Joint Audit and Governance Committee

Report of: Chief Executive

Author: Kim Ashford

Contact: Kim Ashford

Telephone: 01235 422099

Textphone: 18001 01235 540303

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

South Cabinet member: John Cotton

Tel: 01835 408105

E-mail: leader@southoxon.gov.uk

Vale Cabinet member: Matthew Barber

Tel: 07816 481452

E-mail: councillor@matthewbarber.co.uk

To: Joint Audit and Governance Committee

DATE: **04 July 2016**

Review of complaints received during 2015/16

Purpose of report

1. The purpose of this report is to provide the committee with information and statistics about complaints received during 2015/16.

Corporate objectives

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

3. Due to the fact that this annual review been brought forward to this meeting in order to reduce the number of items on the September agenda, the official annual complaints report from the LGO will not be available for inclusion at this meeting. This report will be circulated once received, towards the end of July.

Background

THE COMPLAINTS PROCEDURE

4. The main benefits of having a council-wide procedure for dealing with complaints are that:

    - members of the public know what to do if they have a complaint and how we will deal with it
    - staff can be confident about what to do when they get a complaint
    - everyone is treated fairly and equally
    - by analysing complaints we can improve our services

5. A good complaints procedure gives us the opportunity to show that we want to be open and honest, that we care about providing a good service and that we value feedback on problems that need attention.

    Please note that due to the departure of Anna Robinson and the secondment of Steve Bishop, the process for managing stage 1 and stage 2 complaints has been reviewed. Pending the arrival of the new Chief Executive, interim arrangements are as follows:

    Stage 1 complaints are dealt with by service managers or heads of service within the relevant service, and stage 2 complaints are dealt with by an independent head of service or the chief executive.

Stage one

The head of service or service manager will respond (or arrange for a member of their team to respond on their behalf) within 20 calendar days of receipt of the complaint. All complaints are logged on the complaints database, which generates daily automatic reminder emails from three calendar days prior to the target date and continues to do so until details of the response have been entered.

Stage two

An independent head of service or the chief executive will respond within 20 calendar days of receipt of the request to escalate the complaint to stage two. Again, the complaints database generates daily automatic reminder emails from three calendar days prior to the target date.

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

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

COMPLAINTS STATISTICS

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

6. Appendix One contains statistics and details relating to the number of complaints received and our performance against target for issuing responses. The number of complaints in South is broadly in line with the previous 2 years, while those in Vale have increased with roughly 40% relating to planning. Planning complaints are less likely to be resolved at stage 1.

LGO investigations

7. During 2015/16 the LGO received 13 complaints against South compared with 24 in 2014/15, and 7 against Vale compared with 15 in 2014/15.

9. The number of complaints against both South and Vale has decreased in 2015/16.

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

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

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

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

11. South achieved 77% of target for response times for LGO complaints, while Vale achieved 43%. While these response times are below target, this is because of some very difficult outlying cases which needed to be investigated over a prolonged period. The LGO was aware of the difficulties with these cases and where the delay was on the side of the Council, the LGO was kept informed of progress.

12. Examples of LGO complaints are attached for information, at appendix 2 (South) and appendix 3 (Vale).

Financial Implications

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

Legal Implications

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

Risks

17. Having a formal complaints procedure allows us to analyse complaints and improve services where necessary. It also gives members of the public clarity

about what to do if they have a complaint, and how we will deal with it. If we did not have a formal procedure, we would be unable to carry out such analysis, with the risk that we would fail to make service improvements.

Other implications

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

Conclusion

19. This report sets out the statistical data for complaints received during 2015/16.

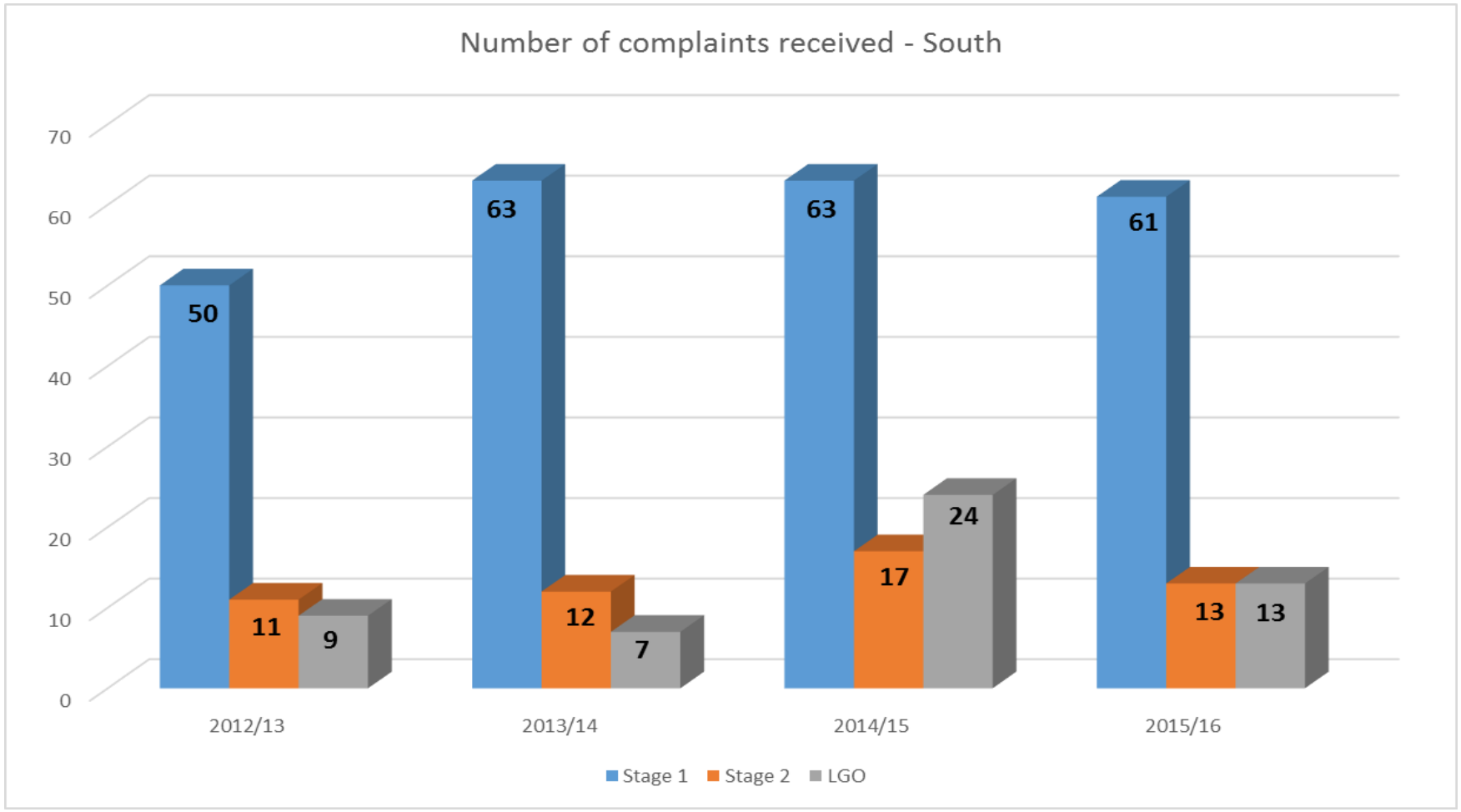
Background papers

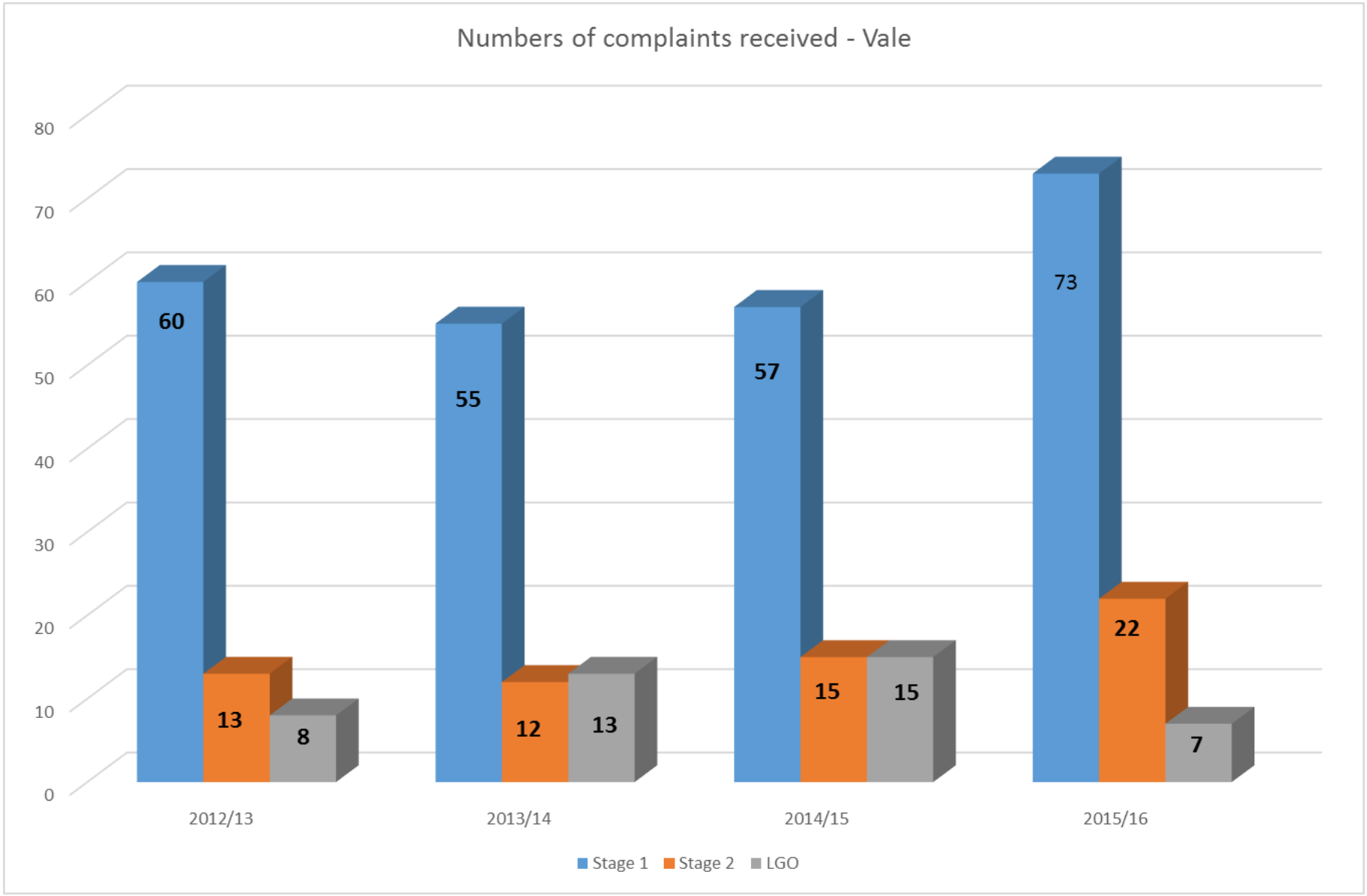
20. None

Appendix One

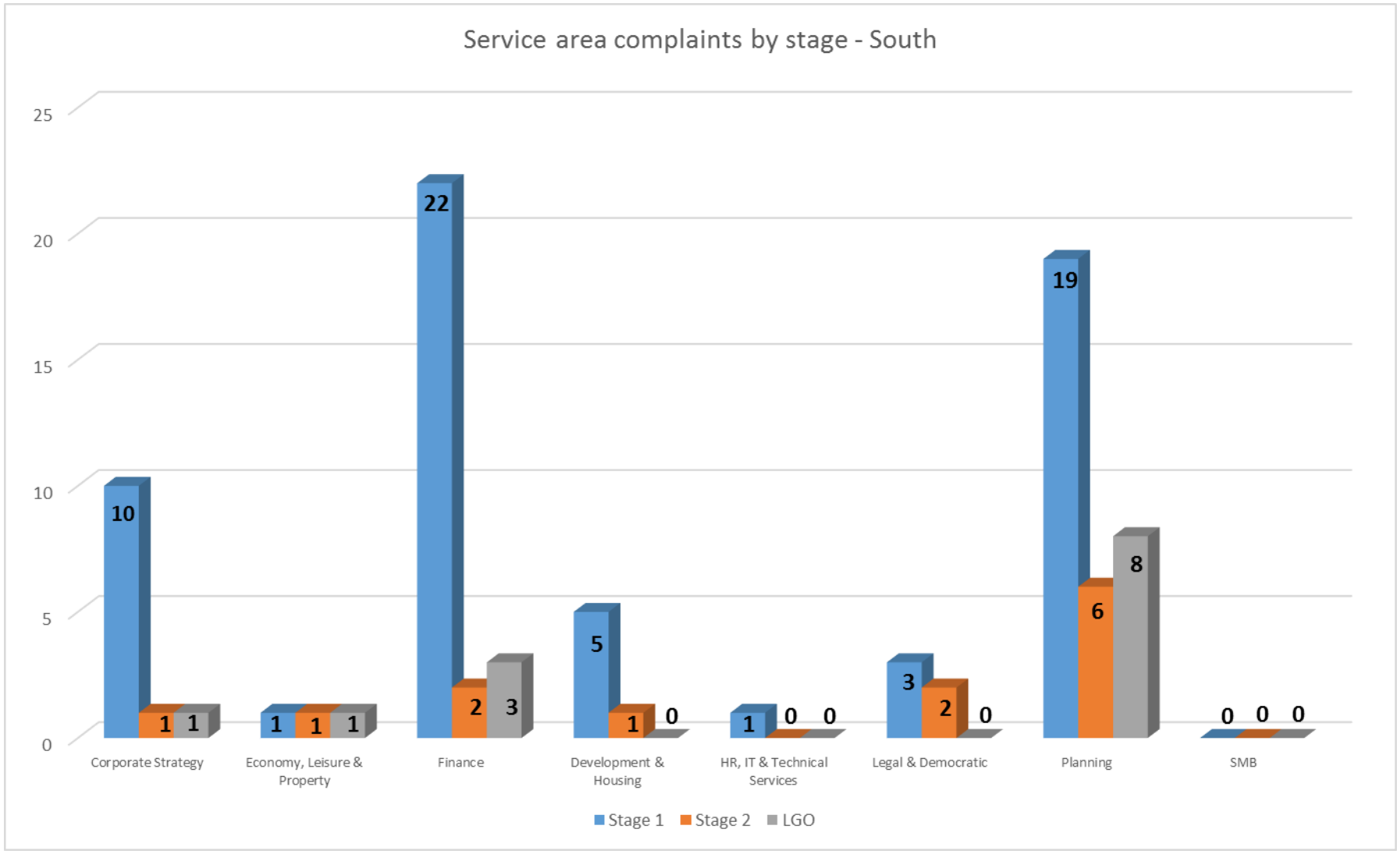
Complaints statistics

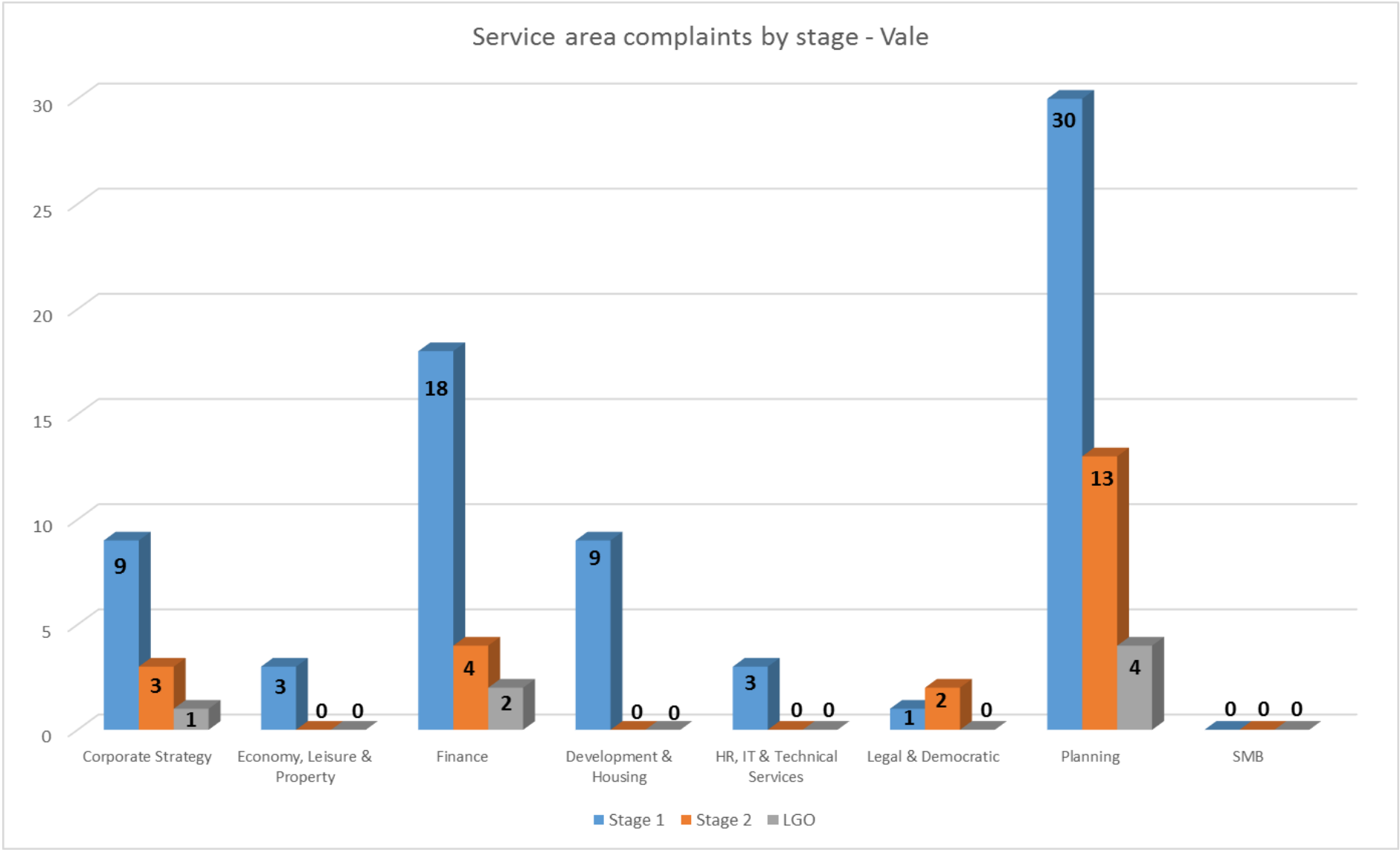
1. The following charts show the number of complaints received at each council, at each stage of the process, and compares them to numbers received in the previous three years.




Numbers of complaints received - Vale
80
70
60
50
40
30
20
10
0
60
13
8
55
12
13
57
15
15
73
22
7
2012/13
2013/14
2014/15
2015/16
Stage 1
Stage 2
LGO

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




Service area complaints by stage - Vale
30
25
20
15
10
5
0
9
3
1
3
0
0
18
4
2
9
0
0
3
0
0
1
2
0
30
13
4
0
0
0
Corporate Strategy
Economy, Leisure & Property
Finance
Development & Housing
HR, IT & Technical Services
Legal & Democratic
Planning
SMB
Stage 1
Stage 2
LGO

3. The total number of complaints received is fairly consistent with the number received last year. For South, there is virtually no change in the number of stage 1 complaints, and there has been a decrease in stage 2 and LGO complaints: in 2014/15 there were 17 stage 2 complaints and 24 LGO complaints, as opposed to 13 stage 2 complaints and 13 LGO complaints in 2015/16. For Vale, there has been an increase in stage 1 and stage 2 complaints, and a decrease in LGO complaints: in 2014/15 there were 57 stage 1 complaints, 15 stage 2 complaints and 15 LGO complaints, whereas in 2015/16 there were 73 stage 1 complaints, 22 stage 2 complaints and 7 LGO complaints.

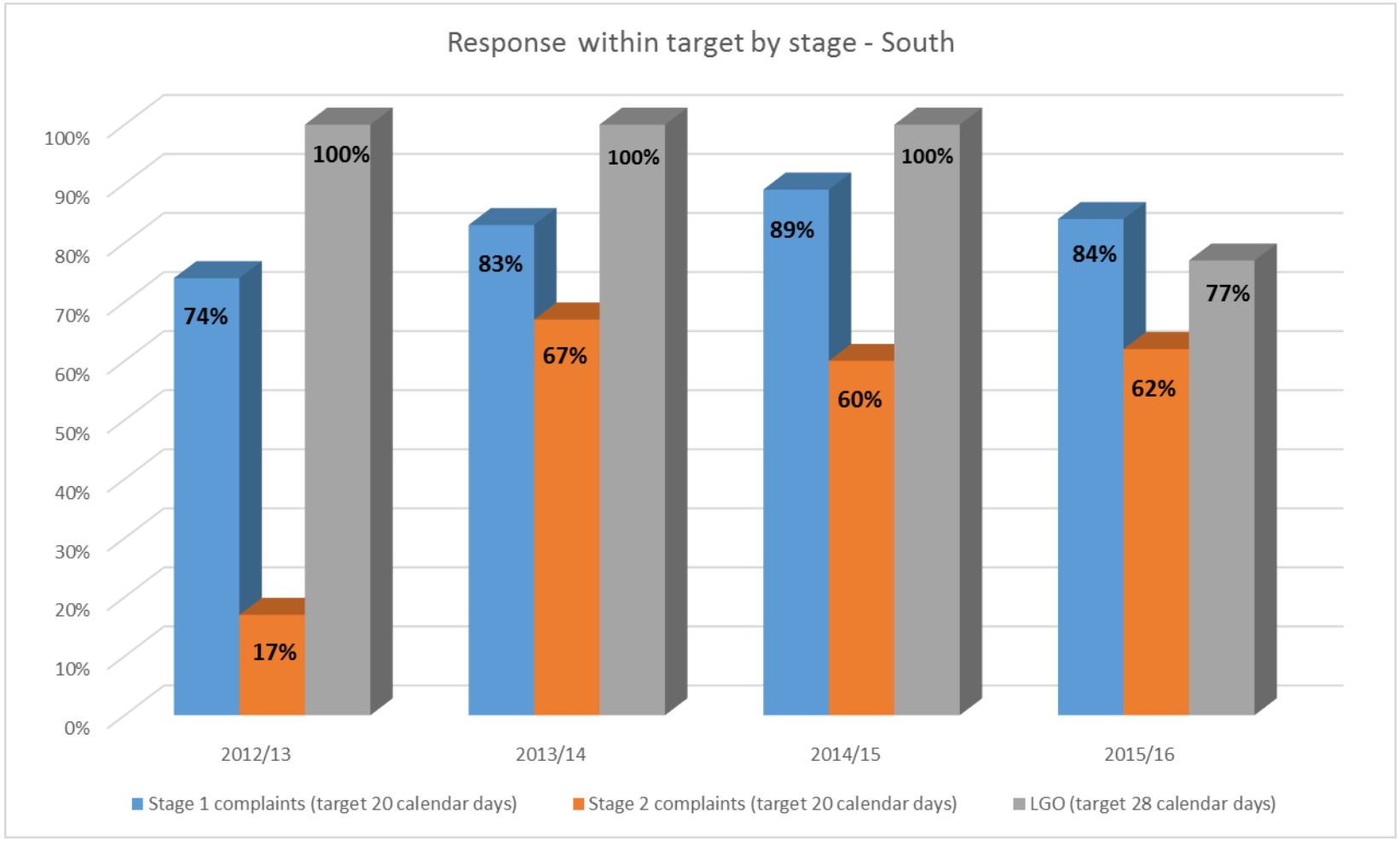
4. As in 2014/15, Finance and Planning received the highest number of complaints across both councils.

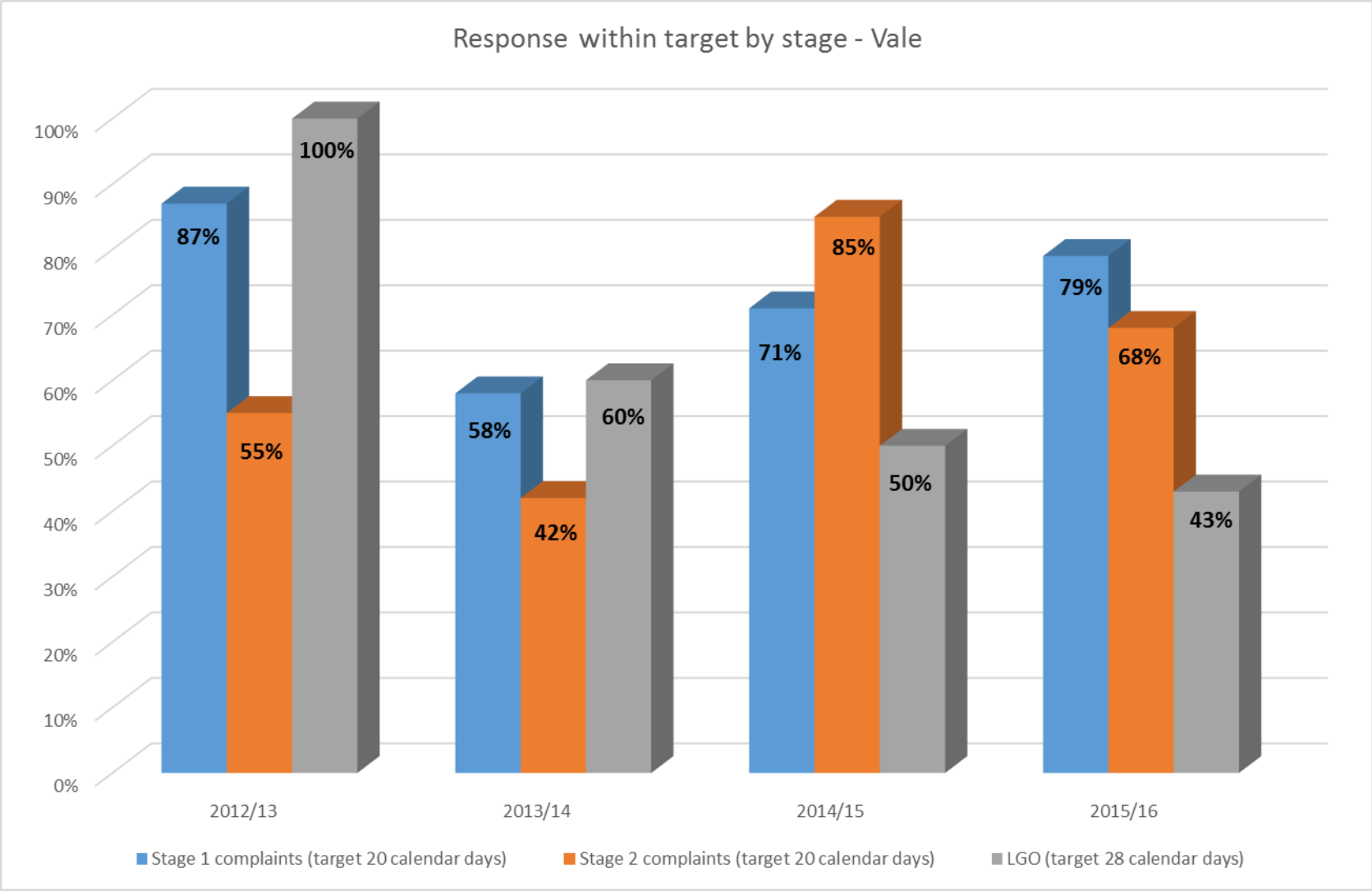
   South
   In 2014/15, Planning received 16 stage 1 complaints, 8 stage 2 complaints and 7 LGO complaints; and in 2015/16, Planning received 19 stage 1 complaints, 6 stage 2 complaints and 8 LGO complaints. In 2014/15, Finance received 25 stage 1 complaints, 2 stage 2 complaints and 2 LGO complaints; and in 2015/16, Finance received 22 stage 1 complaints, 2 stage 2 complaints and 3 LGO complaints.

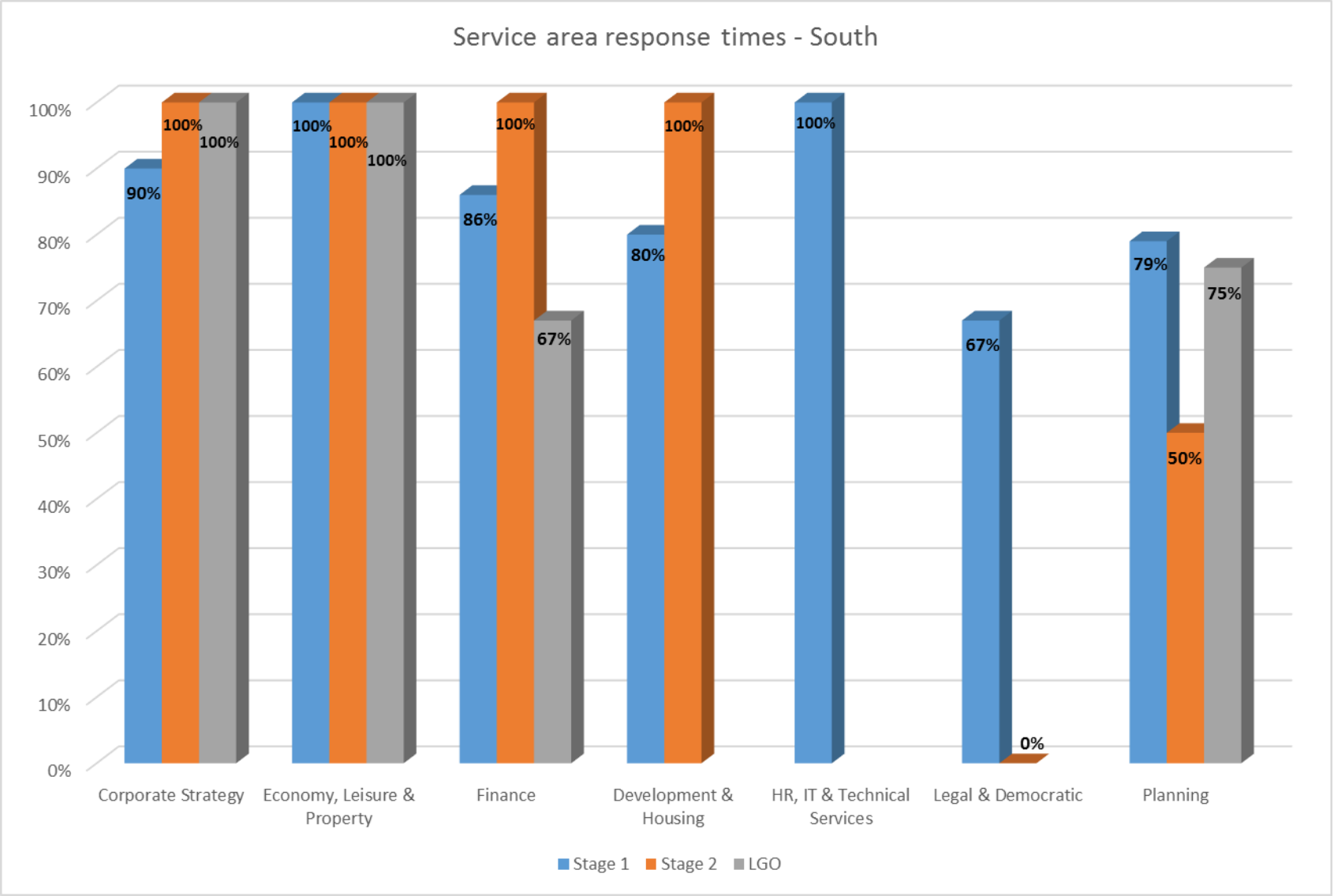
   Vale
   In 2014/15, Planning received 22 stage 1 complaints, 9 stage 2 complaints and 6 LGO complaints; and in 2015/16, Planning received 30 stage 1 complaints, 13 stage 2 complaints and 4 LGO complaints. In 2014/15, Finance received 27 stage 1 complaints, 5 stage 2 complaints and 5 LGO complaints; and in 2015/16, Finance received 18 stage 1 complaints, 4 stage 2 complaints and 2 LGO complaints.

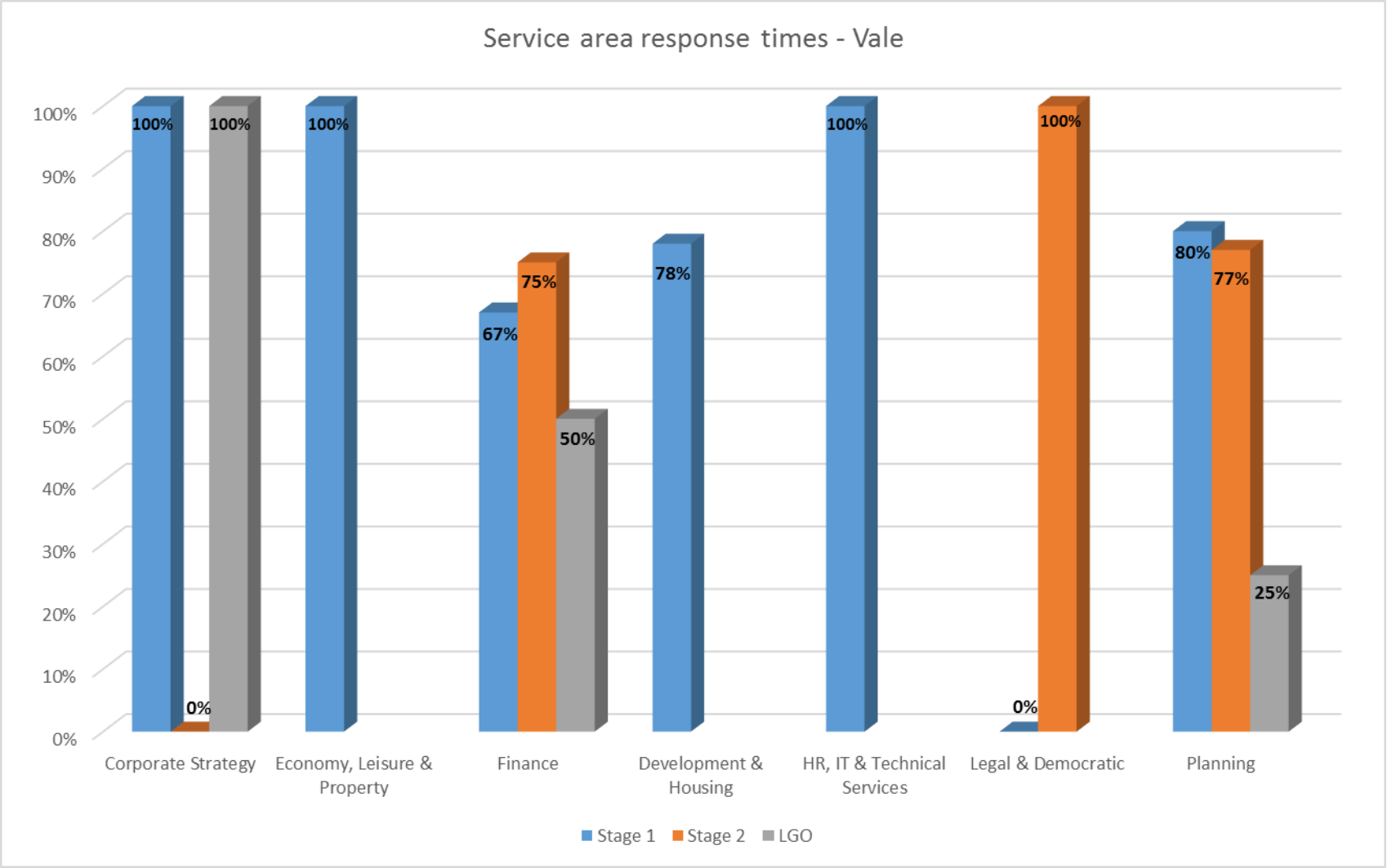
   Planning
   Due to the number and type of complaints received, mainly concerning issues relating to communication response times, an internal audit is currently in progress to investigate and address these issues.

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




Response within target by stage - Vale
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
87%
55%
100%
58%
42%
60%
71%
85%
50%
79%
68%
43%
2012/13
2013/14
2014/15
2015/16
Stage 1 complaints (target 20 calendar days)
Stage 2 complaints (target 20 calendar days)
LGO (target 28 calendar days)


Service area response times - South
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
90%
100%
100%
100%
100%
100%
86%
100%
67%
80%
100%
100%
67%
0%
79%
50%
75%
Corporate Strategy
Economy, Leisure & Property
Finance
Development & Housing
HR, IT & Technical Services
Legal & Democratic
Planning
Stage 1
Stage 2
LGO



6. The percentage of complaints at stages 1 and 2 that were dealt with within target at South is fairly consistent when compared with 2014/15 percentages, with a decrease in the number of on-target LGO complaints since last year. The percentage dealt within within target at Vale has increased for stage 1, but had decreased for stage 2 and LGO complaints.

Appendix Two

LGO decisions – 1 April 2015 to 31 March 2016 – South

1. LGO decision – not pursued: complaint had not been through the council's formal complaints procedure.
Decision date – 06 June 2015

Complaint

Non receipt of postal vote.

LGO's conclusion

The complaint could not be pursued as the complainant had not been through the council's own formal complaints process.

2. LGO decision – not upheld: no further action
Decision date – 24 August 2015
LGO main subject area – Planning

Complaint

The complainant, Mr Z, complained about the way the Council considered taking enforcement action against him. In particular, he complained about:

- excessive delay by the Council in deciding whether to take enforcement action;
- disclosure to third parties of the Council's intention to prosecute him for alleged breaches of planning permission; and
- soliciting information from third parties to allow it to mount a prosecution against him.

Background – Ombudsman's summary

Mr Z owns and runs an airfield in the Council's area. The Council originally granted a CLUED for use of an identified lawful grass strip as a runway for recreational flying by private aircraft only in 2001. Since then, there has been a gradual intensification of activities on the airfield, and the range of activities has also expanded from microlights to fixed wing aircraft, hot air balloon flights and parachuting.

Mr Z sought to regularise some of these activities through applications for further

CLEUDs in 2009, 2010, 2011, and 2014. The Council has approved some of these applications and refused others. Mr Z had a right of appeal to the Planning Inspectorate against the Council's decision to refuse the CLEUD applications.

In 2010 the Council issued an enforcement notice requiring Mr Z to stop recreational flying on any part of the site except the lawful strip and to remove aircraft and associated equipment. Mr Z made a further CLUED application for the use of a grass main runway, a cross-wind runway, taxiways and apron for landings, take-offs, manoeuvring and parking of aircraft. The Council refused the application. The Planning Inspectorate refused Mr Z's subsequent appeal.

The Council began an investigation in March 2012 into further alleged breaches of planning control at the airfield after complaints from a neighbour affected by aircraft noise. Initially, the investigation covered the installation of portakabins and a windsock mast on part of the site and a brown directional sign for the airfield on the road outside. Its investigation also covered the alleged use of the grass landing strip and other areas by a commercial parachuting school. This was said to result in noisy aircraft taking off and landing several times a day usually at weekends. As the original CLEUD allowed only recreational flying, any commercial flying could be a breach of planning control.

During its investigation the Council's records show its officers have made at least five site visits to witness activities or to gather other information.

In May 2013, the Council sent a letter to residents who had either complained about activities on the airfield, or who had expressed an interest to the Council about what was happening on the airfield. The letter says the Council was looking into complaints about alleged breaches of planning control. It does not say that such breaches have happened. It asks if residents think breaches of planning control have happened and for records of the frequency, type and location of flights and other activities on the airfield. It says these records could be used in any prosecution if the Council finds there has been a breach of planning control. It does not say the Council is mounting a prosecution.

In July 2013, the investigation expanded to cover the alleged unauthorised change of use from land used for agriculture and recreational flying of private aircraft only to 'mixed use of agriculture and commercial airfield'. This included flying of private recreational aircraft, flying aircraft for commercial purposes, aircraft sales, maintenance and servicing of aircraft, test flying, flying experiences, trial flights and a flying school. In addition, the Council also investigated the use of additional runways in breach of an existing enforcement notice and the erection of an unauthorised viewing platform.

In December 2013, the Council issued a Planning Contravention Notice (PCN) to Mr Z setting out a series of detailed questions about activities on the airfield in connection to the unauthorised change of use and the erection of the viewing platform. The questions included details of the dates certain activities started on the airfield, and details of the numbers and types of flights on the airfield in the preceding ten years as recorded in the airfield's flight logs.

The PCN gave Mr Z 21 days to supply the information it requested. The Council reissued the PCN in February 2014 when Mr Z said the first PCN had been issued to the wrong person.

Mr Z supplied some of the information requested later in February 2014, but said it was too onerous for him to supply details of the flight logs for all ten years. The Council reduced its request to the flight logs for only three years, and also offered to come to the airfield to inspect these logs in person. Council officers made a site visit to inspect the logs in April 2014.

Mr Z also said there had been commercial activities on the airfield for more than ten years although the parachute school using the airfield had only been operating for about four years. He said the viewing platform had also been essentially complete for over four years and was also immune to enforcement action.

The Council has subsequently analysed a large amount of information provided in the flight logs and by Mr Z. It has also taken its own legal advice. The Council's investigation was also hampered when its offices, including the planning department, burned down in January 2015.

In its response to my draft findings, the Council says it has now closed its enforcement case and intends to take no further action.

LGO's conclusion

The LGO did not consider Mr Z suffered injustice as a result of the Council's investigation into alleged breaches of planning control on his airfield. Mr Z had a remedy for the delay as he could have submitted a formal planning application or an application for a certificate of lawful use or development if he believed he had evidence the breaches were immune from enforcement action. He would also have had a right of appeal to the Planning Inspector if the Council had refused these applications. The LGO also did not consider the Council was wrong to ask residents potentially affected by the activities on the airfield for information or evidence about those activities.

The LGO's final decision was to discontinue the investigation and close the complaint.

3. LGO decision – closed after initial enquiries: out of jurisdiction
Decision date – 19 May 2015
LGO main subject area – Legal and Democratic services

Complaint

The complainant, Mrs X, said she did not receive her postal vote and so could not vote at the General Election.

Background – Ombudsman's summary

Mrs X is a member of the UK Armed Forces and is serving abroad. She applied to the Council for a postal vote and the Council granted this.

For the General Election her postal voting pack did not arrive. She says this is not the fault of the post as the British Forces Post Office prioritises postal votes.

Mrs X contacted the Council who offered her a proxy vote. Mrs X did not know anyone in the Council's area who could vote for her, and could not return the form to the Council offices, as she was abroad. As a result she lost her right to vote.

LGO's conclusion

Although elections appear to be run by local authorities in law they are run by the Returning Officer for each area. The Returning Officer acts in their own personal capacity, not as an officer of the Council. So this is not an administrative function of the Council and not a complaint the Ombudsman can investigate.

4. LGO decision – closed after initial enquiries: no further action
Decision date – 30 June 2015
LGO main subject area – Economy, Leisure and Property

Complaint

The complainant, Mr B, complained the Council failed to take the action it said it would take to remove long-stay boats from a river Thames mooring area.

Mr B says by allowing people to overstay and live aboard the Council has detrimentally affected visiting boaters for whom the facility was created. He says as the area has no services, people using it long term have discharged raw sewage into the river. Mr B wants the Council to enforce its planning restrictions.

Background – Ombudsman's summary

When the Council granted planning permission for the moorings it was for temporary use only.

In October 2014 Mr B complained to the Council about the long term use of the moorings. In response to his complaint the Council said it would take action. Mr B complains the Council failed to take that action and to reply to his communications after he had raised a formal complaint in February 2015.

In its response to Mr B's complaint the Council explained it had received legal advice after it had served notices of seeking possession. It then concluded that taking action in the courts would not provide a satisfactory long term solution. Its preference is to treat the issue of winter overstays as part of a more comprehensive policy. It said it would collect nightly fees over the summer season which would ensure boats moved on after a couple of days.

There is no evidence of fault in the way the Council reached its decision not to go to court. The Council has considered all the relevant matters. Mr B says the Council made an error of fact about another mooring site nearby but this is not an issue which had any significant influence on the Council's decision not to go to court.

The Council upheld Mr B's complaint that it told him it would take action to remove the long-stay boats but failed to do this. It apologised for misleading him. While the Council was at fault in this respect, this is not something that has, of itself, caused significant enough injustice to Mr B to justify the Ombudsman's involvement.

LGO's conclusion

The Ombudsman would not investigate Mr B's complaint because there was no evidence of fault in the way the Council reached its decision not to go to court to remove long-stay boats. Mr B had not suffered significant enough injustice from the Council misleading him.

5. LGO decision – closed after initial enquiries: no jurisdiction
Decision date – 30 September 2015
LGO main subject area – Planning

Complaint

The complainant, Mr D, complained on behalf of his mother, Mrs E. Mr D complained the Council failed to take action against unlawful use of a piece of land close to Mrs E's home.

Background – Ombudsman's summary

In April 2014 Mr D reported an alleged breach of planning to the Council. The allegation was about the neighbouring town Council's use of a piece of land close to Mrs E's home.

Mr D said the reported breach impacted on Mrs E's enjoyment of her home because the town Council were using the area for the composting of green waste. Mr D said this was not in accordance with the permission granted in 2013, which set out the conditions of use for the land. He wanted the Council to take action to cease the ongoing unlawful use of the land.

In May 2014 officers from the Council's enforcement team contacted the town Council to arrange a meeting with the owners of the land to discuss the reported breach of planning. The meeting went ahead on 14 May 2014.

During the initial site visit the Council discovered some issues with the access. The town Council agreed to carry out works to the access of the site within two weeks to make it compliant with the previously approved plans. The enforcement officer also considered an area of the site used for composting. The officer took photographs of the composting and said he would need to consider whether this required planning permission.

The enforcement officer then began his investigations. He found that none of the previous planning applications had included permission for green waste or the storage of equipment. The officer arranged a meeting with an employee of the town Council to discuss the matters.

The meeting took place on 29 September 2014. Shortly after the meeting the enforcement officer advised the town Council of the need to submit planning applications for landscaping and tree protection. He also said the Council needed an application for the storage of green waste, but this would need to be submitted to the county Council which has jurisdiction for matters relating to storage of green waste. The Council allowed 28 days for submission of the application.

In November the town Council put in applications relating to the landscaping and tree protection. The Council later approved these in January 2015.

The Council then contacted the county Council to check the status of the application for green waste storage. Officers from the county Council confirmed the town Council had contacted them to discuss its application for permission to store green waste.

The town Council filed signed statements to assert that the land has been used for the

maintenance of equipment and horticultural materials for more than ten years and thus exempt from enforcement action.

In January 2015 a meeting took place between the town Council, a local MP and residents from the area. After this meeting the land owner confirmed he had not agreed to the storage of equipment. He said he had only ever authorised the storage of grass cuttings and other green waste.

After considering the information available, including the recent statement from the land owner, the Council decided that the site had not been used in this way for the length of time reported, and therefore it was subject to planning permission. Officers contacted the town Council seeking a formal application to regularise the use of the land.

On 1 May 2015 the town Council put in an application for a certificate of lawfulness to formalise the use of land as a 'parks service storage area'. The Council refused the application later that month.

LGO's conclusion

The LGO's investigation found no evidence of fault by the Council and did not uphold the complaint.

The LGO did not investigate Mr D's concerns about the actions of the town Council, and in particular the validity of the statutory declarations made by officers of the town Council. This is because the jurisdiction of the Ombudsman extended to, among other authorities, district, borough, city and county councils. It did not extend to parish or town councils.

6. LGO decision – not pursued: complaint had not been through the council's formal complaints procedure.
Decision date – 21 July 2015

Complaint

The complainant alleged that their request to be re-housed on medical grounds has been ignored repeatedly.

LGO's conclusion

The complaint could not be pursued as the complainant had not been through the council's own formal complaints process.

7. LGO decision – closed after initial enquiries: out of jurisdiction
Decision date – 13 August 2015
LGO main subject area – Planning

Complaint

The complainant, Mr A, complained about a decision made by the Council in 1996 to grant planning permission for his house. He said it did not take due care when granting consent in assessing the risk of flooding.

Background – Ombudsman's summary

Mr lives in a house which he purchased in 1998. He says that planning consent was given for his house in 1996. He believes that at the time consent was granted the Council did not act with due care in assessing the potential risk from flooding.

When Mr A bought his property it was for him and his advisers to carry out their own assessment of the risk of flooding. I do not consider this was the Council's duty alone.

Mr A's property flooded in 2008 and again in 2014. So it is clear that in 2008 he was aware of the problem.

The law requires that a complaint should be made to the Ombudsman within twelve months of the complainant becoming aware of the matters complained of.

It was open to Mr A to complain to the Council at the time and to the Ombudsman if not satisfied by its response. But he did not complain to the Ombudsman until July 2015. By then it was too late to complain.

I have discretion to dis-apply this rule. I would not do so unless there were clear reasons to explain why a complaint was not made earlier, and I was confident there was a realistic prospect of reaching a sound, fair and meaningful decision.

LGO's conclusion

The LGO considered whether to exercise discretion to investigate the complaint. An investigation would have to consider decisions which were taken in 1996. The LGO did not consider that there was a prospect of making a sound, evidence based and robust decision about matters which took place so long ago and saw no good reason to accept this as a late complaint. The Ombudsman would not investigate this complaint about a planning matter as it was outside jurisdiction because it was not made in time.

8. LGO decision – not upheld: no further action
Decision date – 22 March 2016
LGO main subject area – Planning

Complaint

The complainant, Mr X, complained there was fault in the way the Council dealt with two planning applications concerning a neighbouring property. Specifically, Mr X complained the planning officer misled the local parish council with the intention of leading it to withdraw its objection to the first application, which would otherwise have been considered by the Council's planning committee.

Background – Ombudsman's summary

A neighbour to Mr X's property made a planning application to extend a cottage and build another property in the garden. Mr X and others objected to the proposed development. The Council approved the application. The neighbour then made a second application to vary a condition of the permission to add roof-lights and flat-roofed dormer windows in the new property. The Council's planning committee refused the second application and the neighbour appealed to the planning inspectorate. The

planning inspector dismissed the appeal as the Council had meanwhile granted permission after a third application that substituted pitched roofs on the dormer windows.

Mr X complained to the Council. The Council considered five points of complaint and a question. It wrote a final response to Mr X on 2 April 2015. I deal with the five complaints in turn.

The Council supplied a webcast of the planning committee meeting that considered the second application. I have viewed this webcast. A councillor showed concerns about the attitude of the neighbour. This was because he had submitted the second application in order to add roof-lights and dormer windows shortly after the decision on the first application. Another stated that something must have gone on behind the scenes.

Councillors were entitled to refuse the application, which they did. However, the opinions or suspicions of councillors are not the same thing as evidence of fault, despite Mr X's view to the contrary. The correspondence I have seen shows no evidence of fault by the Council in the way the planning officer conducted the planning process.

Given the planning committee rejected the second application, there is an argument that it would also have rejected the first had it considered it. This is not certain. But what is more important is whether the planning committee should have had the opportunity to consider the first application. If not, speculating on the planning committee's likely decision would be irrelevant.

The Council's scheme of delegation sets out the grounds on which an application must be considered by the planning committee rather than a planning officer. One of these is an objection by the relevant parish council. The local parish council withdrew its objection to the application. I deal with Mr X's allegation about this below, but once the parish council withdrew the objection, the planning officer could decide the application herself.

The Town and Country Planning Act 1990 sets out a range of relevant planning matters planning authorities must consider. However, it allows planning authorities to decide what weight to give to those matters. The Ombudsman cannot therefore criticise the weight a planning authority gives to relevant matters, only the failure to do so.

Although Mr X takes the view the planning officer did not consider valid objections, her report shows she considered relevant planning matters. These included the size and scale of the new development and its suitability in the streetscape in an historic environment. I do not therefore find the Council at fault here.

I have read the correspondence between the planning officer and the parish council. The parish council emailed the planning officer to say it objected to the first application because the development had roof-lights in the new building. The planning officer confirmed the developer had sent in amended plans that removed the roof-lights. The planning officer then asked the parish council if it still wished to object and the parish council confirmed it did not. Although the developer later applied again to vary the condition, this does not mean the planning officer misled the parish council during the first application. The Council approved the first application on the basis there were no

roof-lights, which was the point on which the parish council had objected. I do not therefore find it at fault.

Mr X complained of this in his original complaint. The Council said the inaccuracies were addressed in letters and emails from the developer.

Documents on the Council's website from the first application show the architect apologised to the Council in an email that some drawings were inaccurate and submitted revised drawings. I have seen no evidence to suggest whether there were any other inaccuracies. Mr X has not stated whether the planning officer relied on any specific inaccuracy in writing her report on the first application. I do not therefore find the Council failed to challenge inaccurate statements.

Mr X complained a senior planning officer suggested in a letter the Council had no duty to protect listed buildings even when specific risks were identified. I have read the letter. It stated the Council had considered such concerns. I do not therefore find the Council at fault.

LGO's conclusion

The LGO did not uphold the complaint as the Council acted without fault.

9. LGO decision – closed after initial enquiries: out of jurisdiction
Decision date – 21 December 2015
LGO main subject area – Planning

Complaint

Mr X complains that the Council failed to give him clear guidance on how to remedy a breach of planning control at his property. As a result he has incurred unnecessary costs in trying to remedy the breach.

Background – Ombudsman's summary

The Council's policy is to give people who breach planning control the opportunity to remedy the breach before taking formal action. This may involve the Council negotiating a solution in line with its planning policies. The Council's policy is not to disclose the name of a person who reports a possible breach of planning control.

A person can apply for a certificate of lawfulness if there has been a change of use to their property and that change of use has been continuous for 10 years or more. If the Council grants the certificate it means the change of use is lawful and it cannot take enforcement action.

The Council started a planning enforcement investigation into Mr X's property as it had concerns about a possible breach of planning control at his property.

Officer A inspected Mr X's property and noted he was storing materials inside and outside the property. He considered this amounted to a material change of use of the property which it did not have planning permission for. Officer A also noted Mr X was

breaching the conditions of the planning permission for his property by using the garage for storage and storing materials outside.

Following the site visit officer A wrote to Mr X. He explained why he considered there was a breach of planning control. He said he did not believe the Council would grant planning permission to regularise the breaches of planning control but Mr X should seek his own independent advice. He agreed to allow Mr X two months in which to tidy the site but said he was sceptical Mr X could avoid the need for enforcement action. He recommended Mr X sought commercial premises.

Mr X sent an email to officer A setting out what action he intended to take. Officer A replied and advised the measures set out by Mr X would go a long way to showing the business use of the property was ancillary to the residential use of the property. He also said he could not agree to Mr X using the garage as storage as that would breach the conditions of his planning permission. Office A said the only way round this would be for Mr X to apply to remove the condition of the planning permission. He also said the grant of a certificate of lawfulness was another option. This meant the condition could not be enforced on the basis it had been breached for a continuous period of 10 years.

Two months later officer A contacted Mr X. The purpose of this was to arrange a further site visit to see if he had tidied up the site to the extent his business could be considered to be ancillary to the residential use of the property.

Mr X replied to say he had tidied the site and moved his business to a commercial unit. He agreed to a site visit.

Officer A and officer B visited Mr X's property. Officer A's site visit notes record that improvements had been made but some rooms and the garage were still being used to store goods. The notes also record Mr X telling the officers the business use of the property had been ongoing for more than 10 years.

Following the site visit officer A wrote to Mr X setting out the Council's position. He said that he would leave the investigation open as Mr X was still in the process of moving to commercial premises and the business activity exceeded that which could be considered as ancillary to the residential use of the property. Officer A also recommended Mr X applied for a certificate of lawfulness and what evidence he would need to provide to do so.

Mr X made a complaint to the Council as he considered officer A had failed to give clear guidance so he could prevent enforcement action. He also complained the Council was harassing him and the enforcement investigation was corrupt.

The Council considered Mr X's complaint though its two stage complaints process. The Council did not uphold his complaint at stage one so Mr X requested it be escalated to stage two. Officer B and officer C visited Mr X in response to this request. After the visit officer B wrote to Mr X to say she considered that there was a material change of use at his property which he did not have planning permission for. She set out a number of ways in which Mr X could remedy the breach of planning control. These options included a range of ways Mr X could reduce the business use of the property or apply for a certificate of lawfulness.

Officer C responded to Mr X's complaint. He found that officer A had not given Mr X a clear action list for addressing the breach in the way officer B had. He did not uphold Mr X's complaints of harassment and corruption.

LGO's conclusion

The Council was at fault as it failed to give Mr X a clear list of action he needed to take to remedy a breach of planning control. The Council apologised to Mr X which was sufficient to remedy the injustice to him. Mr X complained that the Council's enforcement investigation was corrupt. The LGO did not investigate this complaint as corruption is a criminal matter and not one which the Ombudsman can deal with.

10. LGO decision – closed after initial enquiries: no further action
Decision date – 18 September 2015
LGO main subject area – Planning

Complaint

The complainant, Mr B, said the Council was wrong to approve his neighbour's planning application to extend their property. Mr B said the extension is over development, against the covenants in the title deeds and would lead to a loss of light to his property.

Background – Ombudsman's summary

The Council received a planning application from Mr B's next door neighbour. The application is to build a single storey extension to the bungalow.

Mr B objected to the application and said the extension would be overbearing and cause a loss of light to a window on the side of his property. Both Mr B and the parish council also objected on the grounds the street was built as sheltered housing for single and dual occupants over the age of 50. They were concerned the extension would substantially increase the footprint of the property and be out of keeping with the area.

Council officers considered the planning application and decided to approve it. While Mr B disagrees with that decision, the Ombudsman can only criticise the Council if there was fault in the way the Council made its decision.

Further investigation of the complaint is unlikely to find fault by the Council. This is because officers considered the impact of the proposed development on the local area and specifically on neighbours including Mr B. Officers decided there were no planning reasons to refuse the application and explained their reasoning in a delegated officer report. When considering the impact of the extension on Mr B's amenity, officers noted it would lead to a loss of light to his bathroom window. But as this window is opaque and not serving a habitable room, officers decided the loss of light was not so severe as to warrant refusing the application. That is a decision officers are entitled to make and there are no reasons to criticise the way officers have made their decision.

While Mr B says there are covenants on the property that prevent this type of development, that is not a material planning consideration the Council could take into account. Planning permission does not overrule a restrictive covenant. If Mr B believes his neighbour is in breach of the covenant by building the extension, he can take legal advice to establish whether he can take a private action against his neighbour.

LGO's conclusion

The Ombudsman would not investigate this complaint because there was not enough evidence of fault by the Council.

11. LGO decision – report issued: not upheld, no maladministration
Decision date – 01 December 2015
LGO main subject area – Finance

Complaint

The complainant, Mr X, said the Council should have investigated his complaint about a parish councillor. He said the Council's procedure for investigating such complaints allows it to do anything it likes and then hope people do not take their complaints further. He asked for the Councillor to make a public apology.

Background – Ombudsman's summary

Mr X is a member of a political party. He was attending a meeting of a town council, as a member of the public. A councillor (who I will call Councillor Z) suggested a proposed policy was racist, like the policies of Mr X's party. Mr X stood up and asked Councillor Z to repeat what they had said. Councillor Z did so and made some hand gestures which Mr X and other interpreted as obscene.

Mr X complained to the District Council that Councillor Z had breached the Code of Conduct for Councillors. The Council did not acknowledge Mr X's complaint or tell him how it would consider it. Mr X had to contact the Council several times to find out what was happening.

The Council followed its policy on investigating such complaints. This policy is based on a statutory policy provided by the Government. The Monitoring Officer asked Councillor Z for his comments. As what Mr X had said seemed clear the Officer did not ask Mr X for further comments.

Councillor Z sent an apology to Mr X, for any offence that he had inadvertently caused to him by his hand gestures, which he said were indicating his view that Mr X was a 'small man'.

The Council's decision on Mr X's complaint was the comment had not been that Mr X was racist, but that his parties' policies were. The Council felt the remark was within the acceptable parameters of political debate.

It agreed Councillor Z's gestures could be a breach of the Code of Conduct. But it felt the breach was not so significant to justify spending public money on an investigation. As Councillor Z had agreed their conduct was ill advised and apologised the Council decided no further action was needed.

Mr X complained there had not been an investigation and Councillor Z was lying about what happened. He said the Council should not be using cost as a reason not to investigate. In response the Council said given the weak sanctions available it could

spend time and effort reaching a definitive conclusion, but then only be able to issue a weak warning to the Councillor. It did not think this was a good use of public money.

I suggested to the Council it would be good practice for the Monitoring Officer to acknowledge complaints about Councillors and give the complainant an outline of the timescales and what may happen next. The Council agrees and will do this in future.

LGO's conclusion

The LGO could understand why Mr X was unhappy with the Council's decision not to investigate the complaint. However the Council had followed its policy, based on Government guidance, and had come to a reasoned decision. As the LGO could not say there was fault with how the decision was made, the LGO's decision was not to investigate this complaint.

12. LGO decision – report issued: not upheld, no maladministration
Decision date – 03 September 2015
LGO main subject area – Finance

Complaint

Mr X's complaint related to a series of Discretionary Housing Payment (DHPs) applications he had made to the Council while going through a difficult financial and personal time. Mr X complained the Council:

a) Failed to properly and fairly consider his DHP applications;

b) Failed to take into account his mental health conditions when dealing with him and his applications;

c) Discriminated against him when dealing with his second DHP application.

Mr X said as a result of the Council's failings he and his family members suffered hardships they would not otherwise have endured. Mr X said he had been caused distress by what he considered to be the Council's discriminatory behaviour towards him.

Background – Ombudsman's summary

Mr X was in financial difficulty from June 2014 onwards. He was renting a private home for his family. He signed a new tenancy to stay at the property in July 2014. The rent was £1,700 per month.

Mr X was entitled to apply for DHP to help with his as he was receiving Housing Benefit (HB) at the time. He received the initial 13 weeks of full rent, which was £390 a week. When that period ended in September, his HB fell to the local standard rate for the two-bed property his family was determined to require to be properly housed. Mr X then had a rent shortfall of £200 per week.

Mr X first applied for a DHP on 24 October 2014. Mr X asked for the DHP until February 2015 when he expected to be back on his feet without benefits. Mr X was spending £400 more than his total income at the time.

The Council refused to pay Mr X any DHP. It sent a letter to Mr X explaining its decision on 27 November 2014. Mr X asked for the decision to be reviewed on 2 December 2014. On 8 December Mr X sent a letter which confirmed he had rent arrears of £17,000. The officer reviewing the DHP refusal considered Mr X was living beyond his current means. But the officer decided to give Mr X a DHP of £50 per week from 9 September until 23 February 2015. Mr X had confirmed he would be the beneficiary of some funds from a family trust by February. The Council confirmed this DHP award on 17 December 2014.

After further correspondence with the Council, Mr X asked for the decision to go before the Council's DHP appeal panel. The Council confirmed the hearing would be on 26 January 2015.

Before the appeal, Mr X emailed the Council in December claiming the Council had discriminated against him. He did not allege the discrimination was on the grounds of mental health issues. The Council denied its officers had discriminated against Mr X. Mr X sent further emails in December. On 6 January, he sent a further email stating that the situation had caused him and his family great stress which was affecting his health and ability to work, and he had an appointment to see his GP.

The 26 January panel appeal hearing decided to award Mr X a further £50 per week, payable from 9 September 2014 to 23 February 2015. On 6 February Mr X told the Council he would like to apply for DHP again. He was intending to move to another privately rented house which had a rent of £1,300 per month. The Council advised it may help with his moving costs, but that he would need to consider moving to a property which would be met by the standard HB amount. Mr X did not make a further DHP application.

Mr X complained to the Council on 9 June 2015 about the way it had dealt with his first DHP application. He said the Council's treatment of him had worsened his mental health. He wanted to reapply for a DHP, or Judicially Review the Council.

Mr X submitted a second DHP application on 11 June, asking for £200 per week. He stated he had depression, bipolar disorder, and a previous diagnosis of Post-Traumatic Stress Disorder (PTSD). On 23 June the Council asked him for more details of his mental health problems, and whether he had received a formal diagnosis of any condition.

Mr X told the Council also on 23 June that his parents would be buying a house and renting it to him for the maximum HB rent amount his family could receive. He told the Council he had started mental health treatment. An officer considered Mr X's application and recommended the Council should pay Mr X approximately £200 per week from 23 February to 17 July 2015. That officer took the view the amount requested was not excessive and that Mr X had made efforts to reduce his family's living costs.

The Council did not follow the officer's recommendation and took a different view on the same information. On 7 July the Council wrote to Mr X declining his DHP application. Amongst the second officer's reasons was that Mr X had received a diagnosis of mild depression, not the mental health conditions he claimed. The officer considered £200 per week was excessive and the family was not at risk of homelessness, given the parents' plan to buy a property for them, and the time it would take for any eviction process to end.

Mr X appealed on 9 July. He said the drugs prescribed to him indicated he had bipolar. The Council declined to review the officer's decision but invited Mr X to lodge an appeal to the DHP panel. Mr X asked for a further appeal. The appeal was held on 12 August and sent its decision to Mr X the next day. The panel said it had taken into account all the evidence presented, including medical information, but decided not to award Mr X any further DHP. Mr X brought his complaint to the Ombudsman.

LGO's conclusion

The LGO did not find fault in the way the Council dealt with Mr X's applications for DHP awards. The LGO did not see evidence of the Council discriminating against Mr X during the DHP process or the decisions it reached.

13. LGO decision – upheld: maladministration, no injustice
Decision date – 29 February 2016
LGO main subject area – Planning

Complaint

The complainant, Mr X, complained that the Council failed to properly consider the impact on his property and wrongly granted planning permission for a two story rear extension at his neighbour's property.

Mr X also complained the Council delayed in responding to his complaint.

Background – Ombudsman's summary

Mr X's neighbour applied for planning permission to build a two storey front, side and rear extension. Mr X did not object to the extension in its entirety, but objected to the two storey rear element. He was concerned this would overlook his rear garden and affect his privacy. Mr X made further comments asserting the two storey rear extension would be unacceptable because:

- The overall height and projection would be invasive;
- It would reduce the light to his kitchen, utility room and toilet;
- The window in the rear gable end would be invasive to the privacy in his garden;
- It would reduce the light onto his landing; and
- The two storey section would be out of keeping with the other houses in the street.

A planning officer (Officer 1) considered the application and visited the site. There is no contemporaneous record of what Officer 1 noted on the site visit. But the Council has provided copies of the photographs Officer 1 took during this visit. This includes a photograph of the side of Mr X's property which faces the proposed extension.

Having assessed the application Officer 1 prepared a report recommending approval. The report states the main considerations when determining this application are:

- Whether the scale and design of the proposed extensions would be in keeping with the character and appearance of the site and surrounding area; and
- Whether the proposed extensions would impact neighbouring amenity.

The report considers each in turn. It refers to Mr X's concern the extension would be out of character but notes there is a precedence of two storey side and single storey front extensions along Mr X's street. Officer 1 also considered the varied architecture in the locality would mean the proposal would not result in a material change in character or appearance.
In considering the impact on neighbouring amenity the report refers to Mr X's concerns about outlook and access to sunlight. The report states:

> "*The southern orientation of the rear elevations of [the application site] and its neighbouring properties, the rear projection of the two story rear element and the distance between [the application site] and [Mr X's property] would mean that access to sunlight would not be reduced to an unacceptable level. Outlook of neighbouring properties would not be reduced to an unacceptable level also, with the proposed rear projection not being within 45 degrees when conducting a line of sight analysis.*"

Officer 1 considered there was an established relationship between the properties which resulted in a degree of rear overlooking. Although the windows on the second storey of the rear elevation would have oblique views of neighbouring gardens, the officer considered the impact on garden privacy was acceptable.

The Council approved the application by delegated authority. Mr X was unhappy with the Council's decision and asked it to reconsider. Mr X asserted the planning officer had not given fair consideration to the loss of sunlight and privacy at his property. He was also unhappy Officer 1 had not contacted him about his comments on the application. The Council's response confirms Officer 1 took account of Mr X's objections during the site visit. During this visit Officer 1 noted a number of windows in Mr X's property which could be affected by the proposed extensions. These windows were not to primary living spaces such as bedrooms or a living room. The Council states it was also apparent the kitchen had more than one window.

The Council accepted the proposal would affect the sunlight entering Mr X's property but did not consider the impact would be unacceptable to the point of refusing permission. In addition the Council stated the type and level of overlooking from the proposed extension was commonplace, especially in residential developments like Mr X's street. Had the window been in the side, rather than rear elevation it would not have been acceptable. But the Council concluded the loss of privacy from the rear facing window would not reduce neighbour privacy to an unacceptable level.

Mr X was not satisfied with the Council's response and made a formal complaint. He maintained the two storey rear extension was out of keeping with the character of the street. He felt the Council should have viewed the proposal from his property as he was the only one affected by the rear extension.
Mr X also questioned the Council's assessment of the loss of sunlight to his property. The Council had incorrectly assumed his kitchen had more than one window. Mr X felt this was a gross error which suggested Officer 1 had not properly considered the impact on his property. He also disagreed with the Council's assessment on the loss of privacy.

In its response the Council confirmed the two storey extension complied with the Council's relevant development policies and design guidance. It apologised for the incorrect assumption regarding Mr X's kitchen windows. But did not consider this materially altered the assessment of the impact of the extension with regard to loss of light.

The Council considered the decision to grant planning permission was soundly based having taken account of the particular circumstances of the development and the relationship with Mr X's property. As Mr X felt the Council had not adequately addressed his concerns he asked the Council to consider the matter further. Mr X also complained about the delay in responding to his complaint. The Council's response acknowledged it had not met its response times on several occasions and apologised for this.

As part of the review of Mr X's complaint the Council had asked Officer 1 to consider the application afresh based on only one window to Mr X's kitchen. Officer 1 confirmed the national planning policy framework and planning rules would still point towards approval. The Council did not uphold Mr X's complaint and refused his request for compensation.

In response to my enquiries Mr X has reiterated his concerns about overlooking of his patio and the loss of light to his kitchen. He does not consider either to be acceptable.

LGO's conclusion

The Council's error regarding the number of windows in Mr X's kitchen amounted to fault, but there was no evidence that but for this error it would not have granted planning permission. The Council's failure to respond to Mr X's complaints and correspondence was also fault and the Council provided an appropriate apology for this.

14. LGO decision – closed after initial enquiries: out of jurisdiction
Decision date – 06 June 2016
LGO main subject area – Planning

Complaint

The complainant, Ms B, said there had been a total lack of openness and objectivity by the Council when considering planning applications at a site near her home.

Background – Ombudsman's summary

It is not the Ombudsman's role to police or oversee how councils run their departments. While the Ombudsman can consider complaints about specific actions where there is a claimed fault causing an injustice to the complainant, she would not investigate a broad complaint of misconduct or failures at management level. The Ombudsman also has no power to take or recommend action against specific members of staff.

Ms B's complaints about a lack of openness and objectivity by council officers relate to planning applications it received for development near her home. I have considered whether the Ombudsman should investigate complaints about how the Council has made its decisions on these planning applications.

In 2013, the Council received a planning application to demolish existing buildings and build two residential dwellings. The Council approved the planning application in August 2013. Ms B judicially reviewed the Council's decision to approve the planning application. In April 2014 the judge issued his judgment, that none of Ms B's grounds were reasonably arguable.

This complaint is late, because the Council's decision was made more than 12 months ago. There are no good reasons to investigate this late complaint. This is because the Ombudsman cannot consider a complaint about the Council's decision to approve the application, or the way it presented evidence to the judge.

The planning application and the Council's decision to approve it has been the subject of court proceedings and the Ombudsman has no power to investigate such complaints. Even if, as Ms B states, some aspects of the application were not considered by the judge or the Council presented misleading evidence to the judge, knowing it had failed to disclose documents of relevance to the decision, the Ombudsman still has no power to consider this matter.

Also, given Ms B lives a short distance from the site and does not share a boundary with it, there is no significant injustice to her from the Council's decision to approve that planning application.

Ms B has raised a complaint about the way the Council has dealt with the location of a footpath near the application site. The legal public right of way ran across the site for development, although custom and practice of footpath users was to use a path outside the site area. This alternative path was noted in the Council's records as being the definitive path.

Ms B says the applicant failed to correctly answer questions on the application form. The Council has now been through the process to "stop up" the footpath. Again, this was considered as part of the judicial review and relates to matters that happened more than 12 months ago. The complaint is therefore old and there are no good reasons for the Ombudsman to now consider it. The footpath as commonly used is still accessible. And the loss of the legal route in favour of the "as used", footpath has not caused Ms B a significant personal injustice.

LGO's conclusion

The LGO would not investigate this complaint. The Ombudsman cannot consider complaints that are more than 12 months old or have been the subject of court proceedings. And where the Ombudsman did have power to investigate, there was not enough evidence of fault or of a significant injustice to Ms B to warrant an investigation.

15. LGO decision – not upheld: no further action
Decision date – 10 June 2016
LGO main subject area – Planning

Complaint

Mr A complained about the Council's handling of planning matters in relation to the development of two properties in his road. The Council had wrongly allowed the applicant, Mr X, to obtain permission to develop his land when previously it had refused permission for the same development. The development would impact adversely on the character of the area and the lives of residents.

Background – Ombudsman's summary

Mr A lives in a cul-de-sac where Mr X owns two properties which I shall refer to here as 1 and 2 Main Street. In 2014 Mr X applied for planning permission to build 2 chalet-style bungalows in the large rear gardens of 1 and 2 Main Street.

The Council refused the application on the grounds that the development would harm the established character of the area and because of the adverse impact on future residents of 1 Main Street.

In February 2015 Mr X resubmitted the application with some modifications but the Council decided the proposal would detract from the character of the area and refused permission. Mr X appealed against the decision to the Planning Inspector.

Mr X then applied for a Certificate of Lawfulness for a large outbuilding for 1 Main Street. In June 2015 the Council confirmed the outbuilding fell within permitted development rights for which planning permission was not required.

In July 2015 Mr X submitted a further planning application to build one bungalow in the rear garden of 1 Main Street and permission was granted in September. In reaching his decision under delegated powers, the case officer took into account the fall-back position provided to the applicant by the Lawful Development Certificate (LDC) for the outbuilding and concluded the proposed development *"would not be harmful to the character and appearance of the surrounding area and would not materially harm the living conditions of nearby residents or result in conditions prejudicial to highway safety".*

In October Mr X submitted a second Certificate of Lawfulness application for an outbuilding for 2 Main Street. At the Council's request, Mr X provided additional information to support the size and use of the building. The officer dealing with the case considered the examples of appeal decisions Mr A had sent in to support his view that the application should be refused. However, the officer decided the application demonstrated a clear and genuine need for the outbuilding and that it would be used for purposes incidental to the enjoyment of the main dwelling house. Having decided the outbuilding met the criteria for permitted development, the Certificate was granted in December.

Mr A complained to the Council about its handling of the applications in relation to 1 and 2 Main Street and in February 2016 it provided its final response to his complaint. The Council did not uphold the complaint. It concluded that the planners had acted correctly

in determining each application step independently of other steps and that at all times had weighed up the various factors in coming to their view.

In April, Mr X's appeal to the Planning Inspectorate against the Council's refusal of his resubmitted application for two bungalows was successful. In allowing the appeal the Inspector took into account that permission had been granted for one bungalow so a form of backland development had been established and it was a material consideration which carried some weight in her determination of the appeal.

LGO's conclusion

Without evidence of fault by the Council the Ombudsman would not pursue the complaint.

Appendix Three

LGO decisions – 1 April 2015 to 31 March 2016 – Vale

1. LGO decision – closed after initial enquiries – no further action
Decision date – 5 May 2015
LGO main subject area – Finance

Complaint

The complainant, Ms B, complained about the way the Council dealt with her council tax account. She said the Council should not have been able to tell her that she owes nothing and then change its mind. Miss B was seeking compensation for the stress she said she had suffered as a result of what the Council had done.

Background – Ombudsman's summary

In August 2014 the Council sent a council tax bill to Ms B. The bill showed the Council had applied an unoccupied unfurnished property discount to Ms B's account so a nil balance was due. What the Council should have done was to apply the exemption for one month only because this is the Council's maximum period for this type of exemption.

The Council issued a new bill later on in August 2014. This showed a balance due of over £800. Miss B wrote to the Council after receiving the new bill. She said as she already had a nil balance bill she would dispose of other correspondence.

Just over a month later the Council wrote to Ms B at the address she had given on her letter. The Council told her the second bill superseded the first one. In October 2014 the Council sent a council tax reminder to Ms B because it had not received an instalment payment. The bill stated failure to pay will result in legal proceedings.

Ms B then wrote to the Council. Her letter heading showed her new address. She said in her letter "Do NOT threaten me with legal action this is clearly YOUR mistake and up to YOU to resolve it." The Council replied ten days later. It sent the letter to Ms B's previous address. The Council said the full charge for an unoccupied and empty property was due after one month. The Council said it was sorry for any confusion the bills may have caused.

Ms B replied in November 2014. Her letter was dated a month after the Council had last written to her. She said she did not live at the address the Council had written to and she had given it her correct address. She said she was the sole owner of the property. She told the Council its previous letter was confusing because it said the adjustment bill showed it had awarded a discount from July 2014 to August 2004. She asked the Council to explain what was happening and for a breakdown of its calculations.

In its reply to Miss B the Council apologised for putting 2004 instead of 2014 in its letter to her. The Council said it needed Ms B to clarify the exact date she moved into the property. It told her it would award a 25% discount if she was the only occupant from that date. The Council said the property had to be her sole or main residence.

In December 2014 Ms B complained about the way the Council had dealt with her council tax. She said the Council had refused a 25% discount and put ridiculous demands on her.

The Council has made some errors in this case. It sent an initial bill which showed it had wrongly applied the empty property discount for more than one month. It delayed replying to the letter Ms B sent after she had received the second bill. It wrote to Ms B at her previous address and it gave an incorrect date in a letter to her. But the level of injustice these errors have caused to Ms B is not significant enough to justify the Ombudsman's involvement. The Council has a statutory duty to levy and collect council tax due. So, if a council makes a mistake with a council tax account the Ombudsman would not criticise it for issuing a new bill superseding the original one.

In April 2015 the Council told Ms B if she would confirm she moved into the property when her tenant moved in and she was the sole occupier and so was entitled to the single person discount, it would write off the remaining debt. Ms B says the Council has failed to clarify what main residence status is. She has sent a cheque to the Council for the amount due as a sole occupant of the property.

If Ms B wishes to challenge the Council's decision on her eligibility for a single person discount, it is reasonable to expect her to appeal to the Valuation Tribunal. That is because the Valuation Tribunal is the appropriate body to decide disputed eligibility for the single person discount. The Ombudsman cannot rule on the question of eligibility for the single person discount.

LGO's conclusion

The Ombudsman would not investigate Ms B's complaint because the level of injustice she suffered as a result of the Council's errors was not significant enough to justify the Ombudsman's involvement and it was reasonable for her to go to the Valuation Tribunal to challenge a decision on her eligibility for the single person discount.

2. LGO decision – not upheld: no maladministration
Decision date – 01 September 2015
LGO main subject area – Planning

Complaint

Mr B complained that the Council failed to properly deal with his complaints about two extractor fans attached to restaurants near his commercial premises. He said that because of this, his planning application to build three houses on the site was refused. Mr B complains that the Council then granted retrospective planning permission for one of the fans. Mr B also complained about the Council's decision to grant planning permission for the restaurants in 2000, which included an external door leading to his private land.

Background – Ombudsman's summary

Mr B owns some workshop buildings and land to the rear of two restaurants. In 2015, the Council refused Mr B's planning application to demolish the workshop buildings and build three houses. One of the reasons for refusal was that the odour and noise from a

nearby restaurant extractor fan would have a detrimental impact on the proposed residential development.

Mr B had complained to the Council about this extractor fan in 2011. He believed the owner had installed it without planning permission. The Council told Mr B that the extractor fan was included in the planning application for the restaurant that was granted permission in 2000. It said there was no breach of planning control.

In 2014, the owner of the restaurant applied for planning permission to reposition the extractor fan. The Council granted permission in September 2014. Mr B complained to the Council about it again. The Council then told Mr B that while it had granted planning permission for the restaurant in 2000, it had not discharged a condition relating to the extractor fan. It said that its Environmental Health team had recommended that the Council serve a Breach of Condition Notice in 2005. It told Mr B that legal advice had been sought but it could not explain why a Notice had not been served. The Council told Mr B that the failure to comply with the condition became immune from enforcement action in 2010.

Mr B believes that his planning application to build three houses would have been granted planning permission if the Council had taken enforcement action, either in 2005, or when he complained in 2011. Mr B says that he also telephoned the Council about another extractor fan, on the side of an adjacent restaurant, in 2011. He says that the Council told him that it did not need planning permission.

After Mr B complained again in 2014, the Council investigated and found that this extractor fan did need planning permission. The Council contacted the owner who then submitted an application for retrospective planning permission. Mr B objected to the planning application. He said the fan should not be granted permission because it emitted noxious fumes and fat from a cooking appliance.

The Council granted planning permission in April 2015. Mr B says the Council failed to properly consider his objections to the application. He says the planning application wrongly stated that the fan provided ventilation for a store room, when it actually serves a cooking appliance.

Mr B had complained previously that both extractor fans emitted cooking smells and dripped fat onto the ground. In 2012, the Council wrote to Mr B and explained that it had a duty to take action when it received a statutory nuisance complaint from a resident of its area. But that it could not take any action in this case because Mr B was not a resident; he was complaining as the owner of commercial premises.

Mr B complained about the same matter in 2014. He said that the fans were emitting obnoxious smells and were dripping fat onto the ground creating a problem with rats. Mr B also complained that a security light was shining directly onto his commercial property. The Council investigated and decided that a statutory nuisance did not exist. The Officer explained to Mr B that the extractor fans and light could not be considered a nuisance to a vacant industrial plot. He also told Mr B that there was no evidence of a rat infestation.

Mr B considers the Council failed to deal with his complaints properly. He believes that if it had done so, he would have been granted planning permission to demolish his workshop buildings and build three houses.

LGO's conclusion

The LGO did not uphold Mr B's complaint. In the matters that were investigated, the LGO found no evidence of fault by the Council.

3. LGO decision – not upheld: no maladministration
Decision date – 06 January 2016
LGO main subject area – Finance

Complaint

The complainant, Mr X, said the way the Council collected council tax arrears was unlawful. In particular he stated the summons and the liability order were unlawful.

Background – Ombudsman's summary

Mr X has not paid any council tax for 2015/16. He has also not received any CTR for this financial year. The Council has invited Mr X to apply for CTR and has offered to send a visiting officer to help him complete the form.

The Council served a summons in July and the magistrates granted a liability order in August. The Council has told Mr X it will cancel the summons, and the costs, if Mr X applies for CTR. The Council has told Mr X that if he is entitled to CTR, which seems likely, then his arrears would be greatly reduced, or completely cleared. Mr X has not applied for CTR.

The Council asked the court for a liability order because Mr X has not paid his council tax and has not applied for CTR to reduce his liability. The Council has obtained a liability order. This means the magistrates were satisfied that Mr X owes the council tax. A liability order is a court decision and, although Mr X thinks it is unlawful, I cannot question a decision made by the court. If Mr X thinks there has been a procedural irregularity he can apply to the court to have it set aside.

In addition, while I appreciate that Mr X has strong opinions about the validity of the summons and the liability order, the Council has offered to cancel the liability order, and the costs, if Mr X applies for CTR. This was a fair offer for the Council to make.

LGO's conclusion

The LGO would not investigate this complaint because there was insufficient evidence of fault by the Council and because the LGO could not comment on a decision that had been made by the court.

4. LGO decision – not upheld: no further action
Decision date – 12 October 2015
LGO main subject area – Corporate Strategy

Complaint

The complainant, Mr B, said the Council's actions and attitude towards caravan site licensing enforcement at a property his company manages was unacceptable and unprofessional. He said it did not comply with the law and relevant guidance.

Background – Ombudsman's summary

Mr B's company owns a mobile home park in the Council's area licensed under the Caravan Sites and Control of Development Act 1960. The Act allows council officers access to licensed sites for a purpose under the Act provided they give notice and do not demand access without it. Officers visited the site in July 2015 and wrote to Mr B about several matters after the visit. Mr B complained because the Council had not notified his company or the site manager before visiting.

In its reply to his complaint the Council said the purpose of the officer visit was not to inspect the site under the Act, but to discuss a private matter with a resident. I have seen records about the visit which I cannot share with Mr B because they are about the person who asked for the discussion, which was not connected with the licence. There is not enough evidence of fault by the Council here to warrant investigation.

Mr B does not accept this, and his solicitor says the fact officers raised licensing matters after the visit is evidence its purpose was in connection with the licence. That is clearly a matter of interpretation of the law rather than one of fact, and it would be reasonable for Mr B to ask a court of law to interpret the law. It is not a matter for the Ombudsman.

Mr B also complained about:

- remarks made by an officer on the visit;
- the action the Council took after the visit;
- reports to the police; and
- what he described as harassment and intimidation which made him fear for his safety.

The Council asked for more specific information or evidence about these matters, but without it could do nothing to reply to them. Some of the allegations are for the police as potentially criminal matters, and the Ombudsman would not therefore investigate them.

It would be reasonable to expect Mr B's company to appeal against action the Council might take to enforce compliance with the site licence conditions, as provided under the Act. So, the Ombudsman will not investigate such matters. Mr B's solicitor says his client wants the Council to have a transparent approach to enforcement and for it not to treat other licence holders more favourably. That the Council might be treating others more favourably is not evidence of injustice to Mr B which the Ombudsman will pursue.

The Council has decided in its response to Mr B's complaint not to remove a particular officer from involvement in the matters it is investigating on site as Mr B asked. It is for the Council to decide how to manage its officer resources. It cannot reasonably be

expected to be able to substitute officers in a specialist area of work, even if there was some reason to do so.

Some of Mr B's allegations about the negative attitude of council officers are not specific enough for the Ombudsman to investigate. Nor is there evidence to support them in the limited exchange of correspondence I have seen. It is the responsibility of Mr B's company to comply with the licensing regime. The Council should satisfy itself about that compliance and take action if not. It is Mr B's company's right to use the relevant appeal rights if they cannot agree. There is little or no role for the Ombudsman in these procedures, and not enough evidence of significant injustice to Mr B's company from other matters outside it.

LGO's conclusion

The Ombudsman would not investigate Mr B's complaint because it would be reasonable for his company to use its rights to appeal against any substantive enforcement action. There is not enough evidence of fault by the Council or of it causing Mr B's company injustice in matters outside the enforcement and appeals procedure to warrant the Ombudsman investigating.

5. LGO decision – insufficient evidence for an investigation to be conducted
Decision date – 19 October 2015
LGO main subject area – Corporate Strategy

Complaint

The complainant, Mr X, complained about the Council's refusal to cancel a parking fine. He also complained that he was denied the right to appeal to an independent body**.**

Background – Ombudsman's summary

Mr X parked in a car park on a Friday and bought a ticket. He was attending an event and needed to keep his car in the car park for Friday and Saturday. The ticket machine did not allow him to buy a ticket in advance for the Saturday.

The Council issued an ECN at 8:18am on the Saturday because his car was not displaying a ticket for that day. Mr X bought a ticket at 9.25am which was valid for the whole day. He spoke to the traffic enforcement officer who suggested he appeal.

Mr X appealed. He explained he could not buy a ticket in advance. He also pointed out that the Council had not lost any parking revenue. In response, the Council explained that it had correctly issued the ECN because he was not displaying a ticket during the restricted hours. It said he could have bought a ticket for the Saturday, after 6pm on the Friday. He could also have used the telephone payment system to avoid going back to the car park. The Council gave Mr X another ten days to pay at the reduced rate. It explained it may prosecute if he did not pay.

Mr X said the ticket machine did not say he could have bought an advance ticket after 6pm. He said the Council's decision was unjust and unfair and he wanted an independent appeal. In response, the Council denied it was abusing the law but said it was the driver's responsibility to park correctly. The Council gave Mr X another ten days to pay £40. Mr X paid £40.

LGO's conclusion

The LGO would not investigate this complaint because there was insufficient evidence of fault by the Council.

6. LGO decision – report issued: not upheld, no maladministration
Decision date – 09 December 2015
LGO main subject area – Planning

Complaint

Ms A complained the Council failed to properly consider a planning application for a large development in her village. The Council did not consult the County Council's Care Commissioner about the care home facilities part of the application and failed to consider its sustainability. In granting permission, the creation of jobs, which the care facilities would have provided, was given significance when the site for such facilities was never sustainable.

Background – Ombudsman's summary

The Council's planning committee granted planning permission for a development in Ms A's village involving 100 residential dwellings and the provision of extra care facilities for the elderly.

One of the factors taken into account in coming to the decision to grant permission was the employment opportunities the proposed care facilities would provide. However, subsequently the County Council confirmed the site was not suitable or sustainable as a location for elderly care facilities.

Ms A's parish council submitted a complaint to the Council about its handling of the planning application. It complained that no proper consideration had been given to the sustainability of the proposed care facilities part of the application and that the County Council's Care Commissioner had not been consulted and if he had been he would have expressed the view that the site was not suitable or sustainable for care facilities.

The complaint was considered at the two stages of the Council's complaints procedure but the Council did not accept the parish council's view that the issue of sustainability had not been properly considered. It explained that the report to the planning committee had made clear why the Council could not sustain an "in principle" objection to the proposal and further explained that had the application been for residential dwellings only, rather than dwellings and care facilities, the decision would very likely have been the same.

However, at the second stage of its complaints procedure, the Council did accept that officers should have been more diligent in seeking the views of the relevant County Council officer on the merits of the care home facilities and that it was not good enough to have relied just on general consultation with the County Council when no response to the care home aspect of the application had been received.

Dissatisfied with the Council's response to the parish council, Ms A made her own complaint to the Ombudsman, citing her personal injustice as that of being denied employment opportunities and care facilities which she and her family might have used.

LGO's conclusion

Given the limited fault by the Council, and the limited injustice caused to Ms A, the Ombudsman would not pursue the complaint any further.

7. LGO decision – not investigated: insufficient injustice to justify an investigation
Decision date – 02 November 2015
LGO main subject area – Corporate Strategy

Complaint

The complainant, Mr X, complained the Council had not cancelled an Excess Charge Notice (ECN) he had received for parking without displaying his Blue Badge.

Background – Ombudsman's summary

Mr X said that:

- he has a valid Blue Badge which he normally uses for free parking in a council car park,
- his medical condition and medication can make him forgetful,
- he has in the past forgotten to display his blue badge and the Council has cancelled an ECN because of his condition,
- more recently, he parked without displaying his Blue Badge and got another ECN which the Council has refused to cancel on appeal,
- the ECN costs £35 if paid within a two week period and increases to £70 if paid later than that,
- he is worried about the cost and inconvenience of further ECNs, should he continue to forget to display his blue badge,
- he would like the Council to cancel the current ECN.

The Council has said that it has already cancelled one ECN in the last year and would not cancel this one. It has, however, agreed to extend the period during which Mr X can pay the lower price and has agreed he can pay it in four instalments.

LGO's conclusion

The LGO would not investigate Mr X's complaint about the Council's refusal to cancel an ECN. The injustice to Mr X was not enough to justify an investigation and an investigation would be unlikely to achieve more for Mr X than the compromise the Council has already agreed.

8. LGO decision – not upheld: no fault
Decision date – 22 March 2016
LGO main subject area – Planning

Complaint

The complainant, Mr X, complained there was fault in the way the Council dealt with two planning applications concerning a neighbouring property. Specifically, Mr X complained a planning officer misled the local parish council with the intention of leading it to withdraw its objection to the first application, which would otherwise have been considered by the Council's planning committee.

Background – Ombudsman's summary

A neighbour to Mr X's property made a planning application to extend a cottage and build another property in the garden. Mr X and others objected to the proposed development. The Council approved the application. The neighbour then made a second application to vary a condition of the permission to add roof lights and flat-roofed dormer windows in the new property. The Council's planning committee refused the second application and the neighbour appealed to the planning inspectorate. The planning inspector dismissed the appeal as the Council had meanwhile granted permission after a third application that substituted pitched roofs on the dormer windows.

Mr X complained to the Council. The Council considered five points of complaint and a question. It wrote a final response to Mr X on 2 April 2015. I deal with the five complaints in turn.

The Council supplied a webcast of the planning committee meeting that considered the second application. I have viewed this webcast. A councillor showed concerns about the attitude of the neighbour. This was because he had submitted the second application in order to add roof lights and dormer windows shortly after the decision on the first application. Another stated that something must have gone on behind the scenes.

Councillors were entitled to refuse the application, which they did. However, the opinions or suspicions of councillors are not the same thing as evidence of fault, despite Mr X's view to the contrary. The correspondence I have seen shows no evidence of fault by the Council in the way the planning officer conducted the planning process.

Given the planning committee rejected the second application, there is an argument that it would also have rejected the first had it considered it. This is not certain. But what is more important is whether the planning committee should have had the opportunity to consider the first application. If not, speculating on the planning committee's likely decision would be irrelevant.

The Council's scheme of delegation sets out the grounds on which an application must be considered by the planning committee rather than a planning officer. One of these is an objection by the relevant parish council. The local parish council withdrew its objection to the application. I deal with Mr X's allegation about this below, but once the parish council withdrew the objection, the planning officer could decide the application herself.

The Town and Country Planning Act 1990 sets out a range of relevant planning matters planning authorities must consider. However, it allows planning authorities to decide what weight to give to those matters. The Ombudsman cannot therefore criticise the weight a planning authority gives to relevant matters, only the failure to do so.

Although Mr X takes the view the planning officer did not consider valid objections, her report shows she considered relevant planning matters. These included the size and scale of the new development and its suitability in the streetscape in an historic environment. I do not therefore find the Council at fault here.

LGO's conclusion

The LGO did not uphold the complaint as the Council acted without fault.

9. LGO decision – not upheld: no further action
Decision date – 29 April 2016
LGO main subject area – Planning

Complaint

Mr X complained that the Council's consideration of a planning application on land to the rear of his property lacked transparency as he considered the officer who recommended approval of the application had a conflict of interest.

Background – Ombudsman's summary

A developer submitted an application to the Council to build a two bedroom property on land to the rear of Mr X's property. Officer A, the case officer, assessed the application. She considered the application should be refused. She came to this view as she considered:

- the development site was too small in comparison to other plots in the vicinity
- development was cramped with insufficient amenity standards for occupiers
- insufficient parking
- the contribution of one house to the housing supply shortfall did not outweigh the harm when considered against the strategic housing applications in the emerging local plan and the housing policies of the adopted local plan.

Officer A issued a draft report to the developer. The emails between officer A and the developer show he challenged her reasons for refusal. He considered the refusal reasons were not in accordance with the national planning policy framework (NPPF) which is the Government's guidance on determining planning applications.

Officer A discussed the application with officer B who was her line manager. In response to my enquiries the Council has said officer B assessed the application in light of paragraph 14 of the NPPF and came to a different conclusion to officer A.

Paragraph 14 of the NPPF provides there is a presumption for sustainable development. It also says where relevant policies are out of date, councils should grant permission unless any adverse impacts of doing so would significantly and

demonstrably outweigh the benefits. Paragraph 49 of the NPPF says that a councils housing policies cannot be considered to be up to date if it does not have a five year supply of housing land. The Council does not have such a supply.

The Council has said it had previously interpreted paragraph 14 in a different way that had led to it refusing planning permission for developments. The developers appealed against these decisions which the planning inspectorate upheld and granted planning permission.

The Council proposed to determine the application by delegated decision. This means the application is not considered by the planning committee. It is decided by the head of planning in consultation with the chairman of the planning committee.

Emails between officer A and the developer show the application was discussed with the chairman of the planning committee but a decision was deferred. This was because the highways authority had objected to the application on grounds of whether the development would have sufficient parking and whether the access was sufficient. Officer B visited the site to determine if a refusal on the grounds of insufficient on street parking could be sustained and also asked the developer to supply more information.

Some months later the Council decided to approve the application. The officer's report set out his consideration of the application. He considered:

- the development is relatively small and would be in keeping with the area;
- the size of the garden met the Council's standards and the layout provided sufficient space for a two bedroom property;
- amendments to the plans created a better outlook for the occupants of the proposed development;
- there was sufficient space for parking to gain access to the site and sufficient on street parking. So the Council considered it the Highway Authority's objection could be sustained;
- the proposed property would not have a great impact on neighbour's amenity.

So the Council considered the potential adverse impact of the development was not significant or demonstrable.

The Council issued the decision notice stating it had approved the application. But the decision notice gave reasons for refusal. Mr X made a complaint to the Council about the confusion caused by the incorrect decision notice and the difference of opinion between officers A and B. He also considered officer B had a conflict of interest as he knew the developer.

The Council considered Mr X's complaint through its complaints procedure. It upheld his complaint about the incorrect decision notice and apologised for the errors. It also explained planning officer can come to different professional judgements about an application and this was not fault.

The Council also explained the developer and officer B had worked together some 27 years ago. But it considered there was no conflict of interest as they do not have a

professional or social relationship. The Council also said they were professional adversaries.

Mr X made a complaint to the Ombudsman as he considered the Council's response was contradictory as it said officer B and the developer did not have a relationship. But then said they were professional adversaries. Mr X considered this showed officer B had a conflict of interest.

In response to my enquiries, the Council has said that an officer who knows the applicant in a social capacity would not be involved in the consideration of their application. But it did not consider an officer to have a conflict of interest if they know the applicant in a professional capacity.

The Council has said officer B had contact with the developer in 2013 at a meeting but there had been no contact since. Officer B has only had professional contact on no more than two or three occasions in the last 27 years.

LGO's conclusion

There was no evidence to indicate that officer B had a conflict of interest when considering a planning application for an applicant who he knew in a professional capacity.