

Name of meeting: Corporate Governance and Audit Committee

Date: 23 September 2020

Title of report: Corporate Customer Standards Annual Report 2019-20

Purpose of report:

To update Corporate Governance and Audit on complaint handling for the year 2019-20, a review of the Ombudsman and Third Stage Complaints received. The document also contains details of the Whistleblowing Complaints that have been received.

For Corporate Governance and Audit Committee to consider the content of the report, and to advise if they would like any additional areas for the next interim report.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	No
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Strategic Director</u> & name Is it also signed off by the Service Director for Finance IT and Transactional Services? Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Yes Julie Muscroft 03.09.2019
Cabinet member portfolio	Graham Turner

Electoral wards affected: all

Ward councillors consulted: none

Public or private: Public

Corporate Customer Standards Annual Report 2019-20

1: Purpose of report

To update Corporate Governance and Audit Committee about complaint performance during the previous financial year.

The report is informed by the Local Government Ombudsman Annual Report which is published early in July, and also incorporates information about third stage complaints handling, some key examples of learning and a summary of the Whistleblowing concerns that have been received.

2: Background processes

Appendix 1 contains details of the council's complaint processes.

3: Complaint Statistics – how is Kirklees performing?

Ombudsman Formal Report

The ultimate sanction that the Local Government Ombudsman can apply is to issue a formal report against a council. These are usually issued where a matter is very serious and the council clearly has a number of process issues to consider and resolve, where there is a public interest in matters and learning can be shared with other councils, or where the council clearly has not reflected or changed its procedures after issues had been highlighted in the past.

In 2019-20, there were no formal reports issued against Kirklees Council.

Ombudsman Upheld Complaints

Overall numbers are very similar to previous years.

In 2019-20 23 cases were formally investigated (24 in the previous year. There were 12 upheld complaints by the Ombudsman (2018/19: 13 cases).

Details of the upheld complaints are provided in [Appendix 2](#) with the summary of the case provided by the Ombudsman.

The proportion of cases upheld by the Ombudsman in Kirklees (52%) is lower than average for comparable authorities (67%) and is slightly better than last year (54%). This is against a backdrop where overall numbers of cases being upheld by the Ombudsman have increased.

100% of recommended actions were completed in timescale.

The third measure published by the Ombudsman appears somewhat arbitrary; the percentage of upheld cases where the remedy offered by the council equals what the Ombudsman might also conclude. It does not take account of satisfactory

remedies that do not reach the Ombudsman. This figure for Kirklees is 8% in 2019-20 (or one case), it was 15% (or two cases) last year.

We have continued to work with services to ensure they consider what an appropriate remedy might be if they have identified an error (in line with what the Ombudsman might conclude), and more actively seek to resolve complaint matters.

Comparison with other councils: Ombudsman Investigations

We can also compare Kirklees performance against West Yorkshire as a whole. As the Kirklees population is approximately 19% of the West Yorkshire total, we can use this as a basic measure to see whether the council attracts more or fewer complaints than may be anticipated. In line with previous years, Kirklees attracts fewer such complaints than might be anticipated by population (and this trend has been more pronounced this year).

LA Area	Number of 2019-20 Omb investigations	Number of 2019-20 Omb Upholds	Percentage Upheld
Leeds	49	31	63%
Bradford	35	21	60%
Calderdale	19	14	74%
Wakefield	19	7	37%
Kirklees	23	12	52%
Kirklees Proportion	23/145 = 15.8% (19% of overall population)	12/85 = 14.1% (19% of overall population)	Ave West Yorks 58% Ombudsman peer group 67%

Standard statistical caveats apply, in that with small numbers, as few of two extra or fewer investigations can make quite a difference to the figures.

It should be highlighted that we always promote the next stage of the complaints process, so residents are aware of their right to progress their concerns to the Ombudsman. While some residents might not have confidence in the Ombudsman process, meaning figures are deflated, this would be common across all councils so the proportions should still stack up.

Complaint Volumes

Appendix 3 contains historical comparison data regarding the number of complaints received at third stage.

Unfortunately, the Ombudsman has altered the way it presents information this year which makes comparing it to previous years difficult.

The number of third stage complaints received tailed off at the end of the year (presumably through the impact of Coronavirus), so it is difficult to assume the drop in third stage complaint numbers this year is significant.

The corporate customer standards section have been involved with almost 800 cases in the year in total. This is slightly more than the year previously.

Additional work beyond third stage and Ombudsman undertaken by the department includes:

- giving advice to services about complaints handling,
- looking at resolving complaints presented to the Chief Executive, Directors and those that appear complex at an early stage,
- co-ordinating replies between services where the complaint straddles a number of areas to ensure complaint responses are collated.
- dealing with repeated enquiries/vexatious complaints

The numbers considered by the section has increased considerably over recent years, and it is likely this early intervention work has contributed to ensuring that third stage and Ombudsman complaints have not increased.

5: Changes and trends

There has been a increasing number of complaints about discrimination. It may be more recently, that the BLM (Black Lives Matter) protests have further highlighted these concerns. These concerns are important to investigate so as to give assurance to the public but they can be complex and lengthy complaints to consider. It can be difficult to assure and confirm there is no unconscious bias is in the system and much of the work administered by the council is based upon government legislation.

More general examples of such investigations, include complaints about street works being different/more frequent in wealthier “white areas”, that insurance payments for road damage is biased against poorer communities (because the legislation sets out a court process for escalation of such matters), that public protection enforcement is biased against certain types of establishment etc.

Some continuing work to consider unconscious bias has taken place this year. This has included a review of the taxi license processes, considering different breaches of environmental protection and whether the enforcement action has been equitable and proportionate, and considering council policies and process. These kinds of investigation have a wider remit than just the complaint in hand and requires considerable input and commitment from (for example), the service or our internal audit department.

We have been working with our busier services to assist with the complaints handling process at stages 1 and 2 in the process, and to ensure our evidence provided to the Ombudsman is detailed as possible.

In our Adults Service, we held regular complaints meetings to ensure senior managers were aware of and tracked ongoing complaint cases and actively tracked

and managed more of the difficult cases, and to share learning. As this has developed, we now operate meetings on a case by case basis, to ensure key staff are aware of the complaint and to coordinate the required work amongst the teams so a more timely and full response can be prepared.

Special Educational Needs have reviewed how that represent their decisions at appeals tribunals. This leads to a more co-ordinated and consistent approach where the support plans that have been devised can be more clearly justified and explained. This also assists with complaint handling. We have also sought to provide greater clarity to parents, to set out which parts of their concern may be considered during formal tribunal, and which areas can be considered through the complaints process. Early results suggest an improvement in the number and complexity of some of the complaints that are received.

We have also continued to consider how the complaints process can become more restorative in nature. The Statutory Childrens Complaints Process has a more restorative approach at its heart, as it requires the complaints investigator to discuss and agree the scope of the complaint, then to progress through each point of the agreed complaint, before preparing a formal response to the issues raised. This ensures that the complainant has been listened to, the scope of the complaint is agreed, and time is then taken to consider each point of the complaint at hand. This helps ensure that the importance of the complaint to the council is demonstrated.

Unfortunately, the corporate complaints process has less time to devote to each individual complaint than it once did. In 2008, there were approximately half the number of third stage complaints that there are now, fewer Ombudsman enquiries, and the officers were involved in about one third of the number of general advice enquiries than it currently receives. The section also is now more actively involved with handling more unreasonably persistent complainants. The Local Government Ombudsman process has also become more complex, in that they now require evidence to confirm that remedies have been undertaken, and they request more data as part of the pre-complaint consideration.

While staff numbers of the section have increased since 2008 (from 1.5 FTE to 2.5 FTE), there remains less time to devote to each individual complaint investigation and peaks and troughs of work are created.

While the development where the Customer Standards Section provides more support and advice to services at an earlier point in the process is in line with the restorative ethos to try to resolve complaint matters at the earliest point, those peaks and troughs of work mean the capacity of the section to offer support is not consistent. There is also succession planning to consider, and accordingly their needs to be an assessment of the current capacity of the team.

We anticipate a further busy period during 2020-21 as there is a pent up demand for progressing complaints. The Ombudsman was closed for 3-4 months from early April and while we anticipate overall complaints will be lower because some residents will not trouble to submit a complaint some months after the event, the Ombudsman are

currently working overtime to process cases with a consequent need for the council to make necessary responses to requests for information.

During the year, the Corporate Customer Standards Officer has attended restorative training sessions, with a view to considering how complaints handling may benefit from a more restorative approach. There would seem to be some solid customer service foundations behind the restorative approach, which includes:

Seeking to deal with complaints as quickly and as early as possible

- Giving the complainant opportunity to explain their complaint and for a common understanding of the issues to be agreed
- Providing a full explanation and considering with the complainant what the constraints are (largely legislation which describe the council's service provision), and what might be achieved within those constraints
- Building up empathy and an appreciation for the situation to build up a working relationship with the complainant

Some positive work has been achieved over recent years (particularly around seeking to provide a full response which sets out the legislation and policy against how the matter has been considered, and undertaking joint reviews with the service for more complex and sensitive matters). However, there is work to do, particularly around assuring things like having more detailed conversations and contact with residents to better understand and discuss the complaint and its resolution, and deadlines for complaint handling are missed during busy times, reducing customer satisfaction and leading to feelings that their complaint is unimportant. Offering coaching and support to a number of complaints handlers across the council would also be required if restorative practices were to be taken to its earliest point in the complaints process.

We have been discussing how we may expand the service to be able to meet these requirements, to consider succession planning, and to offer a more robust customer standards service.

7: Whistleblowing Concerns

The Head of Risk and the Corporate Customer Standards Officer co-ordinate investigations for those cases directly reported to the Whistleblowing telephone line and email address. Other investigations may take place through issues reported to the HR section or direct to the Audit section.

It is worth noting that many of the cases received fall outside of the technical definition of a Whistleblowing complaint (the legislation seeks to protect internal staff if they "whistle-blow") and many concerns arrive from members of the public.

Services are reminded that employee whistle-blowers are legally protected from persecution and that they should play their part to ensure that reviews are impartial and that concerns are reasonably considered.

Whistleblowing issues may be referred to the Corporate Governance and Audit Committee or to Scrutiny for their consideration. Those investigated by internal audit

are reported as a part of other reporting mechanisms to Corporate Governance and Audit Committee.

Whistleblowing contact details when provided remain confidential at all times.

During the year 2019-20 33 Whistleblowing referrals were received via either the Whistleblowing e-mail address (www.whistleblowing@kirklees.gov.uk) or telephone (01484 225030). This is a significant increase on previous years, although it is unclear whether the Whistleblowing route simply picked up more general HR complaints.

The whistleblowing reports received and how they were dealt with can be found in **Appendix 4**.

Appendix 1

Recap of the Council's Complaints Procedure

The council's complaint process for 2019-20 has three internal stages.

First stage – the complainant initially contacts the council to express dissatisfaction about the service they have received. Many of these complaints are resolved by front line staff immediately, as errors are spotted corrected and an apology offered, or an explanation is given to explain the situation to justify why the situation is accurate.

Second stage – this is where the complainant remains dissatisfied and the complaint is referred to a senior manager within the appropriate service to consider.

Third stage – the Corporate Customer Standards Officer will review the actions taken by the service on behalf of the Council and Chief Executive and consider whether anything further can be done to resolve the complaint. The Local Government Ombudsman requires the council to give the complaint a final review before they may become involved with it.

Some complaints do not progress through the council's complaints procedure; these are usually complaints where a formal review process applies such as complaints relating to Childrens and Adults Services and Housing Benefit assessment complaints. The Ombudsman will consider some complaints before third stage review if they are considered urgent (for example school admission appeals).

Complaint stages are sometimes merged depending on the type of complaint received so as to ensure matters are dealt with appropriately and to ensure the complainant can progress to the Ombudsman as quickly as possible if matters have been dealt with.

Appendix 2: Summary of the cases upheld by the Ombudsman 2019-20

The summary of the case provided by the Ombudsman in each case is as follows:

18000577	Planning & Development	A complaint about a number of aspects of an approved application found fault with one aspect around enforcement in controlling drainage during the construction stage and delay in responding to the complaint.
18002031	Adult Care Services	Mr Z complains on behalf of his partner Miss X about poor care provided by a home care provider that was jointly funded by the Council and the NHS and about delay in resolving his concerns. The Ombudsmen have upheld the complaint. The Council and the care provider have agreed to apologise and provide financial redress to Miss X and Mr Z. They have also agreed to make service improvements. We have therefore completed our investigation.
18014651	Environmental Services & Public Protection & Regulation	Miss Y complains the Council wrongly laid down the gravestone of her grandparents. The Ombudsman finds the Council did not act in accordance with its own procedures or government guidance when inspecting the memorial and has no records to show how and why it laid down the gravestone. The Council has agreed to apologise and arrange for the headstone to be reinstated. The Council will also contact others similarly affected by the faulty inspections.
18011052	Adult Care Services	Miss X complains the Council failed to assess her needs properly in March 2018, resulting in a significant cut in her personal budget. When the Council identified changes in her circumstances it should have done a needs assessment. The failure to do so means it is unclear whether it is providing enough help to meet her eligible care needs. The Council should do a needs assessment and take action to make sure it does them when necessary in future.
19002628	Education & Childrens Services	The Council failed to consider Mr X's complaints under the statutory children's complaints process. The Council has now agreed to consider Mr X's complaint at stage 2 of the process.
19007759	Highways & Transport	Mr B complains about the actions of enforcement agents acting on behalf of the Council in recovering a debt. The Ombudsman finds no fault in the substantive matters investigated. There was however fault in the how the complaint about this was dealt with. An apology is recommended, together with service improvements.

19007883	Education & Childrens Services	The complainant says the Council failed to properly consider her application for a school place and properly conduct the appeal against its decision. The Council says it correctly applied the admissions policy and the appeal panel properly considered the appeal. The Ombudsman finds the appeal panel acted with fault. The Ombudsman recommends and the Council agrees to arranging a fresh appeal hearing.
19008119	Planning & Development	Mr F complains the Council gave him incorrect pre-application planning advice that he did not need to apply for planning permission for change of use of his property. The Ombudsman has found fault. The Council has agreed to apologise to Mr F, which is a suitable remedy for the injustice caused.
19008980	Adult Care Services	The Council withdrew respite care for thirteen months because Mr X would not accept residential respite. It then reinstated respite but reduced the number of nights. It also set an arbitrary upper limit on the amount it was willing to pay per night.
19009200	Adult Care Services	There is fault by the Council in this complaint. It cancelled Mr Y's day service at short notice, failed to provide alternative support, and failed to respond to a crisis situation whilst Mr Y was in residential respite care. Consequently, the placement broke down. The impact on Mr Y's wife was significant.
19015585	Environmental Services & Public Protection & Regulation	The Ombudsman will not investigate Mr L's complaint about the loss of recorded music at his father's funeral. The Council has offered suitable remedial action and it is unlikely an investigation would result in a substantively different outcome.
19019083	Housing	The Ombudsman will not investigate Mrs X's complaint about the Council's aborted purchase of her former council property. This is because we are satisfied with the Council's actions to remedy the complaint.

Appendix 3: Historical comparison data regarding the number of complaints received at third stage:

This year the Ombudsman has presented its figures in a different way, making it very difficult to compare individual service data against previous years.

In total the Ombudsman received 123 contacts from members of the public about Kirklees Council (including complaints which had not been investigated by the council and returned to them, and those dismissed without formal investigation).

Numbers for Ombudsman Contacts for individual service areas in Kirklees are as follows:

Adult Care Services	25
Benefits and Tax	9
Corporate and Other	8
Education and Childrens Services	29
Environmental Services & Public Protection & Regulation	24
Highways and Transport	7
Housing	6
Planning and Development	10
Unspecified	5

It is difficult to interpret much from this information given the low number of contacts and the lack of historical comparisons.

Third Stage Complaints - investigated internally

Service	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Adults	2	3	1	4	2	4
Benefits, C Tax & NNDR	16	16	16	14	6	7
Corporate and others	21	19	15	10	6	12
Children's and Education	5	4	5	5	11	7
Environment & Public Protection	10	15	16	29	31	19
Highways and Transport	12	6	11	3	8	7
Housing (including KNH)	5	5	2	2	4	2
Planning	15	18	19	15	20	13
Total	86	86	85	82	88	71
% upheld and Part Upheld	20.9%	20.9%	21%	20.7%	22.7%	21.1%

Overall number of third stage complaints dropped, but the volume of complaints received dropped off during Feb/March as concerns about Covid 19 became more prominent.

Appendix 4: Summary of Whistleblowing Cases received

Cases with a star indicate that the whistleblower was a council employee and was thus making a Whistleblowing concern in accordance with the legislation. For administrative ease, we investigate concerns raised by members of the public in a similar way.

Concern	Outcome
An improper relationship between managers, and concerns about approach to service changes.	During the investigation, the Senior Manager left the council to take up another post. Work was undertaken with staff to better involve and explain the direction for the service, and the purpose of service changes.
A homeworker was taking unrecorded breaks from work.	The work output of the employee was not found to be abnormal, but time checks were undertaken and advice was provided to the individual.
Concerns were raised about inappropriate comments on social media, made by an employee of a local health trust.	Information was passed to the Health Trust who confirmed the matter was being considered.
* Complaint about management at a School	Advised to raise issue with Governors who manage the running and operating of the school in the first instance.
* Complaint and counter complaint between staff member and manager at a school	Advice and support provided to the Governors who manage the running and operating of the school.
Complaint about high temperatures at a nursing home	Ensured the nursing home were undertaking remedial repairs to the heating system.
Complaint about private financial conduct of a member of staff by an estranged relative.	The council ensured the employee did not hold financial responsibilities in their role, and the manager held a discussion with the staff member, although the council had no direct interest in this matter.
Unsubstantiated and anonymous allegation that staff member had breached data protection.	Not enough information to investigate and resident did not return.
* A conflict in professional judgement and an ongoing HR issue was raised as a whistleblowing matter.	The service considered the concern about process, and HR continued with its review of matters.
An allegation that a member of staff was complicit in that they were aware of a relative making a fraudulent benefit claim. It was received anonymously.	Certain aspects of the claim could be disproven. As the Whistle blower could not be contacted, the matter was closed.

Concerns that an Adult Services support direct payments for 2 members of the public were not being used or administered correctly by the person holding financial responsibility	Passed to Adult Services to investigate and consider the use of the payments in question.
* Concerns from a former employee about the atmosphere in the department, and that there was favouritism and inappropriate recruitment.	HR department investigated staff, recruitment processes and did not identify inappropriate behaviour although advice was provided to the section.
Concerns from a member of the public that a staff member had shared inappropriate information gained from public record on social media.	A data breach was identified although the level of data was not high enough to formally report to the ICO. The manager of the service was informed, and action was taken against the individual.
Concerns that a council employee who was off work sick, was continuing their second job outside the council	The issue was considered and investigated. The roles were very different, and the second job outside the council was seen to be beneficial for the individual while they recovered.
An employee of the council attended a planning committee in a professional capacity, and also in a private capacity spoke in relation to a proposed planning application. The resident felt this was a conflict of interest.	It was determined that the employee had not attempted to use their employment to gain further coverage of their opinion, but it was agreed that if the employee intended to speak in a private capacity, they should have removed themselves from supporting the meeting. As a local resident the employee held the right to address the committee and share their opinion.
A former member of staff complained about a difficult and bullying culture in their department. This is why they left. The complaint was anonymous	This could be a formal HR process, and the nature of the work was acknowledged to be difficult, and managers had already started to introduce plans to better train staff, and provide them with better support. Other staff had no felt bullied but the difficult nature of the work had been identified.
A council employee was alleged to promote favourites and family.	The HR department determined that the recruitment process had been appropriately conducted.
* A complaint about a safeguarding issue where the accused was identified in front of other colleagues.	HR conducted a full investigation with the Chair of Governors and explained the situation with the complainant.
* Allegation that a manager had used their role to obtain a council service in works time	Fully investigated and not substantiated. There were discrepancies in timings and there were barriers in place to be able to access the service in question.
* Complaint from school employees about the	It was determined on review with the Governors that the school had needed some improvement.

behaviour and conduct of a new Head	The school had a good process of employee liaison. While the employees were unhappy with the changes, there was some explanation for them which was not unreasonable.
* An employee of a school shared anecdotal information about themselves and other staff and how the Head had dealt with them.	The employee did not wish to be identified, the other employees did not wish to put themselves forward, the head was leaving the school. Initial enquiries did not identify the levels of sickness claimed, but asked the WB to get in touch if they wished matters to be progressed.
A third party safeguarding complaint about school and how they recorded excluded pupils was received.	There was no direct information from staff and they did not wish to come forward. At the point the matter was being investigated ofsted was inspecting, and this included an aspect on safeguarding . The WB did not return with more information.
A third party complaint that an employee was allegedly being bullied was received.	This was investigated and checked on by the service.
* An employee was given unpaid leave because of their personal circumstances and another employee felt this was unfair.	Confirmed through HR the circumstances where unpaid leave was appropriately given and in line with HR guidance.
An employee of a non-council maintained school made a whistleblowing complaint.	This was not an issue for the council.
An anonymous complaint received about the conduct of a team of staff raising some general concerns about leave monitoring, stock inventory and conduct of staff.	A general investigation took place to assure that reasonable checks on these issues are undertaken. Unable to obtain more information regarding the allegation to assist in the investigation, or reply to the individual.
A member of staff wearing uniform was rude to a member of the public on their way to work.	Some work undertaken to check the working conduct of the individual and to check on their wellbeing. Allegations unable to be substantiated.
An allegation was received that a member of staff had given a business a low assessment so as to decrease its value in a pending sale.	No evidence to support the allegation, and recognised that a simple reassessment would check the situation, and so the member of staff appeared to wield very little power to do as alleged.
Allegation against financial wrong doing by a member of staff.	Anonymous, non-specific, just a general comment. No evidence from general review of the worker's role, that they were in any position to gain financially from their customers.

* Staff offering support services at a school feeling victimised by their supervisor.	HR investigated claims, although the staff involved were undergoing changes to their job role through review, which may have coloured their judgement (changes were not connected to the supervisor)
Concerns that a group of staff are rushing their tasks and then finishing their work early.	Unable to investigate at present because Covid 19 altered the staff working arrangements temporarily. They currently do not operate as they did at the point of the concern.
A complaint that a member of staff is using a third party details to claim benefits fraudulently.	Anonymous, non-specific. Contacted the Department of Work and Pensions who were unable to identify issue.
* A complaint from a member of staff that they were feeling bullied	Also passed to HR, who handled the complaint through the formal HR processes.