. (Adult social care complaints were not included in the 2009/10 figures). There were no public reports issues for 2010/11.
- 8.4. When compared with neighbouring authorities Lewisham was the only one which had a decrease in the number of complaints investigated by the LGO. Comparative performance with our neighbours is set out in Appendix 5.
- 8.5. The improvement in the Council's response time to Ombudsman enquiries was sustained in this year with the average number of days to responding decreasing from 31.2 days in 2009/10 to 24.7 in 2010/11.
- 8.6. The LGO's report has been considered at Executive Management Team and cascaded to directorate management teams. The Council continues to build and develop a positive professional relationship with the York Ombudsman's office, as well as continuing to learn from mistakes made in complaints management.

9. Actions for 2011/12

- 9.1. An Internal Audit of Comments, Complaints & Compliments which commenced in 2010/11 but reported in 2011/12 gave the service a substantial level of assurance. The recommendations resulting from the audit, all of which were low or medium priority, have been incorporated into the Corporate Complaints Action Plan 2011/12 which is attached at Appendix 6.
- 9.2. The Corporate Complaints team and the Corporate Complaints Improvement Group (CCIG) have identified actions to take forward in 2011/12 to ensure that complaints handling across the Council continues to improve. These include:
 - ◇ Ensuring that the actions resulting from the IA's recommendations, recommendations relating to last year's annual report from the Public Accounts Committee and recommendations from an Internal Audit that took place April 2011 are monitored and reviewed regularly by CCIG
 - ◇ Preparing for the transfer of housing management complaints to the Housing Ombudsman in 2013 and working with housing partners to ensure that this is communicated to tenants

- ◇ Working with the LGO to develop training on complaints handling for frontline staff

10. IA actions for 2011/12

- 10.1. The IA's role is not only to determine complaints and encourage the Council to learn from those complaints, it is also to make recommendations for good administrative practice. So, this year, the IA will be producing updated guidance on remedies and making apologies. In addition, the IA will be writing a factsheet for complainants to be posted on the Council's website explaining her role; what she can and cannot look at; the kinds of remedies she proposes; and anonymised examples of complaints she has upheld and not upheld. The IA believes that this will help manage complainant's expectations at a time when the Council is facing such significant challenges and the consequent prospect of increasing complaints.

11. Legal Implications

- 11.1. There are no specific legal implications arising from this report. It is recommended good practice from the Local Government's Ombudsman's Office to make full and specific reference to handling complaints within a management agreement entered into under section 27 of the Housing Act 1985.

12. Financial Implications

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

13. Personnel Implications

- 13.1. There are no personnel implications arising from this report.

14. Crime and Disorder Implications

- 14.1. There are no crime and disorder implications arising from this report.

15. Equalities Implications

- 15.1. The iCasework system enables the Council to collect equalities monitoring information which is used to ensure the complaints process remains accessible and that no particular parts of the community suffer inequity in service delivery.
- 15.2. The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty came into force on 6 April 2011. The new duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 15.3. In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 15.4 As was the case for the original separate duties, the new duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 15.5 The Equality and Human Rights Commission issued guides in January 2011 providing an overview of the new equality duty, including the general equality duty, the specific duties and who they apply to. The guides cover what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guides were based on the then draft specific duties so are no longer fully up-to-date, although regard may still be had to them until the revised guides are produced. The guides do not have legal standing unlike the statutory Code of Practice on the public sector equality duty. However, that Code is not due to be published until April 2012. The guides can be found at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance/>.
- 15.6 The corporate complaints and quality team will continue to work with voluntary community groups to ensure no one is disadvantaged from using the complaints process.

16. Environmental Implications

- 16.1. There are no environmental implications arising from this report.

17. Conclusions

- 17.1. The Council has been continually improving its complaints process in response to feedback and best practice. However, there is still a lot more to do to ensure customers receive excellent services. The actions contained in the report will ensure excellence is achieved.

18. Background Documents and Report Author

- 18.1. There are no background documents to this report.
- 18.2. If you would like more information on this report please contact Peter Gadsdon, Head of Strategy & Performance on 0208 314 8464.

**Fifth Annual Report of the
Independent Adjudicator
for the London Borough of Lewisham
1 April 2010 – 31 March 2011**

Fifth Annual Report of the Independent Adjudicator for the London Borough of Lewisham 1 April 2010 – 31 March 2011

Margaret Doyle
August 2011

This is the fifth Annual Report of the Independent Adjudicator for the London Borough of Lewisham*. It covers the period from 1 April 2010 to 31 March 2011. It is organised as follows:

Section 1: Headline issues

Section 2: Background and role of the IA

Section 3: Procedure

Section 4: Performance

Section 5: Observations and issues from the casework

Section 6: Recommendations

Appendix: Case digests

**The report covers the Council and its partner organisations. A separate annual report has been produced for Lewisham Homes as well.*

Although some of the housing cases I dealt with, and included here, involved only the Council's partners, throughout this report I sometimes refer to 'the Council'. This is both for simplicity's sake, and because my role has been to consider complaints about the Council, which ultimately is the body held responsible by the users of Council services and by the Local Government Ombudsman.

Section 1: Headline issues

The main issues I want to highlight in this year's Annual Report are:

- A significant decrease in stage 3 complaints – 24% fewer than last year. This is very promising and in my view reflects improvements in complaint handling at earlier stages.
- Improved timeliness in Council officers responding to requests for information. Officers are better at meeting their deadlines for submitting information to me. The quality and thoroughness of that information remains patchy, however. I have seen improvements particularly from Lewisham Homes and the Council Tax sections.
- A level of defensiveness, particularly about apologies. In a number of cases I have had protracted discussions with Council officers about my recommendations for apologies. In my view the Council is sometimes reluctant to accept and acknowledge when things have gone wrong.
- One failure to comply. In one case I report on here, the Council has failed to implement my recommendations. This is the first time that I am aware of that this has happened.

Under the IA protocol, instances of non-compliance are to be reported in the Annual Report.

Section 2: Background and role of the IA

The establishment of the IA

In September 2006, the Mayor and Cabinet agreed to introduce an Independent Adjudicator (IA) at stage three of the Council's complaints procedure, following a review of the procedure commissioned by the Chief Executive on behalf of the Mayor. The main objectives of the IA role were to give complainants a better service with a detailed and independent review of their complaints, as well as reducing the number of complaints going to the Local Government Ombudsman (LGO) for consideration. Subsequently, the Mayor and Cabinet agreed to make the IA position permanent. It was also agreed that the IA would deal with stage three complaints against the Council's partners.

The role

The role of the IA is defined as follows:

- To thoroughly investigate third stage complaints, and where necessary and appropriate, arrange meetings with the complainant and officers;
- To contact the relevant service area/partner to discuss any aspect of the complaint, where necessary;
- To keep the Council's Corporate Complaints and Quality Manager and her team up to date on the progress of complaints;
- To attend a quarterly review meeting with the Council's Head of Service Development;
- To make recommendations within 30 days of receiving the complaint;
- To present an annual report summarising the outcomes of third stage complaints and include lessons to be learnt;
- To be proactive in ensuring that a complaint is dealt with within the target time; to liaise with the service area/partner if they are not providing information within this defined timescale; and to escalate the matter if, and when, necessary;
- To offer advice to officers, and to negotiate and facilitate a satisfactory resolution to a complaint;
- To provide updates to the Council's Departmental Management Team (DMT) on lessons learnt from complaints, and to share the learning with service areas/partners.

The postholders

Roger Jefferies, a former Housing Ombudsman with vast experience in local government, conducted the review referred to above, and piloted the IA role from November 2006 to October 2007. I filled the IA role on an interim basis from October 2007 to June 2008, when the decision was made to make the post permanent and Linzi Banks took on the role of IA. Ms Banks was seconded from the Local Government Ombudsman, initially for one year (until the end of May 2009) and with her investigative experience she brought yet another perspective to the IA role. Ms Banks' secondment ended in December 2009 and she returned to the Ombudsman's office. I have held the role since Ms Banks' departure, from January 2010 to May 2011. The post has now been filled on a permanent basis; a transparent and public recruitment was carried out, and as a result of that Ms Banks has now been appointed the IA as of May 2011.

I believe that in spite of the changes in IA since 2006, which have brought a range of experience and background to the role, we have developed a consistent and robust approach to investigating stage 3 complaints and feeding back lessons learned to the Council and its partner bodies.

Acknowledgements

I am grateful to Ms Banks for her invaluable support and advice during my second interim period as IA. I am also very grateful for the assistance I have received from the Corporate Complaints Team, and in particular the sterling work of Rebecca Goodman, Corporate Complaints Officer, and from the many members of staff with whom I have liaised in the departments and partner organisations.

Section 3: Procedure

The protocol for the handling of complaints at stage three (developed, reviewed and improved where necessary by the IAs and Corporate Complaints Team over the past four years) sets out the obligations of the service departments within the Council in relation to providing background information to the IA; timescales; and the implicit obligation to accept the IA's findings, including the payment of compensation if recommended (any disagreement to be taken at executive director level and recorded as part of this report).

I and my predecessors have found that overall the protocol has worked well and we have had full cooperation from officers in terms of following the protocol. As my predecessor found, there has generally been a positive response to the IA role.

In one complaint I investigated this year the Council proposed a change to the protocol that would allow the Council to consider whether or not to accept my recommendations. I stated that I would not be in favour of altering the IA protocol to require the IA to allow the Council opportunity to consider whether or not to accept the recommendations, and respond later to the complainant. This would, in my view, seriously damage the credibility of the IA and the perception of the Council's commitment to the IA process.

Compliance

There are, of course, occasions when my findings are surprising to the Council and my recommendations raise concerns. In a very small number of cases this year, I have had to spend additional time explaining to reluctant Council officers why I have reached the conclusions I have. I have noticed in this small number of cases a less than enthusiastic response. Where this is conveyed to the complainant – such as in a poorly worded letter of apology – it can have unfortunate consequences, including a complaint to the Local Government Ombudsman.

Up to now, no department has refused to accept the IA's recommendations. This is an impressively high level of compliance and ensures that the IA process is effective. However, for the first time, one of the complaints that I investigated this year resulted in the Council's failure to implement my recommendations. The failure fell into the 2011-12 financial year but, because the investigation was carried out in 2010-11, I mention it here. Although the Council

adhered to the recommendations, it didn't follow the advice that supported them, thereby diminishing the intent of the recommended redress.

Timescales

There were some delays in providing background information, which has led to some delays in final decisions. However, I have seen a marked improvement in this since my Annual Report last year.

The Council has 5 days to respond to the request for information made by the Corporate Complaints Officer when a stage 3 complaint has been received. The agreement with Lewisham Homes allows them 10 days to respond to this request for information.

I have also seen an improvement in the case information sent to me by officers at the start of my investigation. I have noticed that some sections of the Council, as well as Lewisham Homes, have made significant improvements in this regard. There remain some problems with this, however, and this has led to frustration on my part as well as delay.

The other point at which delays can occur is after I circulate my draft decision for comment by officers. This year I encouraged more use of the telephone rather than email for officers to discuss their concerns with me. I believe this will help speed up the time between draft and final letters and helps prevent misunderstandings. However, I recognise that as the IA is part-time it is not always possible to arrange telephone appointments within the timescale. In addition, there are times when an audit trail is needed of concerns discussed.

Procedural independence

I am independent of the Council and have carried out my IA duties as a self-employed consultant. I believe this independence is important to complainants, although it does not always reassure complainants, especially when they are unhappy with my findings. As a mediator my approach has been to seek to achieve mutually acceptable resolutions to complaints where possible. In doing so, I have emphasised my accessibility to both complainants and Council officers. Although the limited time available for handling stage 3 complaints means that it is not always possible to meet every request for a site visit or meeting, I have wanted to be as flexible and accessible as possible in my approach and make myself available by telephone to both complainants and Council officers.

The arms'-length nature of the role has its drawbacks. It is important that the IA encourages learning from complaints across the Council, and that my findings identify not just redress for the individual complaining – where appropriate – but also any improvements that can be made in policies and procedures to help prevent future complaints. One of the issues I have found problematic in my time as interim IA is that I am not always aware of what procedural improvements have been made as a result of my stage 3 decisions.

For example, I recommended in a previous annual report that decisions on medical assessments should be sent to the applicants along with reasons for the decision. As far as I can tell this has not changed; I dealt with a small number of stage 3 complaints involving this issue and it appeared that reasons are still not being provided to applicants.

Although redress to the complainant is always followed up, other recommendations relating to improvements in practices and procedures have not been.

On the other hand, I have found officers for the most part to be willing to have a constructive dialogue with me about my findings. I urge them to contact me by phone where possible. I consider their comments on my draft decisions. My decisions are a reflection of my findings and views, and so inevitably there are occasions when they do not accord with the Council's view, but I have been satisfied with the response I have received. I have noted before that I believe this is a healthy indication of a robust and independent process.

Section 4: Performance

This section sets out the statistical figures for the cases that my I handled in the year 1 April 2010 – 31 March 2011. It covers complaints about the Council and its partners, including those about Lewisham Homes (which are also covered in a separate report).

Section 4a: Performance 1 April 2010 – 31 March 2011

Total cases received and determined

TOTAL CASES RECEIVED	NO. OF CASES DETERMINED	NO. OF CASES WITHDRAWN	NO. OF CASES CARRIED OVER FROM 2009-10	NO. OF CASES OPEN AS OF 31/3/11
74	72	1	4	5*

* Five cases had yet to be determined as of the final date of the period covered by this report – 31/3/011

Number of cases upheld

TOTAL CASES DETERMINED	UPHELD IN FULL	UPHELD IN PART	NOT UPHELD
72	9 (13%)	31 (43%)	32 (44%)

Time taken by the IA to resolve:

30 days and below	31 to 50 days	More than 50 days
57 (79%)*	14 (20%)	1 (1%)

*The target is 85% of cases resolved within 30 days

Number of cases received: a comparison

The Council and its other partners	Lewisham Homes	Total cases received
43	31	74

Cases by directorate:

No. of complaints against each directorate and each partner - All Council (withdrawn cases in brackets)

Customer Services	Regeneration	Children and Young People	Community Services	Resources	Lewisham Homes	Regenter B3	TOTAL
22 (1)	9	2	2	1	31	7	74 (1)

Cases by subject:

No. of complaints determined, by subject matter - All Council (does not include cases that were withdrawn and number upheld in full or in part in brackets)

	All Council	Council and other partners	Lewisham Homes only
Housing: Repairs	16 (12)	4 (4)	12 (8)
Housing: Tenancy	8 (5)	3 (2)	5 (3)
Housing: Re-housing	7 (2)	3	4 (2)
Anti-social behaviour	4 (2)	0	4 (2)
Pest Control	2	0	2
Housing: Leaseholder	7 (2)	3	4 (2)
Housing Benefit	1	1	N/A
CAT	1	1	N/A
Private-sector leasing	3 (3)	3 (3)	N/A
Planning	6 (5)	6 (5)	N/A
Education	2 (2)	2 (2)	N/A
Trees	1 (1)	1 (1)	N/A
Building Control			N/A
Miscellaneous	5 (4)	5* (4*)	
Council Tax	7 (1)	7 (1)	N/A
Parking	2 (1)	2 (1)	N/A
Total for all Council	72 (40)	41 (23)	31 (17)

Note that although some complaints raised more than one issue, each was categorised according to the main or primary issue complained about.

Compensation:

Number of cases in which compensation was awarded*: 26

Up to and including £100	£101 - £500	More than £500
5 (total £400)	19 (total £4,945)	2 (total: £6250)

Total compensation awarded: £11,595 (of which £5,225 related to Lewisham Homes).

Section 4b: Commentary on performance

Number of cases

The total number of stage 3 complaints received about the Council and its partners (including Lewisham Homes) has decreased significantly – from 100 to 74.

This equates to approximately 6 per month, an improvement on the past two years (6.5/month in 2008-09 and 8.3/month in 2009-10).

Breaking this down between the Council and Lewisham Homes gives 3.5 per month for complaints about the Council and 2.6 per month for complaints about Lewisham Homes. This is an improvement for both that should be noted.

I have said in my previous annual report that the number of complaints in itself is not negative, and an increase in complaints can be a sign of transparency and accessibility in signposting by the Council. The converse can also be true – that poor signposting can lead to a decrease in complaints. I do not believe the decrease this year can be attributed to poor signposting, however. There are two reasons for this.

The Council has a clear and accessible process for residents to make complaints – a complaints form is available online and residents can also make complaints by telephone, email or letter. I understand the Council has also conducted outreach to ensure that community organisations are familiar with the complaints portal so they can log complaints on behalf of their clients.

In addition, as I explain further in this report, I have seen demonstrable improvements in the handling of complaints at stage 2. I therefore believe that it is likely that the reduction in stage 3 complaints is due to better resolution of complaints at an earlier stage. I do not have evidence for this, however, and I think it would be wise for the Council to carry out some limited research to ascertain if this accounts for the fall in stage 3 complaints. This could be done by, for example, contacting those who had a stage 2 complaint but did not progress it to stage 3.

Complaint numbers overall

It is important to keep in mind the relatively small number of complaints that proceed to stage 3 of the Council's procedure. In 2010-11, for example, 2,111 complaints were dealt with at stages 1 and 2 (including Lewisham Homes but excluding MP, Mayor, and Councillor enquiries), and only a very small percentage, 3.5%, of these progressed to stage 3. This figure has been consistently in the region of 2%-3.5% since the IA process started. It is important to highlight that it is still a very small percentage of complaints received overall.

The picture of escalated complaints is complex because complaints reach the IA at stage 3 in different ways. The 'normal' route is via stages 1 and 2, when the complainant remains dissatisfied with the responses received. By far the majority of complaints go through one or both of these stages. But complaints also very occasionally skip a stage, if the complaint is particularly serious or there have been delays at stage 1 or 2. In addition, enquiries to MPs, Councillors and the Mayor can progress to stage 3 but by no means do they all.

Last year, in 2009-10, I noted that approximately one-quarter of complaints were escalated to stage 3 – in other words, one-quarter of those complaints considered at the proceeding stage remained unresolved and proceeded to stage 3. I suggested that the Council should monitor this figure and consider whether, if the percentage of escalated complaints continues upwards, it reflects a concern about the robustness of complaints investigations and responses at stages 1 and 2. This percentage has slightly decreased in 2010-11 to 22% - this is a positive step in the right direction.

Upheld rates

I have noted before that having complaints is not a measure of poor service or performance. The percentage of cases upheld at these escalated stages, however, can be used as an indicator of how effective the complaints procedure is at stages 1 and 2. The aim should be for complaints to be resolved at the earliest stage possible, with only the most intractable cases progressing to stage 3.

The percentage of complaints upheld, across the Council (including Lewisham Homes), is the same as last year, 56%.

Breaking this down, the figure shows that the percentage of upheld complaints against the Council (excluding Lewisham Homes) has increased and the rate upheld against Lewisham Homes has stayed the same. This is disappointing given last year's figures, which showed a marked improvement.

Interestingly, the percentage of complaints upheld in full decreased this year, whereas the percentage of partially upheld complaints increased. Complaints are partially upheld when the IA finds evidence of failures in some but not all aspects of the complaint raised. Therefore sometimes a partially upheld complaint might reflect a very minor failure such as a delay in correspondence.

I noted last year that there is no benchmark against which to measure upheld rates. However, it would be useful for the Council to try to decrease this percentage to nearer 30-40% across all complaints. The trend clearly is in that direction, and I would hope next year will see improvements on the percentage of complaints upheld.

Time taken to resolve cases

The majority of cases (79%) were resolved by the IA within the 30-day timescale for IA investigations. This fell short of the target of 85%, however. This is disappointing, especially given that the past few years have shown a vast improvement in this area due to improved procedures.

Fifteen complaints were not decided within the 30-day timescale. Nine of these were minor delays of 5 working days or less. Although that is regrettable, it is inevitable that some such delays will occur, as the IA post is not a full-time one. I believe it is important to keep complainants informed of any delays, and to apologise for these in my final decision letter. When it is clear that my stage 3 decision letter will not be issued within the 30-day timescale, I send the complainant a holding letter with an apology and a new 'resolve by' date. In some cases I also telephone them to discuss the reason for the delay.

However, the other six cases were subject to more significant delays. The reasons varied. One involved delayed information being sent to me, followed by unnecessarily protracted discussions with Council officers about my recommendation for an apology. I discuss the issue of apologies further below.

In another I began my investigation late, after a period on leave, and found that a meeting was required to go through details of the complainant's Council Tax account. This resulted in a week-long delay.

One complaint involved a high level of compensation and this required discussion with the Head of Service and the Chief Executive's office. Although I circulated my draft letter well within the timescale, individuals' schedules made it difficult for me to finalise the letter until 10 days after the target response date. Another case was very complex, with vast amounts of evidence submitted by the complainant and involving allegations going back several years and actions taken by a number of different Council officers.

In one case, a very complex one, the reasons for the delay were mixed. This case involved not only a large amount of compensation but also specific actions to be taken by the Council, and it took time to establish a realistic action plan for this. More concerning, however, was that the investigation was delayed by the lack of a case file from the section concerned. At one point I had to convene a roundtable meeting with a number of officers in order to get a response to my initial findings.

No delay is desirable, especially given that delays at stage 3 come on top of what might have been considerable delays at an earlier stage of the complaint. Complainants for the most part understand that a stage 3 complaint can take time, and they often express their preference to have a thorough investigation rather than a rushed decision. Where delays cannot be avoided, complainants want to be kept informed.

By directorate and subject matter

As in previous years, the majority of complaints in 2010-11 related to Customer Services – 54% of complaints excluding Lewisham Homes. This was a decrease on previous years and reflects the fact that other directorates showed an increase in complaints, especially Regeneration (9, up from 5 the previous year) and Children and Young People (2, up from 1). As noted in previous annual reports, it is to be expected that most complaints will relate to Customer Services, given the services that come under the directorate – many of which are to do with housing, such as homelessness and allocations, and also Council Tax and Housing Benefit.

I am concerned to see that complaints about planning doubled, from 3 last year to 6 this year. Five of these were upheld. I comment on planning cases later in this report.

Few Council Tax complaints were upheld, and I see this as a reflection of good investigations at an earlier stage as well as a willingness to acknowledge errors and offer redress.

The number of leaseholder complaints was down this year, although one complaint involved three separate leaseholders. Many of the leaseholder complaints related to similar issues and were, in essence, matters that are not within my remit because they involve the reasonableness of charges or the standard of work.

One of the key housing issues related to condensation and mould in tenants' homes. I comment on this later in the report.

Compensation and other remedies

The total compensation awarded in 2010-11 was £11,595 (of which £5,225 related to Lewisham Homes). This is an increase of about £2,000 from last year, most of which relates to Lewisham Homes. Compensation was awarded in 26 cases (27 last year). Most recommendations for compensation were in the region of £101-500, although in two complaints compensation was significantly higher.

The IA uses the Local Government Ombudsman (LGO) guidance on remedies when determining compensation. It is helpful to point officers in the direction of this guidance, which is on the LGO website but also summarised on the IA sharepoint site, particularly when the compensation appears high to officers responding to the draft decision. This guidance is also useful to officers handling stage 1 and stage 2 complaints. I often see complaints that I believe could have been resolved if the compensation offered at an early stage of an upheld complaint reflected the full range of issues covered by the LGO guidance – including distress and inconvenience but also reimbursement of costs and lost opportunity. And of course compensation is likely to be higher at stage 3 because of the additional time and trouble, and sometimes cost, complainants have incurred in progressing their complaint.

Compensation is not the only remedy the IA recommends, and in 37% of upheld cases no compensation was awarded. Often the most appropriate remedy is a written apology to the complainant, from the relevant Head of Services, and/or a specific action that will benefit the complainant, such as a repair.

Customer satisfaction

The IA does not directly measure satisfaction with its work. This is carried out by the Corporate Complaints Team and involves sending out satisfaction surveys to complainants and an online survey for Council officers and officers of partner bodies. The results of this work are presented in the annual report produced by the Corporate Complaints Team.

Problems

There have been improvements in the timeliness of the information submitted to me by Council officers. I am puzzled, as I was last year, that I do not consistently receive a case file showing what evidence was considered at stages 1 and 2. I rarely receive file notes or a case analysis, as recommended by me and by Ms Banks, the previous IA. Some sections, including Council Tax, have been more consistently thorough in providing me with information.

I know that preparing a case file is time consuming and officers are under a great deal of time pressure. This is likely to increase given the pressure on resources. The difficulty for the IA is that it is often only once the investigation has begun that it becomes clear what evidence is missing. I expect that this evidence will have been gathered at an earlier stage of investigation and therefore will not be time consuming to provide. What I find, however, is that often that evidence has not yet been compiled and requires time, which can then lead to delay in my responses.

I urge the Council to revisit these recommendations from the past two years and put in place an electronic case file system that will encourage a consistent and comprehensive response is

sent to the IA at the start of the stage 3 investigation. This case file could include a case analysis template (one was suggested by Ms Banks in her 2008-09 report), a list of evidence, notes of telephone conversations and a brief chronology. This will not only help the IA but will demonstrate that the earlier stages of investigation have been thorough and not mere rubber stamping.

Effectiveness

I have noted in previous annual reports that the number of IA decisions that are subsequently challenged and then upheld by the Local Government Ombudsman (LGO) is an important indicator of the effectiveness, or otherwise, of the IA role. This year in only one case (so far determined) did the LGO come to a different view from that of the IA. I believe this indicates that the IA role is effective and the judgements made are sound.

Information supplied by the Chief Executive's office at the time of writing this annual report shows that 12 complaints investigated by the IA in 2010-11 have so far gone to the LGO.* (It is possible that this figure will be higher – complainants have 12 months to go to the LGO.) Two cases were still being considered by the LGO. In nine of the remaining cases, the LGO found no evidence of maladministration. In one case the LGO recommended an increase in the compensation to be paid, of an additional £100 above and beyond the £200 that I recommended.

I signpost complainants to the LGO in my letters and tell them that they are at liberty to ask the LGO to consider their complaint if they remain dissatisfied. Sometimes they are dissatisfied with my findings; that is inevitable, and as shown in one case the LGO's view was that I had awarded inadequate compensation for the failure identified.

Sometimes complainants believe that the Council has not implemented my recommendations. One long-running case has led to the LGO criticising the Council for its ineffective actions related to planning enforcement. Where issues are identified that indicate a need for a review of procedures, I urge the Council to make use of this information to drive forward improvements. In last year's annual report I encouraged the Council to make better use of the learning from LGO findings, and I am not aware that any action has been taken on this recommendation.

**Of which seven related to Lewisham Homes. Note that not all complaints about the Council and its partners which the LGO considers have gone through the IA stage, because some are outside the remit of the IA.*

Section 5: Observations and issues from the casework

This section describes issues that have arisen in the IA casework this year.

Section 5a: General observations

Stages 1 and 2

I have noted that there have been improvements in the responses I receive to the initial requests for information from officers at the start of my investigation. These are usually within the set timescales and many are well-compiled. Lewisham Homes and the Council Tax section have been noticeably well-organised with their responses.

I find that sections that are not used to the stage 3 process, such as Children and Young People, which sees only one or two stage 3 complaints each year, have difficulties providing comprehensive information at the start of the investigation. I understand that this may be due to unfamiliarity with the process, but it is important that it is not due to an inadequate investigation at stage 2.

Compliance

Compliance with the IA recommendations is high. However, for the first time, the Council has failed to follow the advice that supported the IA's recommendations. The complaint related to the way in which the Council pursued an interim empty dwelling management order (EDMO). I partially upheld the complaint and recommended that the Council write to her with an apology and pay her £500 compensation. I also asked the Council to review its EDMO procedure in line with the good practice published on the Empty Homes website and revise its own information on empty homes on the Lewisham website.

My concerns with compliance relate to the apology that was sent as I felt that it was deficient and that monies owed for a building control fee, were deducted from the £500 compensation.

As this occurred in the 2011-12 financial year the statistics relating to this case will be included in next year's annual report .

Apologies

A well-drafted and genuine apology can go a long way to reassuring a complainant that their concerns have been taken seriously. Where a complainant has been considered petty or difficult, officers are sometimes reluctant to apologise, perhaps feeling that a troublesome complainant is not entitled to an apology. But where something has gone wrong, even if it is only one aspect of the complaint, I recommend an apology if the failure has caused distress, inconvenience or unnecessary time and trouble for the complainant.

Where reluctance is conveyed in poor wording in an apology, this can exacerbate the issue, as can an apology from the 'wrong' member of staff. This year at least two complainants voiced their dissatisfaction with the quality of the apology they received. I urge the Council to review the guidance on apologies that has been produced in previous years, based on guidance from the Scottish Public Services Ombudsman.

Section 5b: Specific areas of complaint

Damp and condensation

I have noticed an increase this year in complaints about mould and damp. Residents are understandably concerned about mould in their homes, especially when they have children with medical conditions such as asthma. This is a difficult issue for social housing providers because many of the measures they can take to alleviate the problem are only temporary ones. Unless there is a structural problem causing damp, mould is usually a result of condensation within a property. Poor ventilation and overcrowding can increase condensation.

In early 2011 the Council's Housing Select Committee carried out an investigation into how housing providers respond to complaints about damp and mould, how possible health impacts are considered and the possible solutions available to landlords, particularly during the current harsh financial climate.¹ The 'aim was to identify ways in which housing providers might develop particular or better practices for dealing with damp and mould, to identify the extent of possible health impacts and explore viable solutions to the problem for affected tenants.'

There is no doubt that housing conditions contribute to the problems of mould and damp. Addressing these is difficult. Treatments such as mould washes are temporary. Permanent solutions depend on Decent Homes funding – the report noted that more than half of Lewisham Homes properties were 'non-decent', which increases the likelihood of damp and mould. In 12.5% of Lewisham Homes' households, residents report problems with damp and mould. In addition, overcrowding exacerbates condensation build-up and the growth of mould.

The report noted that reporting mechanisms were being improved, and residents were being advised on steps they can take to reduce condensation.

I discussed this issue in a meeting with Lewisham Homes repairs team, and I was told that the information for residents is being improved and that it will clarify that residents have a responsibility for preventing or reducing condensation. Lewisham Homes is also producing a hygrometer for residents to use as a visual aid to help them identify when condensation levels in the home are high and need to be reduced – by opening windows, for example, or using extractor fans.

We discussed the fact that by carrying out mould wash treatments, Lewisham Homes might be inadvertently raising residents' expectations and leading them to believe that Lewisham Homes is responsible for the mould. This then leads to complaints, when residents believe that there is more that Lewisham Homes should be doing to solve the problem.

Among the recommendations in the Select Committee's report were that the Council could work with housing providers to develop a single, comprehensive, easy-to-understand public information leaflet for distribution to tenants and leaseholders; that housing providers should consider additional temporary solutions; that where problems are reported, officers should consider neighbouring properties as well as others in the block; and that health issues and vulnerabilities should be noted and considered. I hope that these recommendations will be followed up and will lead to a decrease in the number of stage 3 complaints about this issue.

Planning

I mention planning cases in particular because the number has doubled this year from last year. Although it is still a relatively small number (6), there are worrying patterns in the planning cases I have seen. Specifically, these complaints tend to have in common concerns about failure to consult residents (third-party objectors to planning applications) and failure to communicate with residents.

¹ Overview and Scrutiny Short Review into the Health Impact of Damp and Mould in Social Housing, Housing Select Committee, March 2011

This is a difficult area. Planning decisions must take account of responses received from residents who object to planning developments, but they also have a duty to the applicants, and there is a great deal of discretion allowed in many planning application decisions. Third-party objectors have no right of appeal, so if they are not consulted on an application according to the requirements, they lose the opportunity to influence a planning decision. There is no way to determine if, had they been consulted, this would have changed the ultimate decision. But the failure to consult can leave them with a lost opportunity, their only opportunity, to have a say.

A failure to consult is often then compounded by communication failures. Most lay people are not familiar with the details of planning law. They reasonably expect that if a planning application is approved subject to certain conditions, the Council will ensure that those conditions are met. But enforcing such conditions is also a judgment to be made by planning officers, and they often engage in protracted negotiations with applicants in order to get acceptable results. Where the result does not meet the expectations of the objecting neighbours, a complaint can result. Complainants then often feel that their concerns are being dismissed because the Council does not reply to their letters or answer their questions.

It is important for planning officers to consider how they can communicate effectively and in a timely way with residents, in order to explain a plan of action or keep them informed of progress.

Private sector leasing

In disputes involving the Council and landlords in arrangements for private-sector leasing (PSL), there is the option of appointing a mutually acceptable independent expert to determine the dispute under the Arbitration Act, as per the terms of the PSL lease (clauses 5.6, 5.6.1 and 5.6.2). Either party can request that an independent expert be appointed, but using an independent expert requires the agreement of both parties.

I received a PSL complaint in which the complainant has requested use of arbitration according to this clause in the lease. The Council explained to me that its preference was to use the complaints procedure, and ultimately the IA, to resolve disputes with landlords over PSL. I agreed that in cases of minor repairs this was acceptable, and in my view the arbitration clause was designed to deal with issue of major structural damage to private properties, requiring the expertise of a chartered surveyor. I noted, however, that in all cases parties to these leases could choose to use the dispute procedure set out in the lease.

I therefore recommended that if either the Council or the complainant did not agree to my proposed settlement, either had the option of using this clause in the lease and having the dispute resolved through arbitration. I noted that there are likely to be costs associated with using an independent expert.

Section 6: Recommendations

Lewisham, like other local authorities, is facing momentous changes and pressures, including severe staff cuts. I noted last year that I was concerned what the economic climate will mean for complaints handling and the staff who deal with complaints. I suspect that complaint

numbers will rise, and many more than in the past will be about issues that the Council has no control over – the pressures that individuals are increasingly facing in their own lives. In such cases it will be helpful for the Council to identify as early as possible whether the issues are ones it can resolve, or whether complainants can usefully be signposted to other services and sources of support. I do not mean by this that complainants will be passed from pillar to post, but I do think it is helpful for those receiving complaints to know how to identify the crux of the problem from the start.

Complaints about complaint handling are unnecessarily time consuming. I have said that complaints are a valuable source of information and feedback that can lead to improvements. But complaints about poor complaint handling are, in my view, unhelpful and wasteful of precious time and energy. I therefore urge the Council to ensure that, in the light of huge pressure on resources, it maintains a sufficient level of resources for complaint handling in order to avoid delays which then lead to complaints.

I recommend that the Council, and its partner bodies including Lewisham Homes and Regenter B3:

- Identify early on whether the complaint is one the Council can deal with, and if not to signpost to an appropriate alternative source of support or help;
- Maintain sufficient resources for complaint handling in order to avoid unnecessary complaint escalation through delays and poor quality responses;
- Look again at the complaint where there was non-compliance with my recommendations to see if any lessons can be learned about the role of the IA and its relationship with the Council;
- Ensure that recommendations involving procedural changes are followed up and the IA is kept informed of improvements made as a result of stage 3 decisions;
- Review the guidance on apologies that has been produced in previous years, based on guidance from the Scottish Public Services Ombudsman;
- Revisit recommendations from the past two years regarding stage 2 complaints handling, and put in place a system that will encourage a consistent and comprehensive response to the IA at the start of the stage 3 investigation;
- Aim to see a decrease in the percentage of complaints upheld at stage 3;
- Carry out limited research on stage 2 complaints to determine if improvements in complaint handling there and better resolution have led to the decrease in stage 3 complaints this year and might do the same in the future: the research comprising contacting those who had a stage 2 complaint but did not progress it to stage 3;
- Explain to housing applicants the reasons for medical decisions as well as the decision itself;

- Consider how planning officers might communicate more effectively with residents about particular developments, providing a plan of action and keeping them informed of progress;
- Consider in private-sector leasing complaints using the dispute procedure set out in the lease.

Specific recommendations for the Council's partner organisations are:

- Revisit the recommendations made last year on insurance claims, ensuring that the procedures are consistent and user-friendly;
- Continue to make improvements in record keeping on inspections and repairs.

**Annual Report of the Independent Adjudicator for the London Borough of
Lewisham / Lewisham Homes
1 April 2010 – 31 March 2011**

APPENDIX: Digest of cases

Margaret Doyle
August 2011

Below are selected examples of stage 3 cases* to illustrate the types of issues that I have considered over the year in my investigations as Independent Adjudicator (IA). I hope that the Council and its partners find it helpful to see the kinds of issues that have been raised, the remedies proposed and, more importantly, my comments on administrative practices.

** Note that this case digest covers complaints about the Council and its partners, including Lewisham Homes.*

1. Housing – Repairs

Housing repairs, as in previous years, made up the largest category of stage 3 complaints. One-quarter of stage 3 complaints related to housing repairs, and of these, 75% were upheld either in full or in part.

1.1 Suitability of temporary accommodation, disrepair – Lewisham Homes

The complaint

The complainant lived in a one-bedroom property with her baby and a toddler. She was overcrowded and also had experienced a problem with damp and mould throughout her flat for several years. One cause of the damp appears to have been her neighbour's bathroom.

Lewisham Homes' inspectors visited to view the problem but the complainant said they never seemed to follow up with a solution or carry out the work. She believed that her flat was not fit for purpose, that it was overcrowded and this was being made worse by the damp and mould and an infestation of insects caused by the damp. The situation had affected her family's well-being and health, including exacerbating her asthma and her children's respiratory problems. She felt they should be re-housed in a suitable property.

The response

Lewisham Homes agreed that there had been damp problems in the flat, and file notes showed that a damp problem in the hallway cupboard was reported seven years before this complaint. Over the years some actions were taken in response to the complaints, but it was not clear from the file notes whether promised inspections were carried out, and the cause of the problems was not determined.

When Lewisham Homes identified that one source of the problem appeared to be in the neighbour's property, they attempted to contact the neighbour to gain access. Not receiving any response, they took action to serve a notice on the neighbour, who eventually made contact.

Repairs were finally carried out to the neighbour's property to address the damp problem in the complainant's home, but this was five months after they had identified the problem, and many years after the complainant had first complained.

The complainant also alleged that her family's medical conditions had not been taken into account in assessing their need for a more suitable property. Lewisham Homes found that the property was overcrowded and acknowledged the difficulties this caused. However, the medical assessments had taken medical conditions into account, and the complainant had been awarded a band C medical priority (which later, under the revised allocations policy in November 2009, was renamed band 3).

My findings and outcome

I found that there had been serious failures in dealing with the problems reported and delays in taking effective action. I found no errors in the way the housing application or medical assessments had been dealt with, aside from an administrative error in informing the complainant of her correct list date. I therefore partially upheld the complaint.

In considering a remedy for the failures, I took into account the length of time it took for effective action to be taken, the complainant's lack of enjoyment of her home in that time, the ages of her children and the fact that they were overcrowded, and the levels of distress and worry experienced. I considered that Lewisham Homes did not ignore the concerns, and I noted that they had recently been proactive about carrying out another inspection and identifying additional remedial works to be carried out.

I recommended that Lewisham Homes to pay compensation of £2,750 to reflect the length of time the leak in the neighbouring property was not dealt with. This figure was based on guidance from the LGO.

1.2 Repairs – mutual exchange – compensation to tenant – Lewisham Homes

The complaint

The complainant and his family moved into their current property under a mutual exchange. He said that the property was in poor condition, including structural defects. Lewisham Homes had agreed to carry out repairs but missed several scheduled appointments. The complainant waited a month and then arranged to have the repairs carried out, borrowing money to do so. He had requested that Lewisham Homes reimburse him the £3,300 he had spent because they had failed to remedy the problem.

The response

Lewisham Homes acknowledged that it had missed appointments. It offered the complainant £250 compensation to reflect the missed appointments and the fact that it did not carry out the plaster repairs in a timely fashion.

With mutual exchanges, tenants are required to accept the property in the condition it has been left by the last tenant and they are expected to take on some repairs responsibilities themselves. Lewisham Homes takes responsibility for repairs under the Right to Repair scheme, and for structural repairs, but its inspection in this case did not identify structural problems.

My findings and the outcome

I did not uphold the complaint. I sympathised with the complainant but I noted that he had already started the repairs before he missed an appointment. He had been told very clearly that he would not be reimbursed for these repairs. I did not agree that Lewisham Homes should pay the costs of the repairs the complainant carried out. It was the complainant's choice to go ahead and proceed with the work at his own expense, without receiving any prior approval from Lewisham Homes to do so.

I urged him to accept the £250 compensation that had been offered him, and I asked Lewisham Homes to let him know if he was also entitled to decorating vouchers.

1.3 Repairs – delays and disruption - Regenter B3

The complaint

This complaint related to problems with refurbishing a tenant's bathroom. The complainant explained that he was aware of a damp problem from before work began on refurbishing his bathroom. Specialist inspectors contracted by Higgins (part of the Regenter B3 consortium) did not identify damp when they carried out an inspection prior to the works beginning. High levels of damp were identified and rectified in October 2009, but during that time the bathroom had to be retiled three times, the shower replaced twice, the shower door replaced three times and the bathroom redecorated on four occasions, among other problems.

The complainant worked from home and felt he had suffered unnecessary disruption to his personal life and business operations as a result of the problems with the work being carried out. The ongoing situation had been very stressful for him and caused months of inconvenience.

The response

Higgins explained that no damp was found before the works began, and again when the work was signed off as completed. Some months after the work had been completed, the complainant raised his concerns again, and another inspection was ordered and damp was identified. It could not determine whether the damp was present when the works began. Work was carried out to rectify the damp problem. From Higgins's perspective they responded promptly to have the damp dealt with as soon as they became aware of it.

When refurbishments are carried out, tenants are expected to experience some inconvenience. In this case, however, Higgins accepted that there were a number of problems with the works that were carried out to the bathroom and this resulted in inconvenience to him beyond what would normally be expected.

The findings and outcome

I upheld the complaint because it was clear to me that the problems were greater than would normally be expected in a refurbishment. I could not determine with certainty why these problems occurred or whether the damp was present when the original surveys were carried out.

It was my view that it would be reasonable for Higgins to compensate the complainant for the unnecessary inconvenience, which resulted in him being deprived of the full use and enjoyment of his home for a period of six months, and the resulting stress of the remedial works that had to be carried out as a result of problems with the works. I recommended that Higgins send the complainant an apology and pay him £300 in recognition of the inconvenience, stress and time and trouble you have experienced.

Post-decision

The complainant was dissatisfied with the decision and asked the Local Government Ombudsman to investigate. The LGO recommended that a further £100 compensation be paid to the complainant.

2. Housing – repairs and insurance

For a second year, the way that insurance claims for damage and disrepair have been handled featured in some stage 3 complaints.

2.1 Leak from neighbouring property – insurance claim – Lewisham Homes

The complaint

The complainant, an owner-occupier, had lived in her property for about a year. The property next door to hers had been vacant for some time and was managed by Lewisham Homes. She noticed that water had been penetrating the adjoining wall between the two properties, causing damp patches that were visible from skirting board level in her hallway through to the length of the living room wall, resulting in wood rot to some sections of skirting board in the living room.

She asked for the source of the leak from the neighbouring property be identified and sealed as soon as possible, and that a claim be considered against Lewisham Homes for damage to her property.

The response

Lewisham Homes inspected both properties and found no evidence of a recent leak. It said that the pipe work in its property had been thoroughly investigated and no leak was found. The property had since been passed to London and Quadrant and was no longer managed by Lewisham Homes.

The claim was not passed by Lewisham Homes to Insurance and Risk, and the complainant was instead advised to contact her own insurance company.

Lewisham Homes agreed that it would have been helpful to have a further inspection of the complainant's property by a more senior technical officer while the property was managed by Lewisham Homes.

The findings and outcome

I upheld the aspect of the complaint related to the insurance claim for damage. Because this had not been referred to Insurance and Risk, there was a lost opportunity to investigate the matter fully. Although I could not say what the outcome of that investigation would have been, Lewisham Homes recognised that it had failed to refer the case to its insurers and failed to carry out a full investigation at the time the complainant raised her concerns.

I did not uphold the aspect of the complaint related to the water penetration. I could not determine the cause or date of the water penetration. After all the time that had passed it might not be possible to determine when exactly any leak occurred. It therefore may not be possible to determine whether any leak occurred was while the property was tenanted – in which case it is the tenants who are liable, but they have since moved – or while the property was vacant.

Lewisham Homes had carried out a number of inspections. However, there was a lack of rigour in the inspections carried out, both in the failure to use a damp-testing meter and in the lack of recorded findings. In addition, no written findings were ever conveyed to the complainant.

I explained that the insurance claim should be referred to Insurance and Risk to deal with any claim on liability of damage caused whilst Lewisham Homes was managing the property. I noted that Lewisham Homes had acknowledged there were failings in the way the complaint was handled and had provided an apology for this. In my view this apology, in conjunction with an inspection now and a referral to Insurance and Risk, provided an adequate remedy for the failings identified.

2.2 Damage – insurance claim – Lewisham Homes

The complaint

This complaint involved loss and damage as a result of repairs that were carried out to the complainant's home. The work was serious enough to require the tenant to be temporarily rehoused. On her return to the property, she discovered that her carpet had been damaged, a ladder was missing, and her garden was in a mess and needed clearing. Also, a garden wall had been removed during the repair work.

The response

A successful disrepair claim had been made but some issues were outstanding. Her solicitor corresponded with the Lewisham Homes' legal department about the outstanding issues to be resolved, and at one point it was agreed that the garden would be cleared. In the meantime, she submitted an insurance claim to Lewisham Homes for the damage to the carpet and the missing ladder. These were rejected.

The findings and outcome

I upheld the aspect of the complaint related to the promises made to clear the garden. Lewisham Homes agreed to carry out this work. Unfortunately, this meant that the complainant had not had full use of her garden for one year, from the date when the written commitment was made to carry this out.

I could not make a finding on the damage to the carpet and lost ladder because there was inadequate evidence. I criticised the way the insurance claim had been handled regarding these two issues. The building contractor was brought in by Lewisham Homes and therefore it was Lewisham Homes which should have dealt with any negligence issue, insurer to insurer, not for the complainant to have done so. Lewisham Homes explained that the vast majority of claims of this type are settled in this way. If there is disagreement, however, then the Council's Insurance and Risk section will intervene, make enquiries and if appropriate carry out a site visit to determine if there is evidence to support the claim. In this case, Insurance and Risk were not informed when the complainant remained dissatisfied with Lewisham Homes' response and that of the contractor. This was a failure. Although I could not say that the outcome would have been different, but at least then the complainant would have felt a full investigation had been carried out.

I recommended that Lewisham Homes should ensure that the work on the garden was completed by a specific date, and send the complainant an apology and compensation of £150 for the loss of enjoyment of her garden for this period, plus an additional £50 for the failings in the way the insurance claim and complaint were handled.

Post-decision

Subsequent to the stage 3 decision, the complainant went to the LGO, who considered the delay in clearing her garden. The LGO found that £250 would be a more reasonable amount of compensation for the loss of her garden during the period when Lewisham Homes failed to fulfill its promise to clear it. The LGO recommended that Lewisham Homes pay the complainant a further £100.

2.3 Condensation and mould – damage – insurance claim – Regenter B3

The complaint

A tenant of a property managed by Regenter B3 had experienced condensation and mould in her home for twelve years, and in the last three years this had become worse. She was disabled with neck and spine damage and could not leave her home. She was concerned that Regenter B3 had not yet resolved the problem. Her furniture had been damaged by the mould and she had resorted to sleeping in the living room for the past two and half years because. She was told to claim any losses against her insurance but she did not have any insurance.

The response

Regenter carried out a number of actions, including mould wash treatment and a positive ventilation system, and also moved a shed that was contributing to the problem. It did not investigate the complainant's claim for compensation because it said that damage by condensation and mould are not insurable, so its insurers would not cover the claim.

My findings and the outcome

I determined that in spite of the actions taken by Regenter B3 to improve the situation, the lack of monitoring was a failing. The situation should have been monitored more actively, and for that reason I partially upheld the complaint regarding the mould.

I also noted that Regenter B3 was not aware of the complainant's disability and medical conditions, and the tenant record did not mention them, although the repairs record notes the fact that the tenant is disabled. I considered this also to be a failing, because it is important that accurate records are kept of tenants' needs, particularly where a disability or medical condition might be worsened by a housing condition or the tenant might require additional support in managing condensation.

I criticised the handling of the insurance claim. The tenant was given inaccurate information about the status of her claim, and she was never asked for more details about the claim. The claim should have been dealt with more sensitively, especially given that the complainant had informed Regenter B3 of the urgency of her situation when she had requested help. There was no reference to this request in either the stage 1 or stage 2 reply. In addition, she was erroneously informed that her claim was being considered by the insurers, when it was in fact never sent for consideration but rejected without any investigation. She was merely told to claim against her own insurers, something she could not do because she did not have insurance.

I asked Regenter B3 to monitor the situation with a follow-up inspection and to send her an apology and £200 compensation. I also asked them to revise their procedure regarding insurance claims, inform tenants how to make a claim and ensure their records accurately reflect any disabilities or medical conditions.

3. Housing – other

Other housing complaints involved anti-social behaviour, leaseholder charges and communal gardens.

3.1 Anti-social behaviour – neighbour nuisance – Lewisham Homes

The complaint

A couple complained about the lack of action taken in relation to difficulties they had experienced for many years from the family next door. They described a number of specific incidents, including loud banging and loud swearing out the back door, objects being thrown into their garden, and racist abuse. They had submitted diary sheets over the years documenting the incidents.

The neighbours had been given a number of warnings, but the complainants felt that no action had been taken regarding these. Lewisham Homes had served notices seeking possession but it had taken no further action in spite of the anti-social behaviour continuing. The complainants felt these notices were empty threats.

The response

Lewisham Homes explained that the family next door had vulnerabilities and was supported by social services and other agencies. Attempts had been made to address the situation using a number of different approaches, including use of an Acceptable Behaviour Contract. The family had been working with Lewisham Homes to try to resolve their difficulties.

The complainants had been advised that Lewisham Homes was unlikely to take legal action given the vulnerabilities of the family and their willingness to cooperate. In addition, Lewisham Homes did not have the resources to provide additional soundproofing.

The findings and outcome

There was no dispute that the complainants had experienced anti-social behaviour. I sympathised with their situation. I found that although Lewisham Homes had taken action to try to address the problem, it had not communicated effectively with the complainants. It had also not been clear as to whether it identified the behaviour as anti-social behaviour, which led the complainants to feel unsupported.

The fact that the family had vulnerabilities did not preclude Lewisham Homes taking legal action. The Local Government Ombudsman's special guidance on dealing with anti-social behaviour and neighbour nuisance makes it clear that the fact that there are mental health issues or that social services is involved with a family *'does not preclude a council from taking other legal action or steps to prevent the anti-social behaviour from continuing. A council has a duty to act if a tenant's behaviour is interfering with another tenant's enjoyment of his or her tenancy. ... A council should weigh up the merits of taking action and consider carefully the effects the behaviour of the perpetrator is having on the victim. Often any legal action will be combined with the provision of good support services for the alleged perpetrator.'*

I partially upheld the complaint. Lewisham Homes had taken action. However, the complainants had been let down by Lewisham Homes in its response, its failure to keep complete records, its failure to keep them informed, and its lack of response to more recent complaints. I noted, however, that there may be little more that Lewisham Homes could do in terms of legal action, and it is important to have reasonable expectations of what can be achieved. My view was that Lewisham Homes had tried to tread sensitively with this, but in doing so it may have lost sight of the 'victim-centred' approach it describes on its website.

I asked Lewisham Homes to ensure it has all the evidence, including diary sheets, relating to the situation and to create an action plan explaining how it will monitor the situation. I asked Lewisham Homes also to explore with the complainants the possibility of using a restorative justice approach or mediation with an independent service to try to resolve ongoing low-level nuisance issues. Finally, I recommended that Lewisham homes pay the complainants £150 for the distress caused by not keeping them informed.

I considered arranging a meeting between Lewisham Homes ASB offices and the complainants in order to agree on an action plan. It was not possible to do so given the diaries of the individuals involved. However, I encouraged Lewisham Homes to convey to the complainants its apologies for the fact that they perceive their complaints have not been taken seriously; to explain its procedures in terms of how it investigates allegations and what residents can expect in terms of service standards; to identify what actions are taking place now; and to identify what actions can (and cannot) be taken, and why. I noted that it would not be easy to restore their confidence, but a genuine response and clear action plan will help to reassure them that they are being taken seriously.

Post-decision

The complainants subsequently asked the LGO to consider the complaint. The LGO is currently considering this complaint.

3.2 Leaseholder charges, major works – Lewisham Homes and Regenter B3

I received a number of stage 3 complaints relating to leaseholders' concerns about the bills they had received for major works. My remit is limited in regard to these complaints, something that I explained to each complainant. Specifically, although I can consider if there have been administrative errors or failings, I cannot consider whether work that was carried out to a property was to the required standard, nor can I consider whether the charges made for the works or related fees are reasonable.

In such cases, leaseholders have a right to go to the Leasehold Valuation Tribunal (LVT). This is an independent tribunal for resolving a range of leasehold issues.

I partially upheld several of the complaints because in some aspects the complainants did not receive as thorough an explanation as they should have when they first raised their complaint.

The complaint

One case involved a group of three leaseholders who submitted a joint complaint about the management and costs of major works carried out to their building. An entry phone system and a new communal door had been installed, after a three-month period when the building was without a working lock and unsecured. There were a number of issues about the management of the work that they were concerned about.

The response

Lewisham Homes accepted that there had been failings in the management of the major works, including specifically access to the properties and that the contractors should have given more notice. It also accepts that there was a delay in the repair to the lock plate for the communal door and as a result securing the door took longer than it should have.

Lewisham Homes upheld the complaint at an earlier stage and offered to waive the management fee on works to the entry phone (equating to £82.88 per leaseholder). The complainants felt that in spite of this there were questions they had raised that had not yet been answered. They also felt that the removal of the management fee was insufficient to compensate for the disruption and stress that had been caused by what they considered to be poor management of the major works.

My findings and the outcome

I believed the waiving of the management fee on the entry phone works was adequate compensation for the failures in the management of the contract.

However, I identified that there was a three-month delay in completing a repair to a communal door. I recommended that Lewisham Homes should consider an additional amount of compensation of £50 for the three-month delay in securing the communal door, and this should be paid to all residents who were affected – (i.e. £50 x 8 residents).

Sometimes, as in the case below, the primary issue is not one I can resolve but I find that leaseholders have not been given as full an explanation as they should have. An early and thorough explanation might prevent a stage 3 complaint in such cases, although the case may have to go on to the Leasehold Valuation Tribunal.

The complaint

Another leaseholder complaint, this one involving Regenter B3, involved a charge on the major works bill reflecting window replacement in the complainants' home. The first bill they received showed a charge for window replacement. They had not had their windows replaced but merely overhauled. Regenter B3 accepted that an error had been made on the bill and they corrected it – the new bill stated that the windows had been overhauled, but the charge was the same, about £2,400. The complainants queried how this could be accurate.

The response

Regenter B3 told them that the charge was accurate. Planning restrictions in the conservation area in which the complainants lived prevented Regenter B3 from replacing their windows with the UPVC double-glazed windows under the contract. Where windows could not be replaced, Regenter B3 was required to refurbish them.

My findings and outcome

I did not uphold your complaint because I could not make a judgement about the reasonableness of the charges or how the charges were calculated. But I could see that the complainants felt the charge was excessive for the amount of work done, and I considered what explanation they had received.

What they had not been told was that the charge was linked to the way that the Major Works were contracted, requiring Regenter B3 to commit to undertake all the refurbishment works for a fixed lump sum. The sums charged to leaseholders therefore did not necessarily reflect the actual work carried out on their windows. The charges would have been approximately the same for those leaseholders who had window overhauls as they were for those who had complete window replacements.

When the correction was made to the bill, I would have expected Regenter B3 to explain that the charge remained the same because it was charged on a lump-sum basis. The complainants should not have had to progress their complaint to stage 3 in order to obtain this explanation, and I asked Regenter B3 to send them an apology.

3.3 Communal garden, leaseholder rights – Lewisham Homes

The complaint

A young couple, who were leaseholders on an estate of mixed tenancy, were concerned that part of the communal garden area that they were legally entitled to access had been fenced off for sole use of the neighbour in the downstairs flat.

The complainants made a number of points, including that the fence was unsightly and the area was not being maintained. They felt it was unfair that they were required to contribute to the

upkeep of the communal gardens but the grounds maintenance contractors had no access to the fenced-off area, and neither did other residents.

The complainants believed that from a legal aspect, the fence directly contravened the law and should be removed as it has been illegally constructed and encloses communal land for private purposes.

The response

Lewisham Homes was unsure at first if the fenced-off area was part of the communal land. Its initial response indicated that it was not and therefore there was no justification for removing the fence. Subsequently it clarified that the area was part of the communal garden area, and that the fence had been put in several years ago. It did not uphold the complaint, however, because it determined that it was not in the public interest to do so given the impact on the residents who had fences and the likelihood that removing it would set a costly precedent in relation to other fences that had been put up as part of a historical informal agreement.

Lewisham Homes said that it would be unfair on those residents who have invested a considerable amount time, effort and money in improving their surroundings. As the fenced-off area was contained within a larger area and was directly outside a dwelling, Lewisham Homes believed the practical benefits of removing the fence were negligible.

My findings and the outcome

I upheld the complaint. I agreed that the fenced-off area is part of the communal gardens, as set out in the complainants' lease and deeds. All residents contribute to the maintenance of the communal gardens, and it was reasonable for them to feel it was unfair that a portion of the gardens was for the sole use of one resident.

However, in my view removal of the fence was not necessarily the solution. Lewisham Homes had obligations to the complainants and to their neighbour. The local agreement under which the area was fenced off and allocated to this flat was historical and was a situation inherited by Lewisham Homes when it took over managing the properties. Those residents with fenced-off areas allocated to their properties had a reasonable expectation that this would continue.

I explained that Lewisham Homes should have removed the fence at the time the flat at no. 78 was empty, before the new tenant moved in. Had they done so, they would not have raised that resident's expectations about having sole use of the fenced-off area. Lewisham Homes explained that they had not received any complaints and so would have had no reason to remove the fence, but the complainants said they had complained of the fence at the time and nothing had been done.

I asked Lewisham Homes to apologise to the complainants for the inadequate responses to the complaint and to meet with the complainants to discuss their concerns about the fence. The aim of the meeting was to understand the specific concerns and identify possible solutions and the timeframe for any actions.

At the meeting it was agreed that Lewisham Homes would liaise with the neighbour to explain the situation and would then explore three options – removing the fence outright, replacing it with improved fencing, or replacing it with shrubbery.

Post-decision

A meeting was held, which I chaired, and subsequently the fence was replaced and access was provided to all residents. In addition, Lewisham Homes committed to removing such fences in other properties as they become vacant.

4. Planning

The number of planning cases increased this year. Among the key issues raised are lack of consultation with residents and failure to enforce conditions that are placed on planning applications when they are approved.

4.1 Consultation – safeguarding issues – Regeneration

The complaint

This complaint related to a development that received planning permission and was subsequently built adjacent to a school's playground. Two of the school's governors complained on behalf of the school because the playground was directly overlooked by the development. They were concerned about the child safety issues arising from the close proximity of the development and they also noted that the Council had failed to consult with the school, an immediate and significant neighbour, during the processing of the planning application.

The development had been built, and the school proposed to the Council a remedy that would involve a land swap between part of the playground and an area of park.

The response

The Council acknowledged that it had failed to consult with the school, due to an administrative error. It believed, however, that even if the school had been consulted it would not have changed the decision. The Council considered the land swap proposal but rejected it.

The officer with responsibility for safeguarding provision for children considered the safeguarding aspect of the complaint. She noted that this is an issue raised by residents at council meetings across the country when such planning permission is sought. Generally permission is given unless such properties block the light and height seems to be a general problem for some. However, it is usually regarded as a sensitive area and there is always consultation with schools and parents before permission is granted. She noted that there is nothing explicit in safeguarding guidance to cover these situations.

My findings and outcome

I explained that I cannot overturn a planning decision by the Council. However, I partially upheld the complaint in relation to the failure to consult and the response given. It is impossible to determine whether the decision on the application would have been different had the school been consulted. I did not agree with the Council's assertion that it is clear that the outcome would have been the same, but nor could I say that the outcome would have been different.

Because of the Council's failure to consult properly, however, the school lost the opportunity to influence a planning development that has a significant impact on the school. That is the only influence that third parties can have on planning applications, as there is no right for third parties to appeal to the Planning Inspectorate on a planning decision they disagree with. That makes the consultation requirements so important.

I believed more effort should have been made to discuss the land swap proposal with the school and to explore other remedies if the Council felt – as it does – that it could not agree to your proposed remedy. I therefore arranged a meeting between the complainants and the Head of Planning, at which a number of possible solutions were explored. I also asked the Council to pay the school £350 for the failure to consult.

4.2 Enforcing planning decisions – consultation – Regeneration

The complaint

A resident made three complaints to me relating to planning approvals for an extension and a commercial property near his home. He had made a number of practical suggestions that he felt would mitigate the overlooking and the increased need for rubbish and bicycle storage from the additional flats. He felt the Council was not enforcing the planning conditions linked with the approved application.

The response

The Council has stated that it has met or exceeded the required standards of consultation on these projects and has complied fully with the legislative and statutory requirements in regard to planning applications.

My findings and outcome

This was a complex investigation covering a number of issues, and there were limits on what I could do for the complainants. I explained that I could not question the decisions made on planning applications or enforcement action, nor could I overturn any decision properly made.

I partially upheld the complaint because, in my view, the Council had not been as clear as it should have been in explaining how it makes those decisions and the timescales in which the decisions will be made. It had promised action but given no indication of how long the process takes or how much time the Council allows the applicant to comply.

I asked the Council to send an apology for not carrying out a wider consultation according to good practice and to discuss with the complainant his suggested remedies in more detail to and to explore any other possible other solutions. I also asked the Council to keep him informed of progress on enforcement action and to consider improvements can be made to its processes in order to provide clearer information to residents on its decision making on potential breaches of conditions, including the timescale of such decisions.

5. Council Tax

I received a number of Council Tax complaints this year, but fewer than last year. I find that the Council Tax section has usually carried out a thorough investigation of the complaint and they are ready to acknowledge errors and offer redress. It is not surprising therefore that out of the seven complaints I investigated only one was upheld.

5.1 Council Tax arrears – bankruptcy - vulnerability

The complaint

This was a very serious complaint about the Council having made a local resident bankrupt for Council Tax arrears. The complainant had serious medical problems. His adviser, citing disability discrimination, said the Council had not taken account of these vulnerabilities and that it should have taken other steps before resorting to bankruptcy proceedings, something the Local Government Ombudsman (LGO) had criticised another Council for in a complaint it investigated.

The two main points in the LGO decision were that the council gave inadequate warnings of the consequences of bankruptcy and that it failed to consider the option of a charging order instead. In the complaint I was considering, the Council did consider but rejected a charging order.

The response

The Council said that the bankruptcy was a last resort and it took place after six years of recovery action. The Council also told me that the complainant never indicated he was unable to deal with his financial affairs. He did inform the Council of a stroke in 2005 and a leg amputation in 2007. The bankruptcy action only proceeded in 2007 after all the other steps had been taken to encourage payment of the debt, and after many years of action. The LGO decision involving another local authority took place a year later.

My findings and outcome

I did not uphold the complaint. I noted that the action taken by the Council had a significant impact on the complainant, and the information provided with the complaint made it clear that his personal circumstances were very difficult at the time of the action. However, I did not believe that the way the Council handled the recovery of his Council Tax debt was faulty.

The Council had had no indication that the complainant was struggling to cope. Although the Council had improved its procedures for debt recovery and bankruptcy after the LGO decision, the procedures it followed at the time of the complainant's bankruptcy included a staged approach, warnings of the consequences of bankruptcy, and several opportunities in the process to pay the balance. It also included advice to seek help from a solicitor or CAB.

In any action the Council must consider what route to recovering the debt is likely to be most effective. Other recovery options were considered, including attachment on earnings and committal application, but they were thought to be unsuitable for this complainant's circumstances.

I found that the Council had responded positively to the complainant's requests to make arrangements for payment several times in the years before the bankruptcy action. The Council had not been given any indication that the complainant was vulnerable or that he was unable to pay the arrears. Over the years he had requested a number of arrangements to pay the arrears, and these were agreed each time by the Council.

I acknowledged that there is no single definition of ‘vulnerable’. It appears that this varies from service to service – vulnerability for the purposes of tenancy or access to property will be different to vulnerability for the purposes of paying Council Tax. I noted that in my view it is important that officers are attuned to the possibility of vulnerability in the specific context in which they work.

I could tell that the information provided with the complaint demonstrated the complainant’s difficult family circumstances and his inability to manage due to medication, and I concluded that he may well have been vulnerable at the time. With the information the Council had at the time, however, there was no indication that he was unable to manage. It could have been seen as unnecessarily intrusive for the Council to question his ability to manage when, by all accounts, he was informing the Council that he was managing.

5.2 Council Tax – bank charges

The complaint and response

The complainant was charged £135 by her bank in overdraft charges, which she says was due to the Council taking two monthly Council Tax payments out at once, without notifying her in advance.

The Council acknowledged that it had made an error in not notifying her, but the payments were due so it was entitled to take them. The Council was willing to refund her bank charges and requested evidence of the charges showing that they related to this un-notified payment.

The complainant submitted bank statements but many of the entries were blacked out for privacy. She was reluctant to provide unaltered bank statements. The Council suggested that she obtain a letter from her bank confirming that the charges related to the Council Tax payment, but she was reluctant to do this.

The Council escalated the complaint to me because it felt it had done all it could to resolve matters.

My findings and outcome

I examined the complaint and wrote to the complainant indicating that I believe a reasonable suggestion had been made that would meet her justified concerns for privacy and the Council’s justified need for evidence. I suggested that she could obtain a copy of the pre-notification letter from her bank, or request that her bank provide a letter confirming that the £135 charge made resulted from the payment to the Council Tax section. The complainant was unhappy with this suggestion, and she said she had incurred additional charges because of having to cancel her direct debits. I explained that the decision to cancel her direct debits was an issue for her, not for the Council.

I did not uphold her complaint. I acknowledged her justified concern for privacy but noted that this needed to be balanced against the Council’s need for evidence before refunding any charges. I clarified with her what evidence the Council would accept.

Post-decision

The complainant subsequently asked the LGO to investigate. The LGO found no evidence of maladministration.

5.3 Council Tax – summons charges

The complaint

The complainant questioned that her Council Tax for the year 2007-08 was in arrears. She had tried a number of routes to get the matter resolved. She felt that she was being forced to pay summons charges needlessly and had intimidating threats of bailiff action. She felt harassed by the Council.

The response

The Council issued the complainant with a summons for unpaid Council Tax. The summons, however, was for 39p – the amount of arrears at the time. Therefore technically the Council was correct that there were arrears – and it noted that it is not always possible for human intervention to replace the automatic issuing of summonses. The Council later removed the costs associated with this summons.

My findings and outcome

I found that the complainant had endeavoured to keep up to date with her payments and at no time had she given the Council the impression that she was avoiding paying.

Her payments, however, had been irregular. In light of her erratic payment history, the Council attempted in good faith to apportion payments in her best interests. This led to confusion, which was then compounded by the summons issued for 39p, which I found was poor handling even though the Council was technically entitled to take that action.

I did not uphold the complaint. I believed that the Council's offer to remove any costs from the account now was a reasonable offer. In addition, I asked the Council to arrange a payment plan for the outstanding amount that would allow the complainant to pay this off in three monthly instalments, as clearly it was never her intention to avoid paying this.

6. Other complaints

Other categories of complaints involved a range of issues – tree work, parking, and private-sector leasing. Here is a selection.

6.1 Tree works - apology and explanation – Council and RegenterB3

The complaint

A resident was unhappy with the way work to trees near his property had been carried out. He said that he and other residents had not been consulted about the work and the reasons for it, and the work had been unnecessary and had gone further than the plans had described. He felt that the Council's actions showed a disregard towards the needs or feelings of the residents

The Council's view

Regenter B3 noted that urban trees have to be maintained for the safety of the people and wellbeing of the trees. It said that the reason for the works to the trees was not as a result of any issues relating to undermining or threatening nearby properties, but solely due to the complaints received.

The Council explained that given the extent of the work necessary, the number of trees and the fact that work had not been carried out for some time, local residents and the local conservation society were notified of the work.

My findings and outcome

I partially upheld the complaint. I noted that the Council is entitled to carry out work it deems necessary to trees on land in the borough where it is responsible for maintaining this. This extends to its partner organisations to whom the responsibility is delegated by the Council – in this case Regenter B3. I clarified with the complainant that I was not able to question the decision on what work is necessary, which is a professional judgement the Council is entitled to make, and in any case is outside my expertise.

I found, however, that the explanations provided to the complainant had been inadequate. I believed that he had been treated badly in the response he received, which included inaccurate explanations for the reason why the work was carried out, a reference to a final inspection for which there was no evidence and no response to his query about future consultation. I asked for the Council to use this complaint as an opportunity to improve its procedures relating to residents' concerns about tree maintenance in the borough. I also recommended that it write to the complainant with an apology for the time and trouble he had gone to on getting a response.

The Council was resistant to this recommendation, and this case became one of several examples where the Council was, in my view, overly defensive about issuing a genuine apology. The Council disagreed with my conclusion and was concerned that it was raising expectations of residents in terms of their rights to be consulted. The failures were not major ones but were significant to the complainant. I saw no reason for the Council to feel aggrieved at being asked to apologise for the failures.

6.2 Faulty lights – safety

The complaint

This complaint related to faulty lights in a public area. The complainant, a local resident, was concerned about safety at night and requested the lights to be repaired. In the stage 2 response to his complaint he was told that the lights had been fixed. In fact, some lights had been fixed, but not the ones he had complained about. He was annoyed at being forced to pursue a complaint to stage 3 in order to get the problem addressed.

The response

The Council noted that there had been delays in identifying who was responsible for maintenance of the lights, and this led to delays in repairs being carried out. Highways had mistakenly thought that the complaint related to lights on the footway, which fall

under Highways responsibility. The lights in the Gardens, which were the faulty lights he complained of, are not part of Highways' responsibility. The complaint highlighted for the Council that the lights in Cornmill Gardens were not being maintained by anybody.

The Council explained that although the defective lights in this particular location would not normally be repaired by Street Lighting, it would agreed to carry out the work as soon as possible.

My findings and outcome

I upheld the complaint because I believed he should not have had to raise a stage 3 complaint with me in order to get this matter resolved. Had the exact location of the lights complained about been clarified with the complainant at the start, the matter could have been resolved earlier.

However, I noted that the complaint raised difficult issues for the Council in that it had to clarify who has responsibility for these lights. I was pleased with their response in the end: the Council accepted that allocating responsibility is not your concern, they committed to repairing the lights, and they met with the complainant to ensure they understood which lights were in need of repair – all these were positive and constructive steps.

6.3 Private-sector leasing – dispute resolution

The Private Sector Leasing Scheme provides for the Council to lease a property from an owner which it then rents out to one of its tenants (the sub-tenant). The scheme is also subject to targets on how many properties of a certain type will be leased.

The complaint

The complainant was the owner of a three-bedroom property, and in she entered into a three-year tenancy agreement (lease) as part of the Council's Private Sector Leasing Scheme. The lease came to an end three years later.

The complainant told me that the property was leased as a two-bedroom house with the understanding that a three-bedroom house was not in demand by Lewisham Council. Yet all three bedrooms were occupied by the sub-tenant, and the complainant believed she was entitled to more rent than was paid because the property was let as a two-bedroom and all three bedrooms were used.

She also alleged that the property had not been maintained to a reasonable standard and as a result a number of repairs were required before the property could be re-let. The problems, she felt, were due to negligence on the part of the Council for not surveying the property throughout the lease as required by the lease.

The Council had provided a list of dilapidation costs in its stage 2 response to the complaint. The complainant disagreed with these. She was also concerned that a broken down car was left by the previous tenant on the drive. This was not removed for some time, and therefore the complainant believed that part of the property was still in the Council's possession until then, and further rent should be paid.

The response

The Council explained that the property was regarded as being in 'fair' condition when they took it on, and the bathroom and kitchen were new. The property would have needed only minimal work to re-let it. There was no requirement upon the Council to redecorate or renew carpets at the end of the lease. Nevertheless, the Council offered a sum of about £160 as a contribution to a number of repairs.

The Council explained that the lease itself does not specify the size of the property. The lease is for the whole property. Rooms are not sealed off and there is no prohibition against sub-tenants using the entire property.

Regarding the abandoned vehicle, Council officers attempted to contact the former tenants to remove the car and were advised that it would be moved. This did not happen, and the Abandoned Vehicles team were asked to investigate. They are required by law to provide a seven-day notice of the intention to remove an abandoned vehicle. The car was removed within the seven days' notice period.

My findings and outcome

I explained that I am could not determine if any repairs resulted as a lack of inspection by Council officers. Nor was I able to determine whether repairs were necessary as a result of damage by the sub-tenants.

Given the uncertainty as to who was responsible for the specified repairs, it was not a clear-cut claim. However, I believed that a reasonable settlement could be reached. Therefore it was not a case of upholding or not upholding this aspect of the complaint. I found no evidence of a failure on the Council's part, nor did I find any fault on the complainant's part in pursuing this matter because she felt the sum offered was inadequate.

I did not uphold the aspect of the complaint relating to the use of three bedrooms and the claim that increased rent should have been obtained from the Council.

I think it is reasonable for the Council to have given a limited amount of time to the former sub-tenants to remove their car before the Council started enforcement action. However, negotiations seemed to carry on for a lengthy time. The statutory seven-day notice was not served until more than three weeks after the complainant informed the Council.

I considered that the car was in the drive for longer than it needed to be, and therefore I upheld this aspect of the complaint.

I proposed as a reasonable settlement that the Council pay the complainant £500, in addition to the sum of approximately £150 it had already paid to her. The total of £650 reflected a lump sum for minor repairs and a sum to recognise that the Council could have acted more promptly to deal with the sub-tenants' vehicle in the drive.

I proposed that alternatively, the complainant could submit detailed costings of specific repairs (providing receipts or paid invoices) for me to consider, and I would then propose an amount that I think would be reasonable for the Council to pay towards these costs.

I therefore provided two options: to accept £500, plus the £150 already paid, as compensation; or to provide receipts and invoices for me to consider an amount for to be reimbursed by the Council.

Post-decision

The complainant decided to accept the additional £500 compensation.

Appendix 2

Local Government OMBUDSMAN

24 June 2011

Mr B Quirk
Chief Executive
London Borough of Lewisham
Lewisham Town Hall
Catford
LONDON SE6 4RU

Dear Mr Quirk

Annual Review Letter

I am writing with our annual summary of statistics on the complaints made to me about your authority for the year ending 31 March 2011. I hope the information set out in the enclosed tables will be useful to you.

The statistics include the number of enquiries and complaints received by our Advice Team, the number that the Advice Team forwarded to my office and decisions made on complaints about your council. Not all complaints are decided in the same year that they are received. This means that the number of complaints received and the number decided will be different.

The statistics also show the time taken by your authority to respond to written enquiries and the average response times by type of authority.

Communicating decisions

We want our work to be transparent and our decisions to be clear and comprehensible. During the past year we changed the way we communicate our decisions and reasons. We now provide a stand-alone statement of reasons for every decision we make to both the citizen who has complained and to the council. These statements replace our former practice of communicating decisions by letter to citizens that are copied to councils. We hope this change has been beneficial and welcome comments on this or any other aspect of our work.

In April 2011 we introduced a new IT system for case management and revised the brief descriptions of our decisions. My next annual letter will use the different decision descriptions that are intended to give a more precise representation of complaint outcomes and also add further transparency to our work.

Extended powers

During 2010/11 our powers were extended to deal with complaints in two significant areas.

In October 2010 all complaints about injustice connected to adult social care services came under our jurisdiction. The greater use of direct payments and personalised budgets mean that it is particularly important for us to be able to deal with such complaints irrespective of whether a council has arranged the care. The increasing number of people who arrange and pay for their own social care now have the right to an independent and impartial examination of any complaints and concerns they may have about their care provider.

In the six months to April 2011 we received 75 complaints under our new adult social care powers. Between 2009/10 and 2010/11 complaints about care arranged or funded by councils doubled from 657 to 1,351.

The Apprenticeships, Skills, Children & Learning Act 2009 introduced powers for us to deal with complaints about schools by pupils or their parents. This was to be introduced in phases and currently applies in 14 council areas. By the end of 2010/11 we had received 169 complaints about schools in those areas and 183 about schools in other areas where we had no power to investigate. The Education Bill currently before Parliament proposes to rescind our new jurisdiction from July 2012.

Our new powers coincided with the introduction of Treasury controls on expenditure by government departments and sponsored bodies designed to reduce the public spending deficit. This has constrained our ability to inform care service users, pupils and their parents of their new rights.

Assisting councils to improve

For many years we have made our experience and expertise available to councils by offering training in complaint handling. We regard supporting good complaint handling in councils as an important part of our work. During 2010/11 we surveyed a number of councils that had taken up the training and some that had not. Responses from councils where we had provided training were encouraging:

- 90% said it had helped them to improve their complaint handling
- 68% gave examples of how the knowledge and skills gained from the training had been applied in practice
- 55% said that complaints were resolved at an earlier stage than previously
- almost 50% said that citizens who complained were more satisfied.

These findings will inform how we develop and provide training in the future. For example, the survey identified that councils are interested in short complaint handling modules and e-learning.

Details of training opportunities are on our web site at www.lgo.org.uk/training-councils/

More details of our work over the year will be included in the 2010/11 Annual Report. This will be

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Mr B Quirk

published on our website at the same time as the annual review letters for all councils (14 July).

If it would be helpful to your Council I should be pleased to arrange for me or a senior manager to meet and explain our work in greater detail.

Yours sincerely

A handwritten signature in black ink that reads "Anne Seex". The signature is written in a cursive style with a large, prominent 'A' and 'S'.

Anne Seex
Local Government Ombudsman

Local authority report - Lewisham LB

for the period ending - 31/03/2011

For further information on interpretation of statistics click on this link to go to www.lgo.org.uk/CouncilsPerformance

LGO Advice Team

Enquiries and complaints received	Adult Care Services	Benefits & Tax	Corporate & Other Services	Education & Childrens Services	Environmental Services & Public Protection & Regulation	Highways & Transport	Housing	Other	Planning & Development	Total
Formal/informal premature complaints	2	18	1	7	9	3	24	2	6	72
Advice given	2	3	3	7	5	5	16	2	2	45
Forwarded in investigative team (resubmitted)	0	4	0	1	1	1	8	0	3	18
Forwarded to investigative team (new)	7	6	3	16	5	2	24	3	4	70
Total	11	31	7	31	20	11	72	7	15	205

Investigative Team

Decisions	Reports: maladministration and injustice	Local settlements (no report)	Reports: Maladministration no injustice	Reports: no Maladministration	No Maladministration (no report)	Ombudsman's discretion (no report)	Outside jurisdiction	Total
2010 / 2011	0	20	0	0	35	15	19	89

Lewisham LB

Adult social care decisions made from 1 Oct 2010*

	Not to initiate an investigation	Out of jurisdiction	Total
2010 - 2011	1	1	2

*These decisions are not included in the main decisions table above. They use the new decision reasons from 1/10/10.

Response times	First enquiries	
	No of first Enquiries	Avg no of days to respond
01/04/2010 / 31/03/2011	36	24.7
2009 / 2010	21	31.2
2008 / 2009	54	34.1

Provisional comparative response times 01/04/2010 to 31/03/20 11

Types of authority	<= 28 days %	29 - 35 days %	> = 36 days %
District councils	65	23	12
Unitary authorities	59	28	13
Metropolitan authorities	64	19	17
County councils	66	17	17
London boroughs	64	30	6
National parks authorities	75	25	0

Lewisham LB

Ward	Issue									
	Council Tax	Housing management	Refuse	Rehousing	Housing Benefits	Housing Needs	ServicePoint	Highways	Education	Planning
Bellingham	1	3	3	2	3			3		
Blackheath	1	2				3	3			
Brockley	2	1	3							
Catford South	1				2	3				
Crofton park	1	3	2						2	
Downham	1			2		3	2			
Evelyn	1	3	1	2	2				3	
Forest Hill	1		2		2	2	2			
Grove Park	1	2		2						
Ladywell	2	1		3				3		
Lee Green	1			3	2					3
Lewisham Central	2		1			3				
New Cross	1	2		2		3	3			
Perry Vale	1		3	3					2	
Rushey Green	1		2	3						
Sydenham	1						2			3
Telegraph Hill	1	2	3				3			
Whitefoot	1	3	2			2		3	2	

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* Based on the post code of the complainant

Directorate Achievements 2010-11

1. Things that have been put in place to improve the quality of complaints handling

CYP

- We offer on the spot resolutions to avoid a complaint from escalating wherever possible, as this is good for the customer as well as the service.
- We have developed a service culture where we value complaints and recognise the importance of managing them well.

Community Services

- In September 2010 the Council received a complaint about the administration of a relating to anti-social behaviour. One of the recommendations of the investigating officer was for the Crime Reduction Service to produce a document to give to residents setting out clearly the parameters/scope of its service and operation as a means of communicating its role, powers and practices and averting misunderstanding of these. This was completed in line with the inception of the new Neighbourhood Community Safety Service.
- Following a complaint received in February 2011 about Sport & Leisure Services, a member of a local sports club is now invited to attend site monitoring visits of the facilities the club uses along with the Council's monitoring officer and Council's contractor.

Customer Services

- Scanning all paperwork on the investigation of cases dealt with by the Casework Team onto the case on iCasework. This enables other users to have a full view of the investigation and is helpful to refer to when a complaint is escalated or when there is a long period of time between complaints.

Lewisham Homes

- We introduced an informal complaints stage in April 2010. Over the year we recorded 232 informal complaints, only 11% of which were unable to be resolved at this stage. Over the same period our stage 1 and 2 complaints have reduced by more than a third, much of which may be attributable to our successfully dealing with complaints earlier.
- We introduced a 'Learning from feedback' process including:
 - checklist for stage 1 follow up actions and learning points at case closure;
 - learning report for discussion in team meetings – this process evolved over the year and now includes in-depth analysis of stage 2 and 3 complaints, the main reasons for escalation as well as relevant feedback from surveys and mystery shopping;
 - a six monthly learning report for our Corporate Leadership team with trends and analysis.

Regeneration

- To ensure thorough investigation occurs when complaints are escalated to stage 2, a response template was introduced in order to guide officers. This has enabled the casework team to ask more specific questions of the services involved and to ensure all aspects of a customer's complaint have been addressed.
- The results of quality checking undertaken by the Corporate Complaints Team are regularly discussed with the Head of Strategy and Performance to identify areas for improvement.

2. Lessons learnt from upheld complaints

CYP

- Complaint about the unnecessary length it has taken to review a child's Statement of SEN, and the fact that she has no school place confirmed for Sept 2010 term, despite it being one month from the end of term.

Service agreed that there should be a more robust monitoring system developed to ensure formal review meetings take place when expected and scheduled.

Community Services

- In September 2010 the Council received a complaint about the administration of a Direct Payment. There had been a significant delay in any money being paid, and a further delay until the correct amount was paid. This complaint fed directly into the programme of transformation currently being undertaken by adult social care.. The concerns raised by the customer have informed the way the Council communicates with service users about Direct Payments and now, individual budgets as well.

Customer Services

- **Dealing with clients and their legal representatives** - Previously in homeless cases where the client is supported by a legal representative, the Council has only corresponded with the representative. However following a complaint upheld by the LGO, the Council has changed the way it makes contact with homeless clients and now makes sure that they also receive a copy of any decisions made

Lewisham Homes

- Reviewing the process for dealing with condensation cases (followed up with an article on preventing condensation in April issue of Home magazine)
- Organise pest control road-show to customer facing staff to achieve greater clarity about Lewisham Homes/ Lewisham council responsibilities
- To minimise delays and achieve more 'first fix' repairs:
 - Produce report to check on jobs awaiting materials prior to booked appointment
 - Improved pre-inspection process for complex jobs
 - Revised Repairs guide detailing residents responsibilities, DIY tips and diagrams to assist diagnosis when reporting a repair.

Regeneration

- To try to make better use of the Council's website and other forms of social media to advertise Transport consultations.
- Review processes relating to Planning enforcement to ensure that where actions have been agreed, they are tracked and monitored

3. Future objectives in your area for the improvement of complaints management:

CYP

- Analysing the root causes of complaints, addressing those causes and implementing lessons learnt.
- Spreading a progressive vision for complaints handling across Services; with the aim of improving how they identify, capture and assess complaints

Community Services

- Ensure learning from complaints is recorded and fed back to service leads and other relevant officers. To assist with this the Customer Relations team are implementing a tracking and monitoring form for follow up actions and remedies
- Implement a rolling programme of SMT visits to deliver good practice guidance and impress the need for an ongoing focus on quality and accuracy.

Customer Services

- To undertake in-depth trend analysis to work with and support Service Areas in identifying and reducing complaints.
- To assist Service Areas in understanding the financial cost of dealing with complaints and incentivise teams to approach complaints with improved speed and efficiency.

Lewisham Homes

- We have recently introduced stage 2 and 3 investigation checklists to provide a clear evidence trail of previous investigation when cases are escalated. This should reduce the time taken to investigate cases at the next stage.
- Improve quality of responses, ensuring all issues are addressed:
 - Delivering complaints investigation training throughout July 2011
 - Delivering letter writing training throughout July and August 2011

Regeneration

- Ensuring widespread use of response templates for stage 1 complaints.
- Making better use of the 'follow up actions' on iCasework to ensure that actions are undertaken.

Local Government Ombudsman – neighbouring borough performance

	Number of complaints			Local settlements			Number of maladministration reports		Average number of days to respond		
	2009/10	2010/11	Direction of travel	2009/10	2010/11	Direction of travel	2009/10	2010/11	2009/10	2010/11	Direction of travel
Lewisham	94	89	↑	21	20	↑	1	0	31.2	24.7	↑
Lambeth	200	211	↓	74	73	↑	3	0	21	23.9	↓
Southwark	142	195	↓	76	67	↑	0	0	32.5	29.2	↑
Greenwich	64	74	↓	15	15	→	0	0	51.4	33.9	↑
Bromley	58	61	↓	17	19	↓	0	0	30.7	34.5	↓

Corporate Complaints Action Plan 2011/12

Appendix 6

Audit No.	Recommendation	Origin	Lead Person	Action taken	Target date	Status of action
2.1a	Unless a full response to a complaint can be given immediately, the complaint should be acknowledged within two working days and recorded on iCasework, in accordance with the complaints guidance procedure	Internal Audit	Jennifer Greaux – Corporate Complaints Manager	Guidance on the need to complete records to staff reissued through the corporate complaints improvement group (CCIG) Monitoring of performance will be a regular item on the CCIG agenda	August 2011	closed
2.1b	For quality monitoring purposes, an explanation on iCasework for not being able to meet required response dates should be mandatory	Internal Audit	Jennifer Greaux – Corporate Complaints Manager	Advice given to all users to ensure that an explanation is given in the notes field of iCasework Corporate Complaints team will monitor relevant cases to check that these instructions are being followed.	Sept 2011	closed
2.1c	Service areas should be reminded to record all comments, complaints and compliments to iCasework at stage one	Internal Audit	Jennifer Greaux – Corporate Complaints Manager	Highlight the importance of recording all comments, complaints and compliments to iCasework at stage one, through various mediums, such as CCIG, learning events and corporate sharepoint. Extensive training program in place.	Sept 2011	closed
2.1d	Consideration should be given to the need to provide further training in respect of the written response to comment/complaint letters, to free them from jargon and to make them more personal and sympathetic. The emphasis should be on ensuring that the communication is responded to thoroughly to prevent potential escalation to a complaint.	Internal Audit	Jennifer Greaux – Corporate Complaints Manager	Training has been provided and will continue to be included as part of the training program and monitored through ongoing targeted quality checking	August 2011	ongoing
3.1	Criteria for assessing and clarifying comments and complaints should be formalised and both comment and response should consistently be recorded on iCasework	Internal Audit	Jennifer Greaux – Corporate Complaints Manager	This has been identified as part of this years annual service plan. The corporate complaints manager will work with CCIG to design and implement the framework. The draft framework will be discussed and signed off at CCIG	December 2011	
4.1a	Completion of fields within iCasework should be	Internal	Jennifer	Follow on actions have already been discussed by	deferred	deferred

Corporate Complaints Action Plan 2011/12

Audit No.	Recommendation	Origin	Lead Person	Action taken	Target date	Status of action
	made mandatory or level of management review and sign off stepped up to ensure that the appropriate amount of information has been recorded and appropriate action has been taken	Audit	Greaux – Corporate Complaints Manager	the CCIG. However due to cost implications, the fields cannot be made mandatory on iCasework. Further discussions will take place within CCIG to find a workable solution		
4.1b	As a positive step in showing that the Council cares and is listening, comments that have resulted in a change in policy or procedure should be actively publicised and updated	Internal Audit	Jennifer Greaux – Corporate Complaints Manager	Will be reiterated at CCIG. Emails will be sent and information included on the website.	March 2012	ongoing
5.1	If there continues to be a poor response, customer sent surveys should where possible be contacted by phone to determine why they have not responded to the survey form	Internal Audit	Jennifer Greaux – Corporate Complaints Manager	Analysis of the response rate will take place during 2011/2012. The effectiveness and methodology of the survey will be evaluated and fed back to CCIG.	By October 2011	open
Page 66	Ensure that all officers dealing with complaints, especially those at stage one and stage two of the complaints process, include an analysis of the complaint on file: the analysis to show the key steps taken in the investigation of the complaint; the evidence used to determine it; a summary of the officer's views of the complaint; and eventually the final outcome.	IA report 2009/2010	All	This was discussed at CCIG and officers felt that this approach would be too labour intensive and they did not have the resource to undertake this task for each case. Therefore it was decided that the best way forward, would be to ensure that all paperwork relating to the case would be uploaded onto iCasework.	March 2012	closed
2	Ensure record keeping – especially on repairs – is improved, so that the Council and its partners know and can demonstrate what has been done when.	IA report 2009/2010	LH/RB3	All repairs are logged on Equipe's /Rydon's repairs data base – Planet FM. This system records all repairs completed and can easily be tracked via Planet FM as well as LBL officers, (once the permits to view have been completed).	March 2012	open
3	Ensure good communication across all partner bodies so that key information – on repairs, on tenancy issues or on disabilities, for example – is shared by all those who need to know and can act on such information.	IA report 2009/2010	LH/RB3	Apart from the official monthly internal operations team meeting between all partners of RB3, RB3 has installed weekly 'coffee morning' meetings to discuss relevant issues at hand, to foster better internal communications.	March 2012	open
4	Log all repairs and record the outcome of repair works. Such records should be retained for at least six years, in accordance with the statutory	IA report 2009/2010	LH/RB3	All repairs are logged on Planet FM and the records of these repairs are kept for the required six year period.	March 2012	open

Corporate Complaints Action Plan 2011/12

Audit No.	Recommendation	Origin	Lead Person	Action taken	Target date	Status of action
	timeframe for disrepair claims.					
5	Put in place consistent and user-friendly procedures for making insurance claims and consider such claims properly, following the approach used by the Council.	IA report 2009/2010	RB3	Information regarding insurance claims are being imparted to residents via the housing managers as well as communicated by newsletters and information in the resident handbook and will also be available on the website, when it is completed.	March 2012	open
6	Identify early on whether the complaint is one the Council can deal with, and if not to signpost to an appropriate alternative source of support or help	IA report 2010/2011	All	The IA will produce FAQ's which will assist in ensuring whether the complaint is for the Council. The website will be updated regularly with the relevant information	March 2102	open
7	Ensure that recommendations involving procedural changes are followed up and the IA is kept informed of improvements made as a result of stage 3 decisions;	IA report 2010/2011	Corporate complaints officer/All	The IA protocol is under review to make more robust.	March 2012	open
Page 67	Review the guidance on apologies that has been produced in previous years, based on guidance from the Scottish Public Services Ombudsman	IA report 2010/2011	Jennifer Greaux – Corporate Complaints Manager	Provide relevant training using guidelines set out by the Scottish Public Services Ombudsman. Make use of the website and intranet. Corporate complaints policy currently under review, which will include a section on apologies	March 2012	
	9	Carry out limited research on stage 2 complaints to determine if improvements in complaint handling there and better resolution have led to the decrease in stage 3 complaints this year and might do the same in the future: the research comprising contacting those who had a stage 2 complaint but did not progress it to stage 3;	IA report 2010/2011	Jennifer Greaux – Corporate Complaints Manager	Review the stage 2 cases that did not escalate to stage 3. Investigate the effectiveness of use of mediation in children's and adult social care.	March 2012
10	Explain to housing applicants the reasons for medical decisions as well as the decision itself;	IA report 2010/2011	Karen Shaw	A meeting is planned to discuss this issue. A letter has been drafted and discussion will take place on how best to implement.	March 2012	
11	Consider how planning officers might communicate more effectively with residents about particular developments, providing a plan of action and keeping them informed of progress.	IA report 2010/2011	Gavin Cooper - Planning Manager	The Planning Service will be shortly reviewing how we consult & communicate with residents. At present, how planning communicates is set out in the council's Statement of Community Involvement. As part of the restructure, 2 new	March 2012	

Corporate Complaints Action Plan 2011/12

Audit No.	Recommendation	Origin	Lead Person	Action taken	Target date	Status of action
				posts of Business Improvement & Stakeholder Manager and Customer Liaison Officer have been created specifically to address Localism issues and ensure Planning Services are built around the needs of applicants, residents and other planning stakeholders. Following a discussion at Full Council we have amended our practice that everyone who attends a local meeting is notified, if necessary, of a Planning Committee. A Customer Charter is being produced. Software is also been implemented this year which will allow residents to be alerted if a planning application is made in a particular area.		
12	Consider in private-sector leasing complaints using the dispute procedure set out in the lease.	IA report 2010/2011	Morna London	This procedure is used when deemed appropriate. However, if and when disputes have been raised it has been found to be more effective and better value for money to use the council's own complaints procedure.	March 2012	

Agenda Item 4

STANDARDS COMMITTEE			
Report Title	Compliance with the Member Code of Conduct		
Key Decision			Item No. 4
Ward			
Contributors	Kath Nicholson, Monitoring Officer		
Class	Part 1	Date: 7 DECEMBER 2011	

1. Summary

This report deals with the way in which Members address the need to comply with the Lewisham Member Code of Conduct and seeks the Committee's views about whether any amendment to practice is required or further information brought to the Committee's attention

2. Purpose

The purpose of this report is to give information about the extent of compliance with the Lewisham Member Code of Conduct and to seek from the Committee any views about how practice in Lewisham could be improved.

3. Recommendations

- 3.1 To consider the information set out in this report and to consider whether to make any recommendations to the Council in respect of the effectiveness of the Member Code of Conduct.
- 3.2 To amend the Council's Whistleblowing Policy as set out in paragraph 8 and Appendix 2.

4. Background

- 4.1 On the 18th July 2007 the Council formally adopted a revised Code of Conduct. It complies with the statutory requirement to adopt a code which incorporates all the elements which are required by the Local Authorities (Model Code of Conduct) Order 2007. By virtue of section 51 Local Government Act 2000, authorities are required to adopt a Code within 6 months of the above Order being made.

4.2 The Lewisham Member Code of Conduct has appended to it a number of protocols:

- Member and Officer relations
- Member Use of IT
- Planning and Lobbying
- Code on Publicity

These protocols do not form part of the Code, but may be of assistance in deciding whether there has been a breach of the Code's main provisions.

5. **Assessment of Current Practice**

Officers have looked at elements of practice by Lewisham members to establish whether practice fits the requirements of the Code.

5.1 A statutory requirement to undertake to comply with the Member Code of Conduct

- (i) All members of the Council, (including those who are co-opted members) have signed a declaration that they undertake to comply with the Member Code of Conduct. Such a declaration is signed by members immediately following election (and very soon after appointment in the case of co-opted members). These declarations are held by the Monitoring Officer, and are in the appropriate format to comply with the Local Elections (Declaration of Acceptance of Office) Order 2001.

5.2 Declarations of Interest

- i) One of the key features of the Member Code of Conduct is the requirement to declare a personal interest at any meeting where a member has such an interest, and to withdraw from the meeting and not seek to influence the decision further if the interest is a prejudicial one.
- ii) Broadly, a personal interest is one which affects the wellbeing or financial position of the member, their family relatives or friends (etc) more than it affects others in their ward. A prejudicial interest is a personal interest which a member of the public in possession of the relevant facts would reasonably think is so significant and particular that it is likely to affect the member's judgement of the public interest. Under the new Code even where a prejudicial interest arises members who are representing their constituents by making representations are able to address the Committee as long as they withdraw at the end of their representations. This has been invoked on one occasion.
- iii) An assessment has been conducted of the number of declarations that have been made since November 2010. The focus has been meetings of the Mayor and Cabinet (including Mayor and Cabinet (Contracts)) and the

Planning Committees. The emphasis has been placed on these meetings as they are the major decision making fora. All declarations of interest are minuted by the Committee Clerk in attendance and a review of the minutes shows the following results:

	<u>Declaration</u> (personal interest)	<u>Withdrew</u> (i.e. prejudicial interest)
Mayor & Cabinet	27	18
M&C (Contracts)	8	4
Planning Committees	6	3
Council	18	3

- iv) It is apparent that there is a clear awareness that members must consider whether to declare and withdraw, as the incidence of such practice shows.

As previously considered and agreed by this Committee a notice now appears at the front of each agenda which details the circumstances in which a personal/prejudicial interest can arise. Members have commented that they find this notice to be a helpful reminder and concise summary of their responsibilities on declaring interests.

5.3 Advice on Ethical Issues

- i) Some of the declarations/withdrawals referred to in paragraph 5.2 above followed a request for advice from the Monitoring Officer, or her representative. However, several were made without even an approach, as the member concerned was of the view that an interest existed without the need for such advice.
- ii) Where possible, if Code of Conduct issues arise, Monitoring Officer advice is incorporated into reports.
- iii) There is a body of evidence which demonstrates that members are aware of Code of Conduct issues as this is embodied in the number and nature of ad hoc requests for advice from the Monitoring Officer. A review of that file shows that councillors have sought advice on Code of Conduct issues arising.

The range of matters includes:

- training session and briefing note to members on the implications of members being involved in outside bodies
- briefing note to all members on the Bribery Act 2010

- training and briefing note to members on the new public sector equality duty and consultation for Council decision making
- advice to all members on the referendum and issues arising during the referendum period
- advice to all members in the run up to a local by-election
- various advices to members in relation to potential personal/prejudicial interests which affect their ability to participate in considering various matters
- advice on extended absence of a member
- advice in relation to carers' allowances to members and possible amendment to the Members' Allowance Scheme
- advice to a member on a potential conflict of interest for him in relation to his attendance and participation at an award ceremony
- advices to members in relation to disturbance by protestors against budget cuts at Council meeting ; and subsequent advices to limit the possibility of future disturbances
- advices to members in relation to potential interests in considering planning applications
- advices to members in relation to issues where a member is volunteering
- advice to a member in relation to the chairing of committees
- advice to the Chair of Council in relation to his report to Council
- advice in relation to filming of planning committee
- advice to members on Code of Conduct issues in relation to the establishment of social enterprises and co-operatives

In all of the instances referred to the Monitoring Officer above, she believes that the advice given has been followed. A written record of all Monitoring Officer advice given is kept.

5.4 Dispensation

There have been no applications for dispensation.

5.5 The Members' Register of Interests

The need to register any of the following interests in the Members' Register of Interests is also a key feature of the Member Code of Conduct.

- (a) any employment, or business carried on by him/her;
- (b) the name of the person who employs or has appointed him/her, the name of any firm in which he/she is a partner, and the name of any company for which he/she is a remunerated director;
- (c) the name of any person, other than a relevant authority, who has made a payment to him/her in respect of his/her election or any expenses incurred by him/her in carrying out his/her duties;
- (d) the name of any corporate body which has a place of business or land in the authority's area where the member has a beneficial interest in a class of securities of that body which exceeds the value of £25,000 or one hundredth of the total issued share capital of that body;
- (e) a description of any contract for goods, services or works made between the authority and him/herself, a firm in which he/she is a partner, a company of which he/she is a director, or a body of the description in paragraph (d) above;
- (f) the interests of any person from whom they have received a gift or hospitality with an estimated value of at least £25;
- (g) the address or other description (sufficient to identify the location) of any land in which he/she has a beneficial interest and which is in the area of the authority;
- (h) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he/she is a partner, a company of which he/she is a remunerated director, or a body of the description in sub-paragraph (d);
- (i) the address or other description (sufficient to identify the location) of any land in the authority's area in which he/she has a licence (alone or jointly with others) to occupy for 28 days or longer

There are entries for all members and an annual reminder is also sent to all members about the need to keep this up to date. All members have submitted a completed Declaration of Interest which now includes a section requesting information in relation to gifts and hospitality.

Individual returns are now available on the Council website.
www.lewisham.gov.uk

5.6 Hospitality & Gifts

Under the Member Code of Conduct members are required to provide details of any gift or hospitality over the value of £25 and the source of such gift or hospitality that they receive as a member. The Code requires that within 28 days of receiving any gift or hospitality over the value of £25 that they notify the Monitoring Officer of the existence and nature of the gift or hospitality.

For the purpose of this review relevant entries for the previous year in the relevant section of the Register of Interests have been perused in an attempt to establish recent and current compliance with the requirements of the Code of Conduct. It appears that incidents of registration is quite common and the section is completed. This tends to indicate that members have a clear recognition of their need to make relevant entries.

Individual returns are now available on the Council website. www.lewisham.gov.uk

6. Complaints of breach of the Member Code of Conduct

- 6.1 Complaints of breach must be made to the Monitoring Officer, and there is a dedicated email address for this to be done. This is widely publicised on the Council's website where there is a direct link alongside the Complaints Procedure. The address is monitoring.officer@lewisham.gov.uk.
- 6.2 Perhaps the most telling indicator of the extent of compliance with the Member Code of Conduct is the number of complaints of breach made to the Council. Since May 2008 all written complaints that a member has breached the Code of Conduct are for the Standards Committee to consider initially. There has been four formal complaints, three being against one councillor and one against another. One complaint against each councillor was found not to merit investigation. One matter is currently being reconsidered by the Assessment Sub Committee. In the other instance, the matter proceeded to a formal hearing; the allegation was found partially to be substantiated and the Sub Committee recommended action by the Council.
- 6.3 The action was:
- (i) that the councillor apologise to the complainant in the form required by the Hearing Sub Committee. He did so on 5th July 2011.
 - (ii) that the councillor attend training in duties and responsibilities in relation to equalities legislation and chairing skills in relation to public meetings. There has been some difficulties sourcing this but it has been arranged by Member Development for January 2012.
 - (iii) that the Council review the advice given in relation to the governance of Assemblies and their coordinating groups, with particular reference to chairing and the respective roles of officers and members. Amended advice was circulated by the Executive Director Community Services.

7. Whistleblowing Complaints

If there were complaints of alleged breaches of the Code of Conduct by members, it may be that they would arise through the Council's whistleblowing policy, which is well embedded. This Committee has so far received eight annual reports on whistleblowing cases. As is evident from those reports none of the complaints have referred to members. Had they done so, the Monitoring Officer would have advised the complainant of their right to refer the matter to her for possible consideration by the Standards Committee.

It is proposed that the Whistleblowing Policy be amended as set out in Appendix 1 to reflect the changes necessary as a consequence of the implementation of the Bribery Act 2010 and is also amended generally to reflect staff changes.

8. Bribery Act 2010

8.1 The Bribery Act 2010 came into force in July 2011 and the Act modernises the law on bribery. The Act creates an offence to offer, promise or give a financial or other advantage where the person doing so 'knows or believes' that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity, which includes the usual local authority functions and activities. A briefing note on the Bribery Act is attached at Appendix 1 to this report.

8.2 To reflect the introduction of the Bribery Act 2010 it is necessary for the Whistleblowing Policy to be amended. A revised version of the Whistleblowing Policy is attached at Appendix 2 which reflects the changes consequent on the introduction of the Bribery Act 2010. Changes to reflect the Council restructuring and changes in personnel are also proposed. Members are requested to agree the proposed changes.

9. Legal Implications

The ethical framework under which the measures set out in this report have been established are provided in the Local Government Act 2000 and Regulations made under it. The Localism Act 2011 will amend the standards regime fundamentally. Though it is anticipated that there will still be a Register of Members' Interests, its content may vary once regulations are made. The Member Code of Conduct provided it complies with general principles will be a matter of local discretion though officers advise that measures such as the hospitality register, whistleblowing policy, advice from the Monitoring Officer on specific items remain in force.

10. Financial Implications

There are no specific implications arising.

11. Crime and Disorder Implications

The Code of Conduct deals with the promotion of the highest standards of behaviour, and the prevention of breaches of the Member Code of Conduct which may well amount to criminal behaviour.

13. Human Rights Act Implications

There are no specific implications arising.

14. Equal Opportunities Implications

There are no specific implications arising.

15. Environmental Implications

There are no specific implications arising.

16. Conclusion

The Member Code of Conduct appears to be well embedded in Lewisham. Evidence seems to suggest a high level of compliance. Members of the Standards Committee are asked for their views on this data, and to make any further comments they consider appropriate to improve practice.

The Bribery Act 2010 – A Briefing

1 Introduction

The Bribery Act 2010 came into force on 1st July this year. It modernises the law on bribery. Prior to the Act, UK bribery law was a patchwork of old common law and statutory offences dating back to 1889.

Part of the driving force behind the implementation of the Act was the fact that it was very difficult for a corporate entity to be convicted of a bribery offence because of the need to prove that a senior manager was the “directing mind and will” behind the offence.

2 Offences under the Act

Bribing (s1)

It will be an offence to offer, promise or give a financial or other advantage with the intention of inducing that person to perform improperly a **‘relevant function or activity’** or to reward that person for doing so.

It will also be an offence to offer, promise or give a financial or other advantage where the person doing so ‘knows or believes’ that the acceptance of the advantage would itself constitute the improper performance of a **‘relevant function or activity’**.

In both cases, it does not matter whether the advantage is offered, promised or given directly or through a third party.

The offence applies to bribery relating to **any function of a public nature**, connected with a business, performed in the course of a person’s employment or performed on behalf of a company or another body or persons.

Being bribed (s.2)

It will be an offence to agree to request, receive or accept a financial or other advantage with the intention that a **‘relevant function or activity’** should be performed improperly and it does not matter whether the advantage is received directly or through a third party.

Bribery of a foreign official (s.6)

Failure to prevent bribery (s.7)

A commercial organisation which fails to prevent bribery commits a strict liability offence which carries a statutory defence available if the organisation has in place appropriate/adequate procedures to counter the potential problem. (s.9).

3 Who may be liable for the offences?

Individuals may be liable for any offence falling within sections, 1, 2 or 6. These are criminal offences and may be tried either in the Magistrates' Court or the Crown Court – depending on the severity of the allegation.

'Commercial organisations' are expressly liable for offences under section 7 (and by implication if the facts are applicable, by association under sections 1, 2, and 6.)

'Commercial organisations' are defined as incorporated bodies and partnerships. The company or partnership must be carrying on a 'business' or part of a business. 'Business' is defined as a trade or profession.

4 How will this affect the Council its members and officers ?

The Council:- s. 1 of the Act confirms that 'bribery' relates to any function of a public nature, connected with a business, performed in the course of a person's employment or performed on behalf of a company or another body or persons. So this could potentially mean that an organisation may be guilty of an offence when bribery is committed by its staff, contractors and even sub-contractors. Consequently, the safest course is to assume that Councils could be liable under the Act for failing to prevent bribery and to implement adequate procedures to safeguard against it.

Members and officers:- The offence of bribing and / or being bribed may be committed by members and officers. This can be directly or indirectly by means of third parties.

5 Managing the risk.

The offence of failure to prevent bribery is a strict liability offence. However there is a statutory defence which is reproduced in statutory guidance.

The Guidance states that organisations wishing to avoid liability for the offence of failing to prevent bribery need to put in place procedures which demonstrate that they comply with six express principles set out and explained in the Guidance which is available at

<http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf>)

The Guidance sets out commonsense and practical advice. Set out below is a summary of the six principles. It is fundamental that bribery prevention procedures should be proportionate to the risk they are seeking to minimise.

1. Proportionate Procedures .
2. Top level commitment
3. Risk Assessment
4. Due Diligence
5. Communication (including training)
6. Monitor and review

It is clear from the Guidance that if an organisation wishes to rely on the defence, then it must develop a policy to prevent bribery and implement proportionate, robust procedures to minimise the risk of bribery. This policy and the procedures must be kept up to date and be communicated to members and officers alike.

6 Effect on Procurement of a section 7 offence:-

Under the Public Contracts Regulations 2006, a company is automatically and perpetually debarred from competing for public contracts where it has been convicted of a corruption offence. The Government has stated that there are no plans to amend the 2006 regulations for this to expressly include the corporate offence of failure to prevent bribery. Organisations that are convicted of failing to prevent bribery are therefore not automatically barred from participating in tenders for public contracts; however the Council has a clear discretion to exclude organisations convicted of this offence.

It is suggested that the Council's template pre-qualification questionnaire and Invitation to Tender be amended to include a specific question on whether a bidder has been found guilty of a section 7 offence, with the Council reserving the discretion to exclude any bidder convicted of such an offence.

7 Next steps

The Council already does much to ensure that its decisions and actions are properly based and avoid the possibility of corruption. However, there is a need for the Council to reflect this new legislation in existing documents such as the anti-fraud and corruption policy, its constitution and codes of conduct, whistle-blowing procedures, anti-money laundering practice and gifts & hospitality procedures. Officers and Members alike need to be made aware of the additional new offences created by the Act.

The following actions are proposed:-

- (1) Draft bribery policy and refer it to EMT.

- (2) Amend key Council documents through appropriate channels
- (3) Amend procurement documents and guidance for contractors
- (4) Provide training for officers in key positions (procurement staff/audit/legal etc – scheduled for August 2011)
- (5) Provide briefing for all members
- (6) Monitor and review bribery policy as part of annual review of corporate governance.

APPENDIX 2

Whistleblowing Policy

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Whistleblowing Policy


The Council is committed to the provision of the highest quality services for local people and to full accountability for the services it provides. The Council is also committed to the highest standards of conduct and has in place detailed rules, regulations, quality standards and procedures to ensure that these standards are observed. However, sometimes malpractice and wrongdoing may occur. Lewisham is not prepared to tolerate any such malpractice or wrongdoing in the performance of its services.

The Council acknowledges that the greatest deterrent to malpractice or wrongdoing is the probability that it will be discovered, reported and investigated thoroughly and that those responsible will be held to account. This policy is intended to be a clear and unequivocal statement that whenever any malpractice or wrongdoing by the Council, its employees, contractors or suppliers is identified or reported to the Council, it will be promptly and thoroughly investigated and that the alleged malpractice or wrongdoing will be rectified as necessary. The Council will also investigate means of ensuring that such malpractice or wrongdoing can be prevented for the future.


The Council is committed to ensuring compliance with its statutory obligations. This policy is one of a number of corporate policies, including the Lewisham Anti-Bribery Act 2011 policy, which together demonstrates and reinforces Lewisham's commitment to the prevention of malpractice in public life.

The scope of the whistleblowing policy - The principles

The policy is based upon the overriding principle that the public interest and the needs of service users must come first.

 The Whistleblowing Policy complies with the requirements of the Public Interest Disclosure Act 1998.

What's covered?

 It is intended that any significant concern which a member of staff, service user, Councillor or member of the public has about

- ▶ any aspect of service provision
- ▶ the conduct of officers or Members of the Council, or
- ▶ the conduct of any other parties acting on behalf of the Council, which may be:
- ▶ unlawful (including fraud or corruption)

▶ against the Council's Standing Orders or policies

▶ contrary to established professional or other standards, the Council's Member and Employee Code of Conduct or any other established Codes of Practice can be reported under this procedure.

It is not intended however, that this procedure should replace existing processes such as the grievance or disciplinary codes. Instead it may be that once the whistle has been blown, action under other processes (such as the disciplinary code) may ensue.

A supplement not a substitute

Anyone, including Councillors, employees, service users and members of the public are encouraged to raise complaints or matters of genuine concern with the Council. There are already in existence a number of channels available to raise such concerns. Where an appropriate avenue exists to deal with that concern, people are urged to use it. This whistleblowing policy is intended to supplement, rather than replace the existing procedures wherever practicable. These channels are:-

▶ Service Managers/Directors

Anyone with a complaint about Council services is encouraged to contact the manager directly responsible for that service or the relevant Executive Director. In most cases where there is concern this avenue will be the first point of reference. If a complaint relates to an Executive Director, it should be referred to the Chief Executive.


▶ The Council's Complaints Procedures

The Council has a corporate complaints procedure by which it invites any person to raise a complaint they may have about Council Services. Information about this procedure is available from the Advice and Information Service on extension 48761.

▶ Local Councillors

Members of the public are encouraged to refer matters of concern to their local Councillor who can then either identify the best point of contact for them to report the matter or take up the issue on their behalf. Information about how to contact local Councillors is available from Governance Support at Lewisham Town Hall on extension 49455.

▶ The Council's Grievance Procedure

 This deals with complaints relating to an individual employee's conditions of employment. The whistleblowing policy is not intended to replace the grievance procedure and should not be used to deal with matters which relate to an individual's

contract of employment. If a concern is raised through the whistleblowing policy which would be more properly dealt with through the grievance procedure, it will be referred to Simon Kilbey, Head of People Management Services.

▶ **Anti-fraud Procedures**

The Council's Anti-Fraud & Corruption Team (A-FACT) investigates all allegations of fraud within and against Lewisham Council and is part of the Audit & Risk Group based within the Resources and Regeneration Directorate. As well as Housing Benefit and Council Tax Benefit fraud the team has specialist officers covering housing fraud, employee fraud, fraud relating to contractors, blue badges etc.

▶ **Internal Fraud**

The Council's Financial Regulations state that it is the responsibility of any employee discovering or having reasonable suspicion of any irregularity, misconduct or fraud immediately to notify the relevant Executive Director or Audit and Risk Manager. When so informed, the Executive Director shall appraise the circumstances and shall notify and discuss the action to be taken concurrently with the Audit and Risk Manager. All information shall be treated in complete confidence.

Reports of suspected fraud may also be made to the suspected fraud, corruption or other financial irregularity can also be made to the Anti-Fraud & Corruption Team Manager who will conduct an investigation and make recommendations for appropriate action. Further information about this procedure can be obtained from Carol Owen ext. 47909.

▶ **Benefit Fraud**

All allegations of Benefit fraud should be made to Carol Owen, Anti-Fraud & Corruption Team Manager, preferably by email to, carol.owen@lewisham.gov.uk.

▶ **Tenancy Fraud**

The Council has a dedicated Housing Investigator who investigates fraudulent applications for housing. They also receive allegations of subletting on behalf of Lewisham Homes and other housing providers. All allegations of housing related fraud should be made to Juliet Bennett, Housing Investigation Practitioner, preferably by email to, juliet.bennett@lewisham.gov.uk

Any reports of suspected, corruption or other financial irregularity may also be made to reportfraud@lewisham.gov.uk or to the team's 24 hour freephone Hotline on 0800 0850119.

▶ Statutory Officers

In addition the officers who have particular responsibility for regulating the conduct of the Council and its activities. They are as follows:

Chief Executive - Head of Paid Service Barry Quirk ext 46444

Responsible for overall management of the workforce.

Executive Director for Resources & Janet Senior ext 48013
Regeneration

Chief Finance Officer - The Council's officer with responsibility for the financial management, audit and financial probity of the Council.

Head of Law - Monitoring Officer Kath Nicholson ext 47648

Dealing with advising on the probity and legality of the Council's decision making. The Head of Law, as Monitoring Officer, is the Council's Whistleblowing officer.

Employees with serious concerns about Councillors should in the first instance raise them with the Head of Law.

The Head of Law may have to pass on concerns regarding Councillors to the Independent Standards Board which is a national regulatory body - the matter may or may not be given back to the Council for investigation. Complainants may alternatively refer directly to the Standards Board.

▶ The Standards Committee

The Council also has a Standards Committee made up of councillors and independent people. It is currently chaired by an independent person, Sally Hawkins. The role of the Standards Committee is to promote the highest standards of ethical conduct amongst members. It keeps the Member Code of Conduct under review and investigates complaints of breach of the Member Code of Conduct.

In the First Place...


People are primarily encouraged to use any and all of the mechanisms for raising concerns as set out above. For Councillors, public and staff it is likely that the majority of concerns will be dealt with by bringing the matter to the attention of management in the relevant Directorate. Such references are positively welcomed by the Council and once the issue is brought to light the manager will treat the complaint seriously, investigate it promptly and inform the complainant of the outcome. The investigation officer will be expected to interview both the individual raising the complaint and the person complained against, as well as any other individuals as

appropriate. If no further action is proposed, the complainant will be given an explanation. If further action is proposed under a separate Council procedure (such as the disciplinary code) the complainant will also be informed.

If a concern is raised by a member of staff, it would be normal for their first reference to be to their direct line manager. However, depending on the nature and sensitivity of the issue, or the identity of the alleged wrongdoer, the line manager may not be the appropriate manager. In such cases it may be more appropriate to raise the issue with a Head of Service or other senior manager. A member of staff may be accompanied by a friend when meeting management to raise a concern. In short, managers within Directorates will adopt a flexible and open approach so that those having concerns feel confident that they may raise them.

But if the usual channels aren't appropriate?

Circumstances may arise where none of the channels above are reasonably available. It may be that the whistleblower fears repercussions for example, or senior members of staff or Councillors may be implicated. Alternatively the whistleblower may have used those channels but still feel that there is real cause for concern. In such circumstances the whistleblower may refer their concern to the Head of Law directly.

 The Head of Law will then ensure that the matter is dealt by her either personally or by a whistleblowing officer nominated by her and operating under her supervision.

How will the whistleblowing officer respond?

Acting under the supervision of the Head of Law the whistleblowing officer will first receive and record the complaint in a register kept specially for the purpose. An initial assessment will then be made to decide what sort of investigation ought to take

In the most serious cases, it may be that a Police enquiry will ensue or an independent investigation may be called for. In some cases the issue will be referred for a management investigation, possibly by the Chief Executive or another officer nominated to act on his behalf. Allegations of fraud, corruption or financial irregularity will be referred to the Special Investigations Manager for investigation.

In other cases however, it may not be appropriate to conduct any further enquiry at all. People are encouraged to raise genuine concerns and do not have to prove them. But understandably they do need to demonstrate that there is a sufficient basis for investigation. This initial consideration will allow the Council to decide on the appropriate method of enquiry and to ensure that resources are not wasted where investigation would be inappropriate.

Unless the issue is raised anonymously then the whistleblowing officer will generally interview the whistleblower as part of this initial assessment. If the whistleblower

requests that his or her identity remains confidential then all possible steps will be taken to respect that wish.

If an investigation is to ensue then the whistleblower will be informed of the fact and given an estimate of the time by when the investigation will be completed. Normally the investigation will be conducted within 28 days, though the time taken to conduct an enquiry will depend on the nature of the concern and its complexity. The whistleblower will be informed of the outcome and this will be noted in the register.

In appropriate circumstances the Head of Law and/or the whistleblowing officer will prepare a report for the Council and for the Standards Committee dealing with the outcome of a particular investigation, the action taken to rectify the situation and prevent a recurrence.

Each year the Head of Law will prepare for the Standards Committee a report dealing with the application of the whistleblowing policy in the previous year, and making suggestions where necessary for changes to improve its efficiency.

Issues raised by Members of the Council or by the public shall be dealt with in a similar manner to those raised by employees, though serious concerns about the conduct of Councillors should in all cases be referred to the Head of Law.

Some General Safeguards

▶No Victimisation

The Council recognises that the decision to blow the whistle can be a difficult one to make, not least because there is a fear of reprisal from those who may be perpetrating malpractice or others. The Council will not tolerate any victimisation of a person who raises a concern in good faith and will take appropriate steps to protect them, including where appropriate disciplinary action.

▶Confidentiality and Anonymity

The Council will, wherever possible, protect the identity of the whistleblower who raises a concern and does not want his/her name to be disclosed. However this may not be possible in all circumstances as the very fact of the investigation may serve to reveal the source of the information and the statement of the whistleblower may be needed as part of evidence against the perpetrator.

▶False and Vexatious Complaints

Just as the Council will seek to protect those who raise concerns in good faith, so it will seek to protect those against whom claims are made which turn out to be unfounded. A concern which is made in good faith and sincerely expressed may transpire to have no basis in reality. In addition it is possible that vexatious or malicious claims may be made. The Council will take disciplinary action against any

employee who makes a vexatious claim. In either case, where it turns out that the claim was without foundation, the Council will use its best endeavours to ensure that any negative impact on the person complained of is minimised. However the Council acknowledges that it may not be able to prevent all such impact in every case.


▶ **Alternative methods of complaint**

As well as the initial complaints and whistleblowing procedures set out in this policy, any member of the public who wishes to make a complaint about the Council may contact one of the following organisations:

▶ **Local Government Ombudsman** - who receives and investigates complaints of maladministration against the Council. He can be contacted at 21 Queen Ann's Gate, London SW1H 9BU, telephone 020 7915 3210.

▶ **The District Auditor** - who investigates complaints of financial irregularity or unlawful expenditure leading to financial loss by the Council. To contact the District Auditor write to him at Millbank Tower, 4th Floor, Millbank Road, London SW1P 4QP. Telephone 020 7233 6400.

▶ **The Standards Board for England** - which considers allegations of breach of the Member Code of Conduct. The Standards Board will only consider complaints relating to Members of the Council (not employees). To contact the Standards Board for England, write to 1st Floor, Cottons Centre, Cottons Lane, London, SE1 2QG.

 Further information about this whistleblowing policy can be obtained from Kath Nicholson ext. 47648 or Helen Glass ext. 49968.

Agenda Item 5

STANDARDS COMMITTEE		
Report Title	LOCALISM ACT 2011	
Key Decision		Item: 5
Ward	All	
Contributors	Head of Law	
Class	Open	Date: 7 December 2011

1. Summary

This report outlines the provisions relating to the ethical framework in Chapter 7 of the Localism Act 2011. It highlights the key changes to the existing regime and some of the decisions which the Council will have to make to give effect to the new regime, when it is in force.

2. Purpose

The purpose of the report is to update the Standards Committee on the changing state of the law and to seek the Committee's preliminary views on the future of standards in Lewisham.

3. Recommendations

That the Committee :

- 3.1 note the report;
- 3.2 make any comments to bring to the attention of the Council at this stage;
- 3.3 ask officers to bring a more detailed report on proposals for a new Code of Conduct at the appropriate time; and
- 3.4 ask officers to bring a more detailed report on proposals for the arrangements for the investigation of complaints at the appropriate time.

4. Policy Context

The Council is committed to the highest standards of ethical conduct in public life. It seeks to promote confidence in the good governance of Lewisham, both in the Council and across the public sector. This report

informs the committee of imminent changes to the ethical framework imposed by the Localism Act 2011 and aspires to respond to those changes in a way that maintains and builds upon the Council's commitment to good governance.

5. Background

- 5.1 The Local Government Act 2000 introduced a new ethical framework for local government, with the deletion of the previous regime, and the introduction of Standards Committees, a national regulatory body - Standards for England, a national Code of Conduct, and a national framework for the investigation of complaints, with a range of sanctions available to either the local Standards Committee or Standards for England in the most serious cases.
- 5.2 Shortly after the General Election, the Coalition Government stated its intention to abolish the Standards Board regime, but to provide a safety net. As a result, the law has now been changed by the Localism Act 2011 which abolishes the existing regime completely. It is the stated intention of the Coalition Government that Chapter 7 of the Act, which introduces the new provisions, will be effective from April 2012. If that ambitious implementation date is met, (regulations are awaited) then from that point, Standards for England, Standards Committees and the national Code of local government conduct will be abolished.
- 5.3 However last minute amendments in the House of Lords rather hurriedly changed the size and shape of the safety net that was proposed, so that some of the Act's provisions differ from those originally set out in the Bill. The key features of Chapter 7 are set out below.

6 The new ethical framework

A general duty

- 6.1 The Act places a general obligation on relevant authorities (of whom Lewisham is one) to promote and maintain high standards of conduct by members and voting co-opted members of the Council including elected mayors.

Code of Conduct

A duty to adopt

- 6.2 In discharging the general obligation, Councils must adopt a code which deals with the conduct expected of members and co-opted members of the Council when acting in that capacity. This is a decision for full Council.

- 6.3 Comment – This represents a fundamental change. Whereas now, the Code of Conduct is nationally prescribed, in future, there may well be different codes adopted by different authorities.
- 6.4 Comment – The application of the Code will be narrower than under the existing system, which could in certain circumstances apply to behaviour of members in some other capacity if there was sufficient connection between the behaviour of the member and the office of councillor. However, the full scope of “acting in that capacity” remains to be determined. There are tricky areas. Examples include a councillor using council facilities for some disreputable private purpose, or disclosing confidential information to friends, or those who use their status as councillor to gain private advantage.
- 6.5 Comment – the limitation to voting members and co-optees means that those non-voting members of scrutiny committees will not be covered by the Code. Though a Council could ask them to be bound by the Code (and perhaps not appoint them if they do not so undertake) it would be a non-statutory process.
- 6.6 Comment – the requirement for councillors to undertake to abide by the Code of Conduct on acceptance of office is revoked. The Council may want to introduce the undertaking voluntarily.

Statutory principles

- 6.7 The Member Code of Conduct adopted must be consistent with the statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These replace the existing “general principles” which are set down in statutory instrument.
- 6.8 Comment - The principles of personal judgement, duty to uphold the law, stewardship and respect for others, which currently rank among the existing statutory general principles, are no longer to be part of the new list of general principles with which the Code must be consistent. The duty to ensure consistency with the new list of general principles does not mean that the Council could not voluntarily adopt a Code of Conduct that embodies those principles now to be excluded from the statutory list. It simply means it is a matter of choice for the Council and not a matter of law. Officers commend this voluntary approach and suggest that the local Code should retain provisions relating to bullying and disrespect, intimidation, misuse of position and resources, and breach of confidentiality.

Pecuniary interests

- 6.9 The Code must also make such provision as the Council thinks appropriate in respect of the registration of interests and the disclosure of “pecuniary interests” and in respect of interests other than pecuniary interests. The phrase “pecuniary interest” is one which was familiar to

the local government ethical regime before the 2000 Act was introduced. Regulations are to follow as to what is a disclosable pecuniary interest, though, as before, the underlying principle appears to be that an interest is a pecuniary one if the member stands to gain or lose in a financial or material way.

- 6.10 Comment – Though there is specific provision in the Act about disclosable pecuniary interests, it is clear that the devil will be in the detail of the regulations which are yet to be published, even in draft.
- 6.11 Comment – It is probably necessary to make some other provision in the Code to be drafted locally about other interests (e.g. membership of a pressure group) but the wording of the requirement to introduce “such provision as the authority considers appropriate” means that this will be a matter for local discretion.

7 Register of members’ interests

- 7.1 The Act provides that the Monitoring Officer must establish and maintain a register of members’ interests and it is to be for the Council to decide what is included in that register. No entries may remain in the register if the interest no longer exists. The register must be available for inspection by the public and on the Council’s website.
- 7.2 Members are under a duty to inform the Monitoring Officer, within 28 days of being appointed, of any “disclosable pecuniary interest” held at the time of notification. Though regulations will define a disclosable pecuniary interest, it will include the interest of the member, their spouse, civil partner or any person living with them as their spouse or civil partner.
- 7.3 Comment – This application is narrower than the current Code
- 7.4 Comment – Currently there is a duty on the member to ensure that their entry in the register is kept up to date. There is no such provision in the new legislation. Any new interest arising on or after the 29th day after appointment need not appear in the register until the next election, though it would be possible to require this in the local Code. The sanctions for failure to register (see later) would only apply to the statutory provision and not any locally determined additional requirement to register.
- 7.5 If there would be a risk of violence or intimidation to the member or someone connected with the member arising out of entry of an interest in the register, then there are exemptions which require the agreement of the Monitoring Officer to apply. These provisions are very similar to those in force now.

8 Disclosing an interest at meetings

- 8.1 If a member has a disclosable pecuniary interest in any matter considered at a meeting at which the member is present, and the interest is not disclosed in the register of members' interests, and the member is aware of the interest, then the member must disclose it to the meeting.
- 8.2 Comment - The requirement seems to indicate that if the register already shows the member's interest, then it need not be declared again at the meeting, though a local Code could require this. This may seem a sensible approach given that the member would in any event be precluded from participation in the debate and vote.
- 8.3 Though if the member has disclosed an interest, he or she must not participate in the discussion or the vote, there is no statutory requirement for them to leave the room, though the Council may impose such a requirement should it choose to do so.
- 8.4 Comment – Despite the absence of a requirement to leave the room, the Courts have taken a dim view of cases they have adjudicated on where a member with an interest has not left the room. Though the statutory provision will not require this, the Courts may persist in this view nonetheless. Further recent amendments to the existing national Code of Conduct allow members to address meetings notwithstanding a personal prejudicial interest provided members of the public are allowed to do so. It may be sensible to carry forward this provision into the new Code of Conduct, as it reflects case law.
- 8.5 If a member discloses an interest at a meeting they must notify the Monitoring Officer of the interest so that it thereafter appears in the register of interests.

9 Offences

- 9.1 The Act provides that it will be an offence if a person without reasonable excuse:
- fails to notify the Monitoring Officer of a disclosable pecuniary interest within the time period;
 - participates in any discussion or vote at a meeting where he/she has such an interest;
 - takes any steps or further steps in relation to the matter in which he/she has such an interest, where he/she would otherwise have taken the decision personally.

It will also be an offence to give false or misleading information to the Monitoring Officer about an interest, or to be reckless as to whether the information is true or misleading.

- 9.2 Prosecution is by the Director of Public Prosecutions and conviction carries a fine of up to £5000, and possibly disqualification for up to 5 years. Proceedings must be brought within 12 months of the date on which the prosecutor has sufficient evidence in his/her opinion to warrant proceedings, but in any event within 3 years of the offence.

10 Dispensations

- 10.1 The Council may grant a dispensation to a member with a disclosable pecuniary interest allowing them to participate in the discussion and/or vote if, having regard to all the relevant circumstances, the authority considers that:-

- without the dispensation, the number of persons prohibited from participation would be so great a proportion of the body transacting the business as to impede the transaction of the business;
- without the dispensation, the political balance would be so upset as to alter the likely outcome of any vote;
- granting the dispensation is in the interests of the persons living in the area;
- where there are executive arrangements, without the dispensation, each member of the executive would be unable to participate; or
- it is otherwise appropriate to grant the dispensation

- 10.2 Comment – the circumstances in which a dispensation may be granted are wider than at present.

11 Arrangements for dealing with allegations and investigations

- 11.1 The Council must have arrangements for investigation of allegations of breach of the Member Code of Conduct. They must include the appointment of at least one independent person (IP) whose views must be sought and taken into account before the authority may make a decision on an allegation it has decided to investigate. The member concerned may also seek the IP's views.

- 11.2 The IP may not be a member, co-opted member or officer of the authority, a relative or close friend of any of those people, nor can the

IP have been a member, co-opted member or officer of the authority in the last 5 years.

- 11.3 The IP is appointed by full Council following public advertisement, and can be paid (including expenses)
- 11.4 If the Council finds that there has been a breach of the Code it may have regard to the failure in deciding what action to take.
- 11.5 Comment – It is difficult to see that the Council would have very wide scope to take action as there are no provisions for sanction by the Council. It would be possible for a censure motion to be passed, and for the breach to be made public. Also, case law has held that in certain circumstances, depending on the circumstances of the breach, it is possible for Council facilities to be withdrawn. However, the Council will not be able to remove members from positions to which they were elected or appointed by political groups.

12 Constitutional issues

Membership of a new committee?

- 12.1 As now, conduct matters are to remain non-executive functions, and so will be decided by full Council or by a committee appointed by the Council. The terms of reference of any such committee will be for the Council to decide, as the statutory requirements relating to the terms of reference of the existing Standards Committees will disappear. Any Committee appointed will have to be politically balanced.
- 12.2 The current requirements for independent membership on the Standards Committee will disappear, though it will be possible for the Council to co-opt independent members on to the committee. However, co-optees do not have voting rights on the committee, unless the committee were established as an advisory committee without decision making powers. Further in the absence of legislative provision (as exists now, but will disappear under the Localism Act) an independent member cannot chair a committee because of their inability to exercise a casting vote if necessary.

Arrangements for investigation of allegations of breach

- 12.3 These are left to the authority to establish, and though the formal procedures put in place by previous legislation will disappear, this gives rise to a number of questions about what the new process should be. The Council will still have to make decisions somehow about whether complaints warrant investigation, and if so by whom and how, bearing in mind that the investigator will have no power to require people to attend interviews, or to access documents. Should there be a hearing process or is a written exchange sufficient? Who will decide what action should be taken, if any, if an allegation is found to be

substantiated? How does the IP fit in to this process? Should the investigation process be delegated to an officer, with only the final decision about action to be taken reserved to members?

- 12.4 The existing provisions particular to meetings of Standards Committees which allow private meetings in certain circumstances and dispense with access to information requirements relating to notice of meetings for example, will disappear. Meetings of any new committee will be subject to the access to information requirements applying to all Council meetings, and meetings will be public unless one of the exemptions under the Local Government Act 1972 can be made out. There are to be no special provisions for any new committee.

13 Some matters to address

- 13.1 *What kind of Code does the Council want?* The Association of County Solicitors and Secretaries (ACSES) are producing a model Code of Conduct and officers propose that this may be an appropriate starting point for Lewisham with any amendments thought necessary to reflect local circumstances. A further report on the proposed Lewisham Code will be brought back at the earliest opportunity. Officers suggest that the Standards Committee consider the contents of a draft new Code and that it be referred to full Council with the comments of the Standards Committee for agreement in due course.
- 13.2 *How will the register of members' interest be recast?* This will only be known once the regulations defining pecuniary interests are to hand. Again this will be dealt with in a further report as soon as possible.
- 13.3 *The Constitution will need to be amended to reflect the new requirements relating to the disclosure and recording of interests* This will be addressed through the Constitution Working Party and referral to full Council
- 13.4 *What kind of member body will discharge functions relating to ethical standards?* How will members discharge the general duty of promotion, informing and training? The Constitution Working Party expressed its commitment at a meeting in November 2011 to the continuation of a dedicated Standards Committee in some form. Will there be co-options to this committee?
- 13.5 *What will be the arrangements for investigation of complaints?* What role would any standards committee have in such matters? What will be delegated to officers? What will be reserved to members?
- 13.6 *Who will deal with applications for dispensation?* Is it to be a retained Standards Committee or some other arrangement?

- 13.7 *Will the Council appoint one or several independent persons?*
Protocols will need to be drafted about how they fit into “arrangements” for the handling of complaints.

14 Financial implications

There are no specific financial implications arising from this report at this stage.

15 Legal implications

- 15.1 Unless and until the provisions in the Localism Act 2011 come into force, the current standards regime as set out in the LGA 2000 and regulations thereunder will continue. There are to be transitional arrangements for cases in progress.
- 15.2 In establishing arrangements under the 2011 Act, particularly in relation to the investigation of complaints, the Council will need to be mindful of the requirements of natural justice and the provisions of Article 6 of the European Convention on Human Rights which relate to the right to a fair hearing.
- 15.3 Changes to the Code of Conduct and to the Constitution are a matter for full Council.
- 15.4 There are no specific equalities or environmental implications. There are crime and disorder implications in that the Localism Act creates new offences as set out in the report.

16 Conclusion

The Localism Act will fundamentally change the statutory ethical framework for local government, with much left to local discretion. The Standards Committee is urged to support the retention of a Code of Conduct which maintains the Council’s commitment to the highest standards of ethical behaviour, by going beyond the statutory requirements. The Committee is also urged to support the principle of adopting arrangements for the investigation of complaints which both increase the flexibility of the current system but still inspire confidence that complaints made are taken seriously and properly investigated. The new provisions are extremely young, and this report represents the start of a process to shift from one regime to another. Officers will therefore bring further reports on options for particular aspects of the new regime as they develop and as regulations, particularly in relation to disclosable pecuniary interests, develop.

Contact Kath Nicholson: 020 8314 7648