

# Standards Committee

**Date: Thursday, 18th January, 2018**

**Time: 6.15 pm**

**Venue: Kaposvar Room - Guildhall, Bath**

**To: All Members of the Standards Committee**

**Independent Members:** Susan Toland (Chair), Deborah Russell and Dr Cyril Davies

**Parish/Town Councillors:** Keith Betton, Tony Crouch and Veronica Packham

**Bath and North East Somerset Councillors:** Councillor Sally Davis, Councillor Sarah Bevan, Councillor Nigel Roberts, Councillor Geoff Ward and Councillor Brian Simmons

**Chief Executive and other appropriate officers**

**Press and Public**



**Enfys Hughes**

**Democratic Services**

Lewis House, Manvers Street, Bath, BA1 1JG

Telephone: 01225 394410

Web-site - <http://www.bathnes.gov.uk>

E-mail: [Democratic\\_Services@bathnes.gov.uk](mailto:Democratic_Services@bathnes.gov.uk)

1. **Inspection of Papers:** Papers are available for inspection as follows:

Council's website: <https://democracy.bathnes.gov.uk/ieDocHome.aspx?bcr=1>

Paper copies are available for inspection at the **Public Access points:-** Reception: Civic Centre - Keynsham, Guildhall - Bath, The Hollies - Midsomer Norton. Bath Central and Midsomer Norton public libraries.

2. **Details of decisions taken at this meeting** can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime, details can be obtained by contacting as above.

3. **Recording at Meetings:-**

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator.

The Council will broadcast the images and sound live via the internet [www.bathnes.gov.uk/webcast](http://www.bathnes.gov.uk/webcast) The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

4. **Public Speaking at Meetings**

The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. They may also ask a question to which a written answer will be given. **Advance notice is required not less than two full working days before the meeting. This means that for meetings held on Thursdays notice must be received in Democratic Services by 5.00pm the previous Monday.** Further details of the scheme:

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=12942>

5. **Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are signposted. Arrangements are in place for the safe evacuation of disabled people.

6. **Supplementary information for meetings**

Additional information and Protocols and procedures relating to meetings

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13505>

**Standards Committee - Thursday, 18th January, 2018**

**at 6.15 pm in the Kaposvar Room - Guildhall, Bath**

**A G E N D A**

1. WELCOME AND INTRODUCTIONS

2. EMERGENCY EVACUATION PROCEDURE

The Chair will draw attention to the emergency evacuation procedure as set out on the Agenda.

3. APOLOGIES FOR ABSENCE AND SUBSTITUTION

4. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** *or* **an other interest**,  
(as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

5. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

The Chair will announce any items of urgent business accepted since the agenda was prepared under the Access to Information provisions.

6. ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS (COMPLAINTS MUST GO THROUGH THE STANDARDS COMPLAINTS PROCEDURE)

7. ITEMS FROM COUNCILLORS AND CO-OPTED AND ADDED MEMBERS RELATING TO THE GENERAL BUSINESS OF THE COMMITTEE

8. MINUTES OF THE MEETING OF 21ST SEPTEMBER 2017 (Pages 7 - 10)
9. REPORT ON THE ASSESSMENT OF COMPLAINTS (Pages 11 - 14)
10. WORKPLAN FOR THE STANDARDS COMMITTEE (Pages 15 - 16)
11. ANNUAL REPORT ON LGO COMPLAINTS (Pages 17 - 80)
12. EXCLUSION OF THE PUBLIC

The Committee is asked to consider passing the following resolution:

“that having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item(s) of business and the reporting of the meeting be prevented under Section 100A(5A) because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

13. HEARING OF COMPLAINT 11.17 BANES (Pages 81 - 174)

The Committee Administrator for this meeting is Enfys Hughes who can be contacted on 01225 394410.

**BATH AND NORTH EAST SOMERSET**

**STANDARDS COMMITTEE**

**MINUTES OF THE MEETING OF THURSDAY, 21ST SEPTEMBER, 2017**

**PRESENT:-**

**Independent Members:** Susan Toland (Chair), Deborah Russell and Dr Cyril Davies

**Parish Representatives:** Veronica Packham

**Bath and North East Somerset Councillors:** Sally Davis, Sarah Bevan, Geoff Ward and Brian Simmons

**Officers:** Maria Lucas (Head of Legal and Democratic Services) and Enfys Hughes

**Independent Person:** Tony Drew

**46 WELCOME AND INTRODUCTIONS**

The Chair welcomed everyone to the meeting.

**47 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the emergency evacuation procedure.

**48 APOLOGIES FOR ABSENCE AND SUBSTITUTION**

There were none.

**49 DECLARATIONS OF INTEREST**

There were none.

**50 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

**51 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS (COMPLAINTS MUST GO THROUGH THE STANDARDS COMPLAINTS PROCEDURE)**

There were none.

**52 ITEMS FROM COUNCILLORS AND CO-OPTED AND ADDED MEMBERS RELATING TO THE GENERAL BUSINESS OF THE COMMITTEE**

There were none.

**53 MINUTES OF THE MEETING OF 11TH MAY 2017**

**RESOLVED** that the minutes of the meeting on 11<sup>th</sup> May 2017 be confirmed as a correct record and be signed by the Chair(person).

**54 REPORT ON THE ASSESSMENT OF COMPLAINTS**

The Monitoring Officer presented this report.

**RESOLVED** that the report on the assessment of complaints be noted.

**55 WORKPLAN FOR THE STANDARDS COMMITTEE**

The Monitoring Officer explained that the meeting of Standards Committee scheduled for Thursday 2<sup>nd</sup> November 2017 would not be needed. This meeting was cancelled.

It was also noted that the provisional meeting scheduled for Thursday 22<sup>nd</sup> March 2018 be re-arranged as it clashed with Council.

**RESOLVED** that the Workplan be noted.

**56 TRAINING SESSION ON STANDARDS COMMITTEE HEARINGS'**

The Monitoring Officer circulated the proposed Standards Committee Hearing Guidance and Procedure to members who took some time to consider it.

During discussion the following issues were raised:

- The report on the assessment of complaints was a public document providing transparency on how complaints were being dealt with
- A decision notice on each complaint was published with a summary of the issues
- The ability to ask the subject member questions was part of having a fair hearing
- All questions raised should be through the Chair
- The importance of keeping to the issues of the complaint and not being diverted by irrelevant matters
- There should be a pre-hearing process to check the matters that have been agreed, then at the hearing the focus is on the issues that have not been agreed which can be tested
- The Monitoring Officer would check the report of the Investigating Officer before the hearing to ensure all the issues had been addressed.

**RESOLVED** that any comments be sent to the Monitoring Officer and then the procedure would be submitted for adoption to the next meeting of Standards Committee.

The Standards Committee then considered several scenarios raising different issues in relation to hearings and then the answers were discussed.

The scenarios with answers were circulated to the members of the Committee.

The meeting ended at 7.46 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

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Bath & North East Somerset Council		
MEETING	Standards' Committee	
MEETING	18 <sup>th</sup> January 2018	EXECUTIVE FORWARD PLAN REFERENCE:
TITLE:	Report on Assessment of Complaints	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Annex 1 – Report on assessment of complaints		

## **1 THE ISSUE**

- 1.1 The Committee is asked to consider Annex 1 (report on assessment of complaints) and discuss any issues arising.

## **2 RECOMMENDATION**

- 2.1 That the Committee consider the report and make any recommendations required.

## **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 3.1 None.

## **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

- 4.1 The Council is required to have in place adequate arrangements to assess complaints and deal with any further actions required.

## **5 THE REPORT**

- 5.1 An up-dated table providing information on the complaints received since the last report was sent to the Standards Committee in September 2017 is attached as Appendix 1 for the consideration of the Committee.

## 6 RATIONALE

6.1 To update the Standards' Committee on complaints received since March 2016.

## 7 OTHER OPTIONS CONSIDERED

7.1 None.

## 8 CONSULTATION

8.1 Not applicable.

## 9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

<b>Contact person</b>	<i>Maria Lucas, Head of Legal &amp; Democratic Services, Monitoring Officer &amp; Council Solicitor (01225) 395171</i>
<b>Background papers</b>	<i>List here any background papers not included with this report, and where/how they are available for inspection.</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	

Complaint Number	Date Received	Complainant	Subject	Relevant provision of Code	Assessment	Date / Decision	Decision	Current Position		
04-15 Dunkerton PC	18.05.15	P Cllr	P Cllr	Bullying/Intimidation. Improperly conferring a disadvantage	Initial assessment by MO and IP - investigation	Standards Hearing 10.12.15	No breach	Complete		
05a-15 Dunkerton PC	29.05.15	P Cllr	P Cllr	Bullying/Intimidation. Improperly conferring a disadvantage. Disrespectful behaviour.	Initial assessment by MO and IP - investigation	Standards Hearing 10.12.15	Breach	Complete		
05b-15 Dunkerton PC	29.05.15	P Cllr	P Cllr	Bullying/Intimidation. Improperly conferring a disadvantage. Disrespectful behaviour.	Initial assessment by MO and IP - investigation	Standards Hearing 10.12.15	No breach	Complete		
05c-15 Dunkerton PC	31.07.15	P Cllr	P Cllr	Bullying/Intimidation. Disclosure of confidential information. Potential criminal offence. Disrespectful behaviour.	Initial assessment by MO and IP - investigation	Standards Hearing 10.12.15	No breach	Complete		
06-15 BANES	17.05.15	MoP	Cllr	Disrespectful behaviour.	Initial assessment by MO and IP	23.09.15	No breach	Complete		
07-15 BANES	01.06.15	MoP	Cllr	Disrespectful behaviour.	Initial assessment by MO and IP	29.06.15	No breach	Complete		
08-15 BANES	23.06.15	O	Cllr	Inappropriate behaviour.	Initial assessment by MO and IP	08.07.15	Breach - apology made			
09-15 Chew Stoke PC	20.07.15	P Cllr / MoP	P Cllr	Non disclosure of DPI.	Not proportionate for police to allocate further resources due to the limited public interest. Independent investigation.	1.3.16	Breach/NFA	Complete		
10-15 Paulton PC	18.08.15	P Cllr	P Cllr	Non disclosure of DPI	Referred to police. Not proportionate for police to allocate further resources due to the limited public interest.	Standards Hearing 31.03.16	Breach	Complete		
11-15 BANES		MoP	Cllr	Non disclosure of interest	Initial assessment by MO and IP	29.09.15	No breach	Complete		
12-15 BANES	18.10.15	MoP	Cllr	Inappropriate behaviour	Initial assessment by MO and IP	18.02.15	No breach	Complete		
13-15 Shoscombe PC	05.11.15	P Cllrs	P Cllr	Bullying/Intimidation	Initial assessment that as cllr is no longer a councillor, no jurisdiction for complaint to be further investigated	20.12.15	No further investigation required	Complete		
01-16 BANES	24.12.15	MoP	Cllr	Inappropriate behaviour	Initial assessment by MO and IP - cllr to send apology to Somerset Guardian	11.02.16	No breach	Complete		
02-16 Hinton Blewett PC	04.01.16	MoP	P Cllr	Non disclosure of interest	Initial assessment by MO and IP	21.03.16	No further action	Complete		
03-16 Paulton PC	25.01.16	P Cllrs	P Cllr	Inappropriate behaviour	Initial assessment by MO and IP	21.03.16	No further action	Complete		
04-16 Paulton PC	25.01.16	P Cllrs	P Cllr	Inappropriate behaviour	Initial assessment by MO and IP	21.03.16	No further action	Complete		
05-16 Paulton PC	19.01.16	P Cllr	P Cllr	Inappropriate behaviour	Initial assessment by MO and IP	21.03.16	No further action	Complete		
06-16 Paulton PC	19.01.16	P Cllr	P Cllr	Inappropriate behaviour	Initial assessment by MO and IP	21.03.16	No further action	Complete		
07-16 BANES	26.01.16	MoP	Cllr	Inappropriate behaviour	Initial assessment by MO and IP	25.03.16	No breach	Complete		
08-16 BANES	26.01.16	MoP	Cllr	Inappropriate behaviour	Initial assessment by MO and IP	25.03.16	No breach	Complete		
09-16 Paulton PC	02.02.16	P Cllr	P Cllr	Inappropriate behaviour	Initial assessment by MO and IP	21.03.16	No further action	Complete		
10-16 BANES	25.02.16	MoP	Cllr	Non disclosure of interest	Initial assessment by MO and IP	25.03.16	No breach	Complete		
11-16 a,b,c High Littleton PC/BANES	25.08.16	MoP	P Cllr	Non disclosure of interest	Initial assessment by MO and IP	17.10.16	No further action	Complete		
12-16 a,b BANES	05.09.16	MoP	Cllr	Non disclosure of interest	Initial assessment by MO and IP	24.10.16	Breach/NFA	Complete		
13-16 BANES	01.09.16	Cllr	Cllr	Non disclosure of interest	Initial assessment by MO and IP	24.10.16	Breach/NFA	Complete		
14-16 BANES	26.08.16	MoP	Cllr	Inappropriate behaviour	Initial assessment by MO and IP	24.10.16	No further action	Complete		
15-16 BANES	07.12.16	MoP	Cllr	Inappropriate behaviour	Initial assessment by MO and IP	7.2.17	No further action	Complete		

KEY  
P Cllr - Parish Councillor. MoP - Member of the Public. Cllr - BANES Councillor  
O - Officer

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Standards Committee - Assessment of Complaints March 2017

Appendix 1

1.17 Chew Stoke PC	5.1.17	MoP	P Cllr	Bullying	Initial assessment by MO and IP	1.3.17	No further action	Complete		
2.17 BANES	1.3.17	MoP	Cllr	Inappropriate behaviour	Initial assessment by MO and IP	2.5.17	Breach / NFA	Complete		
3.17 BANES	12.04.17	MoP	Cllr	Disrepute	Initial assessment by MO and IP	16.06.17	No Breach	Complete		
04-17 BANES	08.05.17	MoP	Cllr	breach of the Council's Code of Conduct on pre-election publicity	Initial assessment by MO and IP	31.05.17	No further action	Complete		
05-17 BANES	01.07.17	MoP	Cllr	Inappropriate behaviour - bullying	Initial assessment by MO and IP	30.11.17	No breach	Complete		
06-17 BANES	01.07.17	MoP	Cllr	Inappropriate behaviour - bullying	Initial assessment by MO and IP	06.09.17	No breach	Complete		
07-17 BANES	20.09.17	MoP	Cllr	Inappropriate behaviour - bullying	Initial assessment by MO and IP	30.11.17	No breach - further action	Complete		
08-17 BANES	22.09.17	MoP	Cllr	Inappropriate behaviour/non-disclosure of interest	Initial assessment by MO and IP	30.11.17	No breach - further action			
09-17 BANES	09.10.17	CX	Cllr	Non disclosure of interest	Initial assessment by MO and IP			Standards Committee on 18.01.17		
10-17 BANES	06.10.17	MoP	Cllr	Inappropriate behaviour - misuse of council resources	Initial assessment by MO and IP	08.12.17	No breach	Complete		
11-17 BANES	16.10.17	MoP	Cllr	Non disclosure of interest		18.10.17		Ongoing		
12-17 BANES	13.12.17	MoP	Cllrs	Non disclosure of interest		13.12.17		Ongoing		

**STANDARDS COMMITTEE WORKPLAN 2018 – 2019**

<b>Date of meeting</b>	<b>Title</b>	<b>Report author/responsible officer</b>
<b>Thursday 21st September 2017 (substantive)</b>		
	Training session – hearings workshop	Maria Lucas
<b>Thursday 2<sup>nd</sup> November 2017 (provisional)</b>	<b>(Previously 9<sup>th</sup> and 23<sup>rd</sup> Nov changed due to full Council)</b>	
	<b>CANCELLED</b>	
<b>Thursday 18th January 2018 (substantive)</b>	<b>(Previously 25<sup>th</sup> January changed due to ALCA meeting)</b>	
	Annual LGO report Complaint hearing Training session	Maria Lucas
<b>Thursday 8<sup>th</sup> March 2018 (provisional)</b>		
<b>Thursday 17th May 2018 (substantive)</b>		

	Annual report	Maria Lucas
<b>Thursday 19th July 2018 (provisional)</b>		
	Annual review letter 2016/2017	Maria Lucas
<b>Thursday 20th September 2018 (substantive)</b>		
<b>Thursday 13th November 2018 (provisional)</b>		
<b>Thursday 24th January 2019 (substantive)</b>		

**Every meeting –** Report on the assessment of complaints  
Workplan

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Standards Committee	
MEETING/ DECISION DATE:	18 January 2018	EXECUTIVE FORWARD PLAN REFERENCE:
		E
TITLE:	Commission for Local Administration in England (Local Government & Social Care Ombudsman) Annual report & update on determinations	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix 1 Annual letter from the Ombudsman Appendix 2 Anonymised determinations made by the Ombudsman 2016 – 2017 Appendix 3 Anonymised determinations made by the Ombudsman 2017 to date		

## 1 THE ISSUE

- 1.1 To provide the Committee with a copy of the Ombudsman's Annual Review for 2016 – 2017; report the determinations made by the Ombudsman for the period 2016- 2017 (the first period) and the determinations made by the Ombudsman for the period 2017 to date (the second period).

## 2 RECOMMENDATION

The Committee is asked to;

2.1 Note the Annual Review

2.2 Note the determinations made by the Ombudsman and determine what if any further action is required.

### **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

3.1 None.

### **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

- 4.1 The Monitoring Officer is under a duty under S 5(2) of the Local Government & Housing Act 1989 to prepare a formal report to Council where the Ombudsman has issued a formal report finding maladministration. The Ombudsman has issued guidance that the duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the Council summarising the findings on all upheld complaints over a specific period and that this may be addressed through an annual report.
- 4.2 The Council has delegated to the Standards Committee the function to consider any reports from the Council's Monitoring Officer regarding illegality, unlawfulness or maladministration and any report of the Local Government Ombudsman.

### **5 THE REPORT**

- 5.1 This report covers the two periods ending 31 March 2017 and 1 April 2017-to date.
- 5.2 During the first period 59 complaints were made to the Ombudsman and 57 decisions were made. This period is covered in the Ombudsman's Annual Letter. Of the 25 detailed investigations undertaken by the Ombudsman, 14 were not upheld; 9 were upheld with only 6 cases with a finding of causing injustice.
- 5.3 Appendix 2 to the report details in anonymised form the 6 cases of injustice in which maladministration was found and where the Council agreed to remedy the complaint by implementing the recommendations made following the investigation.
- 5.4 During the second period covered by this report, 4 detailed investigations were undertaken by the Ombudsman.
- 5.5 Appendix 3 to the report details in anonymised form, 4 cases in which maladministration was found and where the Council agreed to remedy the complaint by implementing the recommendations made following the investigation.

### **6 RATIONALE**

- 6.1 To allow the Standards Committee to consider the Annual Review and any actions required.



## **7 OTHER OPTIONS CONSIDERED**

7.1 None

## **8 CONSULTATION**

8.1 S.151 Officer and Strategic Management Team

## **9 RISK MANAGEMENT**

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

<b>Contact person</b>	Maria Lucas tel 01225 395171
<b>Background papers</b>	None
<b>Please contact the report author if you need to access this report in an alternative format</b>	

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20 July 2017

*By email*

Ashley Ayre  
Chief Executive  
Bath and North East Somerset Council

Dear Ashley Ayre,

### **Annual Review letter 2017**

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman (LGO) about your authority for the year ended 31 March 2017. The enclosed tables present the number of complaints and enquiries received about your authority and the decisions we made during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

The reporting year saw the retirement of Dr Jane Martin after completing her seven year tenure as Local Government Ombudsman. I was delighted to be appointed to the role of Ombudsman in January and look forward to working with you and colleagues across the local government sector in my new role.

You may notice the inclusion of the '*Social Care Ombudsman*' in our name and logo. You will be aware that since 2010 we have operated with jurisdiction over all registered adult social care providers, able to investigate complaints about care funded and arranged privately. The change is in response to frequent feedback from care providers who tell us that our current name is a real barrier to recognition within the social care sector. We hope this change will help to give this part of our jurisdiction the profile it deserves.

### **Complaint statistics**

Last year, we provided for the first time statistics on how the complaints we upheld against your authority were remedied. This year's letter, again, includes a breakdown of upheld complaints to show how they were remedied. This includes the number of cases where our recommendations remedied the fault and the number of cases where we decided your authority had offered a satisfactory remedy during the local complaints process. In these latter cases we provide reassurance that your authority had satisfactorily attempted to resolve the complaint before the person came to us.

We have chosen not to include a 'compliance rate' this year; this indicated a council's compliance with our recommendations to remedy a fault. From April 2016, we established a new mechanism for ensuring the recommendations we make to councils are implemented, where they are agreed to. This has meant the recommendations we make are more specific, and will often include a time-frame for completion. We will then follow up with a council and seek evidence that recommendations have been implemented. As a result of this new process, we plan to report a more sophisticated suite of information about compliance and service improvement in the future.

This is likely to be just one of several changes we will make to our annual letters and the way we present our data to you in the future. We surveyed councils earlier in the year to find out, amongst other things, how they use the data in annual letters and what data is the most useful; thank you to those officers who responded. The feedback will inform new work to

provide you, your officers and elected members, and members of the public, with more meaningful data that allows for more effective scrutiny and easier comparison with other councils. We will keep in touch with you as this work progresses.

I want to emphasise that the statistics in this letter comprise the data we hold, and may not necessarily align with the data your authority holds. For example, our numbers include enquiries from people we signpost back to the authority, but who may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

### **The statutory duty to report Ombudsman findings and recommendations**

As you will no doubt be aware, there is duty under section 5(2) of the Local Government and Housing Act 1989 for your Monitoring Officer to prepare a formal report to the council where it appears that the authority, or any part of it, has acted or is likely to act in such a manner as to constitute maladministration or service failure, and where the LGO has conducted an investigation in relation to the matter.

This requirement applies to all Ombudsman complaint decisions, not just those that result in a public report. It is therefore a significant statutory duty that is triggered in most authorities every year following findings of fault by my office. I have received several enquiries from authorities to ask how I expect this duty to be discharged. I thought it would therefore be useful for me to take this opportunity to comment on this responsibility.

I am conscious that authorities have adopted different approaches to respond proportionately to the issues raised in different Ombudsman investigations in a way that best reflects their own local circumstances. I am comfortable with, and supportive of, a flexible approach to how this duty is discharged. I do not seek to impose a proscriptive approach, as long as the Parliamentary intent is fulfilled in some meaningful way and the authority's performance in relation to Ombudsman investigations is properly communicated to elected members.

As a general guide I would suggest:

- Where my office has made findings of maladministration/fault in regard to routine mistakes and service failures, and the authority has agreed to remedy the complaint by implementing the recommendations made following an investigation, I feel that the duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the council summarising the findings on all upheld complaints over a specific period. In a small authority this may be adequately addressed through an annual report on complaints to members, for example.
- Where an investigation has wider implications for council policy or exposes a more significant finding of maladministration, perhaps because of the scale of the fault or injustice, or the number of people affected, I would expect the Monitoring Officer to consider whether the implications of that investigation should be individually reported to members.
- In the unlikely event that an authority is minded not to comply with my recommendations following a finding of maladministration, I would always expect the Monitoring Officer to report this to members under section five of the Act. This is an exceptional and unusual course of action for any authority to take and should be considered at the highest tier of the authority.

The duties set out above in relation to the Local Government and Housing Act 1989 are in addition to, not instead of, the pre-existing duties placed on all authorities in relation to Ombudsman reports under The Local Government Act 1974. Under those provisions, whenever my office issues a formal, public report to your authority you are obliged to lay that report before the council for consideration and respond within three months setting out the action that you have taken, or propose to take, in response to the report.

I know that most local authorities are familiar with these arrangements, but I happy to discuss this further with you or your Monitoring Officer if there is any doubt about how to discharge these duties in future.

### **Manual for Councils**

We greatly value our relationships with council Complaints Officers, our single contact points at each authority. To support them in their roles, we have published a Manual for Councils, setting out in detail what we do and how we investigate the complaints we receive. When we surveyed Complaints Officers, we were pleased to hear that 73% reported they have found the manual useful.

The manual is a practical resource and reference point for all council staff, not just those working directly with us, and I encourage you to share it widely within your organisation. The manual can be found on our website [www.lgo.org.uk/link-officers](http://www.lgo.org.uk/link-officers)

### **Complaint handling training**

Our training programme is one of the ways we use the outcomes of complaints to promote wider service improvements and learning. We delivered an ambitious programme of 75 courses during the year, training over 800 council staff and more 400 care provider staff. Post-course surveys showed a 92% increase in delegates' confidence in dealing with complaints. To find out more visit [www.lgo.org.uk/training](http://www.lgo.org.uk/training)

Yours sincerely

A handwritten signature in black ink, appearing to be 'M King', with a stylized flourish at the end.

Michael King  
Local Government and Social Care Ombudsman for England  
Chair, Commission for Local Administration in England

**Local Authority Report:** Bath and North East Somerset Council  
**For the Period Ending:** 31/03/2017

For further information on how to interpret our statistics, please visit our website:  
<http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

## Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
10	2	4	7	2	17	3	13	1	59

## Decisions made

				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate	Total
4	0	17	13	14	9	39%	57

### Notes

Our uphold rate is calculated in relation to the total number of detailed investigations.  
The number of remedied complaints may not equal the number of upheld complaints. This is because, while we may uphold a complaint because we find fault, we may not always find grounds to say that fault caused injustice that ought to be remedied.

### Complaints Remedied

by LGO

6

Satisfactorily by  
Authority before LGO  
Involvement

0

## **The Ombudsman's final decision**

Summary: The complaint is upheld. The Council did not follow its policy when deciding to treat Mr B as a vexatious complainer. As the restriction will expire shortly no further action is necessary.

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## **The complaint**

1. Mr B complains about the Council's decision to consider him a vexatious complainant. He considers the Council did not follow the proper process before reaching the decision and the evidence did not support him being considered to be vexatious.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She provides a free service, but must use public money carefully. She may decide not to start or continue with an investigation if she believes:
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify the cost of her involvement, or
  - she cannot achieve the outcome someone wants.

*(Local Government Act 1974, section 24A(6))*

## **How I considered this complaint**

3. I considered the complaint and spoke to Mr B. I asked the Council for its comments on the complaint and additional information. I sent a copy of a draft of this statement to Mr B and the Council and invited their comments.

## **What I found**

### **Factual background**

4. The Council said it considered Mr B's correspondence met the criteria for being a vexatious complainer. It said:
  - Mr B had persistently made complaints where he had already received an answer. It referred to one complaint where the Council had wrongly erected a road sign which projected over Mr B's land;
  - when he had received an answer he would raise a slightly different issue or question or request information or pursue the complaint through other means. The Council referred to the same complaint about the road sign;

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- Mr B's contacts with the Council were excessive in the number of emails and those emails were sent and copied to numerous officers;
  - he had verged on rudeness, been sarcastic and made threats to officers.
5. The Council said that before it made a decision on whether to class him as a vexatious complainer Mr B could make comments.
  6. Mr B replied, his main point was that he wanted the Council to provide evidence in support of its comments. He said he could not reply until he had that detail from the Council.
  7. The Council wrote to him again saying that he would be classed as a vexatious complainer and he should send all future correspondence to one named point of contact. The officer referred to Mr B's numerous complaints and commented that Mr B's correspondence was often abusive, aggressive and harassing. The Council said it would read all letters, but only reply if it judged a reply was needed. The Council would review the decision after six months.
  8. Mr B disagrees with the Council's decision and says he has kept to the Council's complaints procedure. Mr B says the Council has made him a vexatious complainant to prevent him questioning it further. Mr B wants the Council to remove the restriction so he can continue to pursue complaints.

### **Assessment**

9. The Council's policy on when it will consider a complaint to be vexatious states that if it considers that a person has habitually, persistently and without reasonable grounds, made vexatious complaints in accordance with the policy criteria, either against the same or different Council officers and services, the matter will be referred to the Monitoring Officer. The Monitoring Officer will investigate the referral, including monitoring whether the number of complaints received by a department are unacceptably high or had suddenly risen.
10. I do not consider the Council followed its policy when deciding that Mr B should be treated as a vexatious complainer. My understanding of the policy would be the where someone has made many complaints either to one department or across the Council. I consider the correspondence to Mr B explaining that he was to be deemed a vexatious complainer suggests that. The letter refers to numerous complaints. That is not what had happened. Rather Mr B had corresponded about two issues.
11. Even if it was considered that Mr B's correspondence on those two matters had reached a point where it could be considered to be excessive or vexatious that does not meet the requirements in the policy for deeming him to be overall a vexatious complainer. The policy explains the relevant criteria is that someone must habitually and persistently have made vexatious complaints. I do not consider that two complaints could meet that requirement and I do not consider the Council has demonstrated why it considered it did.
12. The Council has commented there is no requirement in the policy for the complaints to be about different matters; the issue is where there are numerous complaints that are vexatious in nature. I consider the policy as written would be understood to mean that distinct complaints were being raised. This was not the case and that is why I do not consider the Council followed the policy as it is written. I therefore consider it would be helpful if the Council reviewed its policy on how it treats unreasonable behaviour from complainants. We have produced guidance on this subject.



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13. The restriction on the means by which Mr B can contact the Council will expire shortly after this statement is issued. I had considered that the Council should lift the restriction but as it will expire so soon there is nothing to be achieved by me pursuing this point further with the Council. Mr B has commented that he considers the Ombudsman should recommend the Council take other action to remedy his complaint. I have considered Mr B's points but I do not consider any remedy is warranted. Mr B could still raise any service issues with the Council while the restriction on contact was in place. He could also raise complaints and the Council would have had to consider how to consider them. Mr B has not suggested that he has not been provided with some service to which he was entitled or otherwise has not had a proper response from the Council to a matter of significance. I do not, therefore, consider that he has suffered any significant personal injustice that warrants any remedy.
14. It will be for the Council to decide how to respond to any further correspondence from Mr B. It is open to the Council to decide that it has provided a reasonable response on a particular issue and that it will not respond further. If Mr B was unhappy with a decision by the Council on how it responded then he can come to the Ombudsman.

### **Final decision**

15. The complaint is upheld. The Council did not follow its policy when deciding to treat Mr B as a vexatious complainer. As the restriction will expire shortly no further action is necessary.

### **Investigator's decision on behalf of the Ombudsman**



**Complaint reference:**  
16 006 313

**Complaint against:**  
Bath and North East Somerset Council

## **The Ombudsman's final decision**

Summary: The Council failed to respond to Mr B's complaint on several occasions within a reasonable period of time. As a result of these failures it delayed in taking action about the parking problems in his street.

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## **The complaint**

1. Mr B complains that Bath and North East Somerset Council (the Council), in respect of parking problems near his home, failed to:
  - respond to his queries and communications within a reasonable period of time or within the timescales set out in its complaints procedure;
  - respond to his queries about parking suspensions and enforcement visits;
  - take prompt action to investigate the issues raised such as visiting the road; or,
  - contact him regarding the planning issues as promised in its stage two response dated 27 April 2016.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

## **How I considered this complaint**

3. I have considered the complaint and the documents provided by the complainant made enquiries of the Council and considered the comments and documents the Council provided. I have also given the Council and the complainant a chance to comment on a draft of my decision.

## **What I found**

### **Council's complaint policy**

4. This policy says that the Council will acknowledge complaints within five working days and respond fully within 15 working days

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### **What happened**

5. Mr B lives on a road with a residents' parking scheme. He has no off-road parking and relies on the permit area to find parking near his home. The area allows non-residents to park for four hours in the bays.
6. In early 2015 building work started on a house near to Mr B's house. This work involved placing a temporary fence and traffic cones across several parking spaces, reducing the availability of parking in the road. Mr B said that on several occasions the nearest parking space was ¼ mile away.
7. In August 2015 he contacted the Council to ask if it had formally suspended the parking bays due to the building work. He received an automated acknowledgement but no reply. On 21 September 2015 he sent a second email. Again he received an acknowledgement but no reply. He then submitted a formal complaint on 29 October 2015. He didn't receive a reply. Instead he received a customer satisfaction request asking if he had been satisfied with the response to his original query.
8. Mr B contacted the Council to say he had not yet had any response to his original query or subsequent complaint correspondence. The Council sent a formal response on 25 November 2015. It apologised for the loss of his emails and the failure to respond. It said according to its records it had not identified any parking bay suspensions in place for longer than a few days. In terms of traders using the spaces for longer than they should, it said it did operate trade parking accounts enabling businesses to activate parking in resident zones across the city when needed to carry out building work. Although this did not involve physical permits, civil enforcement officers on patrol would check to see if the permits had been activated.
9. It said the patrol officers aimed to visit the area every day and complete at least two visits. But it said that due to staffing problems this may not have been achieved in recent months but it was currently training 19 new members of staff.
10. Mr B then asked for confirmation that no applications had been made for suspension of parking in the stretch of road outside the building site and gave details of cars parked for longer than the permitted time over the past two weeks.
11. The Council replied that it had only approved one parking suspension in the road since March 2015 and for a different area. It also said it had spoken to the highways department who confirmed it had not issued any licences for skips or building materials in the road since March 2015. It said it couldn't give information about specific vehicles but since August 2015 officers had made 128 visits and issued 43 penalty charge notices. In December 2015 Mr B informed the Council that the road was blocked by a mechanical digger, a trailer and two 'dump' bags.
12. Mr B did not receive a further reply. In February 2016 he asked for a review of his complaint and contacted his local councillor. He did not receive a reply so he wrote to the chief executive of the Council on 12 April 2016.
13. On 27 April 2016 the Council responded to Mr B. It said it was unable to trace his last email of 14 December 2015 nor his letter of 19 February 2016 which he had hand-delivered to the Council offices. It apologised for these failures. It said it had arranged for the civil enforcement officers to increase their presence in the area over the next few weeks and it would then review the situation. A

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highways officer had visited the site on 22 April 2016 and would pursue the contractor regarding the need to obtain a hoarding licence (for the scaffolding obstructing the highway). It also said it was making some changes to the parking bays to allow the access to the property under development while compensating for the loss of parking in a slightly different area of the road. It also invited Mr B to comment on the four hour parking restriction as part of the review of the permit scheme. Finally the planning enforcement team would visit the site to check if there were any breaches of the planning permission in connection with the work. The officer would then contact Mr B with an update.

14. Mr B sent a further email saying that although action was now being taken it appeared there had been a potential loss of revenue for over six months due to the building work.
15. On 19 May 2016 the Council sent a final response to Mr B. It concluded that the matters originally raised had now been addressed but there were some learning points about the way the Council had failed to deal properly with his complaints since August 2015. Mr B replied in June 2016 saying he was dissatisfied with the level of action taken and it appeared that civil enforcement officers had not reported any problems in the road despite the obvious obstruction for months.
16. Mr B then complained to the Ombudsman. In response to my enquiries the Council said that civil enforcement officers visited Mr B's road on 278 occasions between 1 August 2015 and 30 April 2016 and issued 83 penalty charge notices. It has also provided figures for the period 27 November 2015 to 31 August 2016 saying these show an increase in visits and penalty charge notices. However as the two periods overlap I do not see how it can reach this conclusion.
17. It said officers were expected to report urgent issues which involved a health and safety concern or directly affected parking operations (such as holes, broken glass, walls, fences, fallen trees and unauthorised skips).
18. It said the highways department had written to the contractor on 27 July 2016 regarding the illegal hoarding/scaffolding on the public highway. The contractor submitted a retrospective licence application on 1 August 2016 paying a fee of £120. It said a planning officer had visited the site in May 2016 and not found any evidence to substantiate a breach of the construction management plan. It apologised for not updating Mr B about his conclusions.

### **Analysis**

19. The Council failed to respond to Mr B's queries and complaints within a reasonable period of time between August 2015 and April 2016. It should have responded to his initial query within three weeks but it took three months. It then failed to respond to his email in December 2015 (which it acknowledged it received) and failed to respond to his complaint in February 2016 until April 2016. These repeated failures caused Mr B frustration as well as time and trouble in pursuing the matter when the Council failed to respond.
20. In terms of taking action over the issues raised I consider the Council took far too long to respond. Beyond an assurance to increase patrols in the area it did not visit the road or inspect the site until April 2016. This visit resulted in a change to the parking bays to increase the available parking. If the Council had taken action at an earlier stage then the changes could have been done in November 2015.

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21. The Council also said in April 2016 that it would contact the contractor to ensure he applied for the correct licence. However there was then an inexplicable delay of three months in doing so. By the time it contacted the contractor he was almost ready to dismantle the scaffolding.
22. I am also concerned that despite the daily visits, there is no evidence that the civil enforcement officers reported the obstruction of the parking bays by the building work.

### **Agreed action**

23. The Council has apologised to Mr B for the delay in responding to his complaints and the failure to take significant action in November 2015. I do not consider any further remedy is necessary because Mr B's main concern had been loss of revenue to the Council rather than any great difficulty in parking his car.
24. However I would ask the Council to:
- ensure that the promised improvements to its complaint handling have been implemented; and,
  - to remind its civil enforcement officers of the requirement to notify the Council of any obstructions to the parking bays.

### **Final decision**

25. I consider this is a reasonable way of resolving the complaint and I have completed my investigation on this basis.

### **Investigator's decision on behalf of the Ombudsman**



## **The Ombudsman's final decision**

Summary: the Council failed to keep Mrs B up to date with what was happening with plans to reduce the height of a speed table and delayed. An apology, £500 compensation, a reminder to officers about the requirements in the regulations and a commitment to complete the works within three months is satisfactory remedy for the injustice caused.

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## **The complaint**

1. The complainant, whom I shall refer to as Mrs B complained the Council delayed taking action to reduce the height of the speed table outside her property. Mrs B says the speed table exceeds the regulation height and is causing noise and vibration. Mrs B says despite the Council agreeing to reduce the height of the speed table it has failed to do so. Mrs B says the Council also misled her about whether the completed works met the requirements of the regulations.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints of fault where someone says it has caused them injustice. If the Ombudsman finds fault but no injustice, she will not ask a Council to provide a remedy. If she finds both fault and injustice, she may ask for a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. The Ombudsman cannot investigate late complaints unless she decides there are good reasons. Late complaints are when someone takes more than 12 months to complain to the Ombudsman about something a Council has done. (*Local Government Act 1974, sections 26B and 34D*)

## **How I considered this complaint**

4. As part of the investigation, I have:
  - considered the complaint and Mrs B's comments;
  - made enquiries of the Council and considered the comments and documents the Council provided;
  - considered Mrs B's comments on my draft decisions; and
  - gave the Council an opportunity to comment on my draft decisions.

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## **What I found**

### **Chronology of the main events**

5. The Council installed a speed table outside Mrs B's property in 2009. Mrs B says she contacted the Council about that due to vibration and noise in 2009. Mrs B says the Council said nothing could be done.
6. Mrs B continued to experience noise and vibration from the speed table and measured the height of it in 2014. At that point Mrs B realised the speed table was higher than the regulation height. Mrs B told the Council about that in 2014. The Council later measured the height of the speed table and found it was higher than the regulation height. The Council later told Mrs B it could build road layouts outside the standards and this was not illegal. Mrs B consulted the Department for Transport about that. The Department for Transport told Mrs B there was no tolerance allowed in the regulations.
7. The Council wrote to Mrs B in March 2015 to suggest four alternatives. Mrs B said she wanted the speed table removed. The Council explained that to remove the speed table it would first need to carry out consultation which would delay the process. The Council also said removing and rebuilding the speed table would require consultation. The Council agreed to refer the case to the Cabinet Member following local elections in May 2015. At around this time the parish council offered to complete the formal public consultation at its own expense. The Council did not respond to that offer.
8. In July 2015 the Cabinet member approved remedial works to reduce the height of the speed table.
9. In October 2015 the Council said it would carry out the work when other works in the area which it intended to complete by April 2016. However, when the Council completed the other works in March 2016 it did not reduce the height of the speed table. The Council says that is because reducing the height of the speed table would need a full road closure. The Council considered that would cause unacceptable disruption in the area if it was carried out when the other works took place.
10. The Council has now completed the design work to enable it to carry out the work to the speed table.

### **Analysis**

11. I understand Mrs B first experienced problems when the speed table was installed in 2009. Mrs B says the Council told her at the time nothing could be done. I have not investigated back to 2009 because it is more than 12 months ago. I see no reason why Mrs B could not have contacted the Ombudsman within 12 months of the Council telling her nothing could be done. Given the passage of time and the fact the officer involved has now left the Council I do not consider any investigation I could now carry out into what happened between 2009 and 2014 could reach a safe conclusion. I have therefore not exercised the Ombudsman's discretion to investigate matters before 2014.
12. I am concerned though with what happened once the Council established the speed table exceeded the regulation height. I understand the Council had that information in August 2014. I would expect there to have then been a short delay while the Council considered how to resolve the problem. However, it was more than six months later when the Council came up with four options. I do not



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consider that acceptable given the Council knew the speed table did not meet the regulation height. That delay is fault and has delayed completion of the works.

13. I do not criticise the Council for failing to reduce the height of the speed table as soon as it knew the speed table exceeded the regulation height though. As I said in the previous paragraph, I cannot criticise the Council for considering ways to resolve the matter, although I would have expected it to complete that process earlier. I am satisfied the Council did not pursue the proposals it came up with not due to fault, but because Mrs B said she wanted the table removed. As the Council made clear, removal would require consultation. I could not criticise the Council for failing to reduce the height of the table in the interim because if it then decided to remove the table after consultation it would have wasted public funds.
14. I am satisfied the Council made the decision to reduce the height of the speed table by July 2015. I am concerned about what happened after that. I do not criticise the Council for initially programming the work to take place at the same time as other works in the area. The Council told Mrs B on that basis the work would complete by April 2016. It is clear the work did not take place at the same time as other works for the area. I do not criticise the Council for that decision given it was concerned about additional disruption for local residents as reducing the height of the speed table would require a full road closure. However, I am concerned the Council failed to explain that to Mrs B. In addition, given the Council did not complete the design works until July 2016 it seems unlikely April 2016 was ever a realistic target.
15. I would, in any case, have expected the Council to complete the design work by March 2016 given its intention to complete the works at the same time as other works in the area. As the Council knew the works were required due to it installing the speed table at an incorrect height I consider it should have given priority to those works once the other works were completed. It now seems unlikely the works will complete much before the end of the summer 2016. While I could not say the works will remove any impact on Mrs B she is left not knowing whether the impact on her could have been alleviated at an earlier date. Given the length of time this has already been in progress I would also not want the situation to be allowed to drift. I therefore recommend the Council agree to complete the works to the speed table within three months of my final decision.
16. Mrs B says the Council inaccurately told her in 2015 taking out the existing table and rebuilding it to the correct height would require consultation. Mrs B says that cannot be right when the Council would only be installing a speed table that was at the right height. I understand Mrs B's concern about whether consultation was needed for replacing the speed table with one at the approved height. However, the point here is Mrs B had made clear she wanted the speed table removed. It is likely the Council was wrong to suggest it needed to consult on replacing the speed table with one at the correct height. However, I do not consider this caused any extra delay or further injustice to Mrs B. That is because the reason things did not progress at that point is because Mrs B said she wanted the speed table removed. There is no dispute the Council would have had to consult on that.
17. Mrs B says the Council is at fault for telling her in February 2015 it could build a speed table outside the regulation height when that is not the case. I understand Mrs B's concern about information provided by the Council. However, I am satisfied the Council put together four options to seek to resolve the matter one month later. So, whatever the Council officer said in February 2015 it did not affect the way the Council approached the case. Nevertheless, I recommend

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those dealing with highway works are made aware of the parameters of what the Council can and cannot do when installing speed tables.

### **Agreed action**

18. Within one month of my decision the Council should apologise to Mrs B for not keeping her up to date and for the delays and pay her £500 compensation. That is partly to reflect the time and trouble Mrs B had to go to pursuing her complaint. It is also to reflect the additional time Mrs B has had to put up with a speed table which exceeds the regulation height due to delay by the Council.
19. Within one month of my decision the Council should remind officers dealing with highways works of the regulations relating to the height of speed tables.
20. Within three months of my decision the Council should complete the work to reduce the height of the speed table.

### **Final decision**

21. I have completed my investigation and found fault by the Council which caused Mrs B an injustice. I am satisfied the action the Council will take is sufficient to remedy her injustice.

### **Investigator's decision on behalf of the Ombudsman**

## **The Ombudsman's final decision**

**Summary:** The Council failed to conduct two safeguarding investigations without fault and to ensure the terms of reference set reflected the correct evidential test that should be applied to the information gathered. That resulted in a loss of confidence in the decisions taken.

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## **The complaint**

1. In brief the complaint is when managing a safeguarding investigation the Council failed to:
  - Properly conduct a safeguarding investigation leading it to uphold a complaint and launch a further safeguarding investigation;
  - Properly set the terms of reference for the Chair of the review of the safeguarding investigation reflecting the civil test of 'balance of probability' leading the Chair to decide one complaint as 'inconclusive';
  - Properly weigh evidence presented to the planning meetings during the safeguarding investigation and review.
2. The complainant, whom I shall refer to as Dr X, says this has led to an 'inconclusive' finding on a complaint he believes would have been upheld but for the failure to set the correct terms of reference. Dr X believes the Council should review the matter again. He believes the evidence all points to a finding of 'substantiated' on the complaint that providing 1:1 care would have reduced the risk of falling. Thus preventing injuries suffered by his late father, whom I shall refer to as Mr Y.

## **The Ombudsman's role and powers**

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. He must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, he may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

## **How I considered this complaint**

4. In considering the complaint I have:
  - Spoken to Dr X;
  - Reviewed the information presented with the complaint;

- Put enquiries to the Council and reviewed its responses;
- Taken a statement from the Safeguarding Chair;
- Shared with Dr X and the Council my draft decision and reflected on comments and information received in response to that draft decision.

## **What I found**

### **The Council's Safeguarding Police**

5. The Council's Safeguarding Policy says the aim of adult safeguarding includes:
  - Stopping abuse or neglect wherever possible;
  - Preventing harm and reduce the risk of abuse or neglect to adults with care and support needs;
  - Safeguarding adults in a way that supports them in making choices and having control about how they want to live;
  - Address what has caused the abuse or neglect.
6. The purpose of safeguarding is then to prevent and stop any abuse or neglect or risk of such.

### **Safeguarding Procedure**

7. The Council's procedure says the role of safeguarding planning meetings is to evaluate and decide the outcome of the allegation on the balance of probabilities. In doing so, the Chair must adhere to one of the four possible outcomes contained in the Information and Guidance for the Safeguarding of Adults. This guidance issued by the Health and Social Care Information Centre defines the possible outcomes as:
  - Conclusion Fully Substantiated – all allegations happened on the balance of probabilities;
  - Conclusion Partially Substantiated – some, not all allegations happened on the balance of probabilities;
  - Conclusion Inconclusive – the evidence does not allow the decision maker to make a decision for example where it is one person's word against another's and there is no other corroborative evidence;
  - Conclusion Not Substantiated – the allegations are not believed on the balance of probabilities;
  - Investigation ended at individual's request.
8. The chair must then decide on action taken adhering to the four possible results set out in the Information and Guidance for the Safeguarding of Adults Return (SAR) issued by Government. Those are:
  - No further action under safeguarding;
  - Risk remains;
  - Risk reduced;
  - Risk removed.

### **Why there were two safeguarding investigations?**

9. The Council says for several reasons its first investigation into safeguarding concerns about the care of Mr Y did not cover all the concerns. On the advice of

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its independent complaints reviewer who found fault with the first investigation, it decided to conduct a further safeguarding investigation covering those concerns.

10. The Council says Dr X agreed the terms of reference for the second investigation at a two hour meeting with the proposed Chair of that investigation. The terms of reference state the investigation will review and analyse whether the allegation of neglect [of Mr Y] could be substantiated if the following were identified:
  - “ i) The falls risk assessment and/or consequent falls prevention strategies were inadequate; and/or
  - ii) [Mr Y] continued to require 1:1 supervision: whether for his falls risk or some other reason; and/or
  - iii) [Mr Y’s] fall on 24 December 2013, or some other occurrence that caused [Mr Y] harm would not have happened had [Mr Y] received 1:1 supervision”.
11. Mr X says it is in this third term of reference the Council failed to direct the investigation to the correct evidential test. The Council’s complaints reviewer agreed when she completed her review of the second safeguarding investigation.

### **Background to the complaint**

12. Dr X’s father, Mr Y, lived in a care home funded by NHS Continuing Care. Between November 2012 and December 2013 Mr Y experienced falls in the home. The care home and managers of Mr Y’s care decided he should have 1:1 night time care from January 2013. Mr Y needed help managing his agitation and distress during the night, which when not managed resulted in him walking around his room and going into other resident’s rooms causing them distress. As a non sighted man this put him at risk of falling.
13. In July 2013 the care home changed Mr Y’s care regime. It stopped providing 1:1 night-time care. It decided he needed 1:1 daytime care. It did not consult Dr X or the funding body on this change.
14. At the annual review of Mr Y’s care in October 2013 Dr X learned the 1:1 night-time care had stopped in July 2013. Dr X says he received no explanation. The records do not show any challenge by the funding authority responsible for Mr Y’s care.
15. On 24 December 2013 Mr Y fell during the night suffering injuries. Dr X says that but for the failure to provide 1:1 care Mr Y’s fall would have been prevented. Mr Y passed away on 3 January 2014.
16. The NHS provided care to Mr Y and therefore had responsibility for its management. The Council has responsibility for the investigations into concerns about safeguarding.

### **Safeguarding investigations**

17. The Council undertook two safeguarding investigations because its first investigation did not cover all the concerns raised. That first investigation followed the safeguarding alert received by the Council on 6 January 2014 following Mr Y’s fall on 24 December 2013. The safeguarding investigation began with a multi agency planning meeting attended by Dr X.
18. In April 2014 the Council discussed the terms of reference for the safeguarding investigation. It decided it would investigate whether there had been neglect resulting in significant harm to Mr Y while living at the care home. The investigation would visit the home, review Mr Y’s case notes and compare information with that provided by Dr X. The investigation would:



- Establish if the Care Provider provided the 1:1 care it says it provided between 31 October 2013 and 24 December 2013;
  - Review Mr Y's care between 21 July 2013 and 24 December 2013 to identify any significant incidents causing harm to Mr Y which with 1:1 care could have been prevented;
  - Obtain evidence from the GP surgery, from the Lead Tissue Viability Nurse;
  - Establish when Mr Y received his injury, what action the staff at the care home took, and decide if they took suitable action and whether an ambulance should have been called on 24 December 2013;
  - Consider if the procedure for requesting 1:1 funding could be improved.
19. This first safeguarding investigation reported on 1 October 2014. Dr X complained it had not covered all the concerns raised and so the Council commissioned a review of the investigation. The reviewer decided the investigation had not properly considered all concerns and recommended a second investigation.
20. Having considered its reviewer's advice the Council's officers met with Dr X in May 2015 to discuss the terms of reference for a second safeguarding investigation. This would cover those concerns not covered in the first investigation. The Council agreed terms of reference on 10 June 2015 (see paragraph 10 above). They include whether "[Mr Y's] fall on 24 December 2013, or some other occurrence that caused [Mr Y] harm would not have happened had [Mr Y] received 1:1 supervision"

#### **Second Safeguarding Investigation.**

21. This investigation had to decide whether, had Mr Y had received 1:1 care as he should during July to December 2013, his fall or some other occurrence that caused him harm would not have happened.
22. The Chair decided the investigation could not know as a matter of fact whether Mr Y's fall would have been prevented. The Chair decided the evidence was inconclusive.

#### **What the safeguarding investigations found**

23. The investigations noted staff said Mr Y often refused personal care presenting difficulties for staff. However, the investigator said that: "...if one to one care had been provided [Mr Y] may have built relationships with carers which may have helped when providing personal care..."
24. In brief the investigations found:
- The care provider failed to issue a care plan showing what 1:1 care should be given and did not give details of how it should be delivered. For example it did not say if Mr Y needed someone in his room all the time or just hourly observations to check he did not need help;
  - The reasons for the 1:1 were both to manage Mr Y's night-time agitations within his room as well as preventing him wandering and to manage his risk of falls;
  - The care home failed to tell both Dr X and the care funding authority about the change from 1:1 night-time care;
  - Records did not show any falls at night between July 2013 until the fall on 24 December 2013;

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- The records show no risk assessments undertaken when planning to stop the 1:1 care or after that care had stopped or any review of that decision.
25. The investigation found fault in the patchy records kept by the care home. Those records show Mr Y had 14 falls between 10 November 2012 and 24 December 2013. Four of those falls had been at night (three before 1:1 care had been put in place). However, the records show no night-time falls between July 2013 and Mr Y's fall on 24 December 2013.
26. The investigation found no daytime 1:1 care in place despite the care home saying it had switched it from night time to day time. It found no evidence of what had caused Mr Y to fall on 24 December 2013.

### **Evidential Test applied by the Chair of the Second Safeguarding Investigation**

27. The Council says it undertakes all safeguarding investigations using the civil law evidential test of 'balance of probabilities'. In other words on the evidence it is likely something did or did not happen. Reference to that test is set out in its Safeguarding Procedure. It refutes the suggestion the terms of reference prevented the Chair from reaching a decision that the allegations were substantiated. The Chair as an experienced person would know what test to apply.
28. Dr X says it may not be possible to know as a fact whether the fall could have been prevented. However in his view on the balance of probabilities the failure to have in place 1:1 supervision means it is more likely to happen. He says with 1:1 supervision Mr Y would have someone with him most of the time and that is likely to have prevented most if not all falls. Dr X says the terms of reference prevented the Chair of the Safeguarding Investigation from being able to reach an appropriate decision. Dr X says the appropriate decision would be to uphold the allegations as Substantiated.

### **Complaint about the Terms of Reference**

29. In November 2015 Dr X complained to the Council about the reasoning for the findings made in the second investigation report. Dr X complained the Council had set the terms of reference too narrowly. This left the Safeguarding Chair with no choice but to find the complaint about the impact of the lack of 1:1 care inconclusive. In Dr X's view had the Council properly set the terms the Chair could decide partially or wholly substantiated, or not substantiated.
30. The Council appointed the same reviewer who had reviewed its first safeguarding investigation to review the second. The reviewer upheld six of the complaints and dismissed nine. The six complaints upheld are:
- The investigation had only considered whether the care home had followed its own policies and procedures not whether those procedures were satisfactory;
  - The investigation gave inadequate weight to the care home's failure to properly carry out all the strategies and steps set out in its policies and procedures;
  - The investigation unreasonable accepted the care home's assertion that a resident assigned to be within high visibility meant the same as regular monitoring;
  - The finding of the investigation that the care home did all it could have done to prevent Mr Y falling does not match the available evidence;

- The investigation wrongly found the entirety of the care home's risk assessment and falls management including that arising from 1:1 provision should not have been considered together when it should.

#### **Reviewer's comments on the terms of reference and recommendations**

31. The reviewer did not uphold the complaint about the Safeguarding Chair's decision about whether Mr Y's fall could have been prevented. The Safeguarding Chair said the evidence was inconclusive on the question but for the lack of 1:1 care Mr Y's fall or some other harm "would not have happened".
32. However, the reviewer criticised the terms of reference. She says the Safeguarding Chair had to consider whether Mr Y's fall or some other harm "would not have happened" rather than "would probably not have happened" or "might not have happened". The reviewer agrees with the Safeguarding Chair that on the evidence it simply was not possible to come to such a definite conclusion as required by the words "would not".
33. In the reviewer's view the test set by the terms of reference came closer to the criminal test of 'beyond reasonable doubt'. And not the 'balance of probabilities', test set by the Safeguarding Procedures. So while the reviewer decided the safeguarding investigation had properly applied the terms of reference, those terms of reference precluded the safeguarding chair from applying the right evidential test.
34. The reviewer recommended in future the Council draft terms of reference more closely in line with the Safeguarding Policy to avoid setting the test for evidence too high. She also recommended harmonising the Council's Procedure with the SAR Guidance.
35. On 15 March 2016 the Council wrote to Dr X saying:  
"I fully accept the findings and recommendations of the report and would like to offer my sincere and unreserved apologies for the inadequacies of the safeguarding process and conclusions as identified by [the Council's Reviewer]."
36. The letter then promised the Council would revisit and revise the Safeguarding Investigation Outcomes letter.

#### **Review of outcomes of Second Safeguarding Investigation**

37. In keeping with that promise the Council's Head of Safeguarding wrote to Dr X on 29 April 2016 with a revised outcomes letter. The Head of Safeguarding not the Chair of the Safeguarding Investigation reviewed the Outcomes letter. The Council says:  
"In reconsidering the conclusions letter I have kept to the Terms of Reference that were agreed by all parties."
38. It did not change the result on the question whether Mr Y's fall would not have happened: that remained inconclusive.

#### **View of the Safeguarding Chair**

39. In response to my draft decision the Safeguarding Chair gave a statement explaining the burden of proof she applied. The Safeguarding Chair has several academic qualifications in social work, over 25 years experience including training staff in the Care Act framework. She is a member of the Local Government Association's peer review team and experienced in serious case reviews and safeguarding adult boards.



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40. The Safeguarding Chair says she always applies the civil evidential test when deciding safeguarding investigations. She explained she considered all the evidence including discussions in the safeguarding meetings, and the information in the safeguarding investigation report. Her decision applying the test 'would probably not have happened' was inconclusive because she says it was not possible to know if the provision of 1:1 care probably would have prevented the fall in December 2013. The Safeguarding Chair did not feel constrained by the terms of reference because she always uses the probability test and knows that is the correct test for safeguarding investigations. On that test the evidence she says led her to an inconclusive finding. Such a finding is one of the five permitted conclusions.

#### **Safeguarding planning meetings**

41. The planning meetings discussed issues raised by Dr X and professionals. They discussed the reasons for commissioning 1:1 care, the lack of any consultation on its removal and the absence of any records of proper risk assessments undertaken by staff. The meetings noted the care home reviewed the care plan but did not update it. Therefore it had not properly recorded the reasons for any change or when those changes would be reviewed and how they had been discussed with Mr Y or Dr X. The care plan gave no information about why the care home failed to provide daytime 1:1 care but continued to accept funding from the funding authority for that care.
42. At the meeting on 28 September and the final meeting in October 2015 Dr X presented his written views on the draft report on safeguarding. The Chair considered Dr X's views before issuing the report on 12 October 2015.

#### **Analysis – is there fault resulting in injustice?**

43. It is not my role to say whether the failure to provide 1:1 care to Mr Y caused him to fall. It is to consider whether the Council investigated the concerns without fault.
44. It is for the safeguarding investigation to decide on the evidence before it whether the allegations are substantiated. And to decide what recommendations to make to resolve poor care and prevent repetition. The safeguarding investigations found fault and made recommendations for improvements.
45. The safeguarding planning meetings enabled all parties to present information and raise concerns. What weight is given to that information is a matter for the decision maker. I am satisfied the meetings enabled everyone to put forward their views and present information. I cannot comment on the weight given to any part of that evidence.
46. The Council had to commission a review of both safeguarding investigations. And in both the reviewer found faults and recommended changes. Therefore I find fault in the Council's handling of both safeguarding investigations.
47. The reviewer found the Safeguarding Chair made a decision within the constraints of the terms of reference for the second safeguarding investigation. However, the reviewer found the terms of reference failed to reflect the proper evidential test. The terms of reference should not constrain the Safeguarding Chair from deciding a case on the balance of probabilities.
48. The reviewer says using the words "would not have happened" asks for a higher test than "probably would not have happened". The Council says the Safeguarding Chair would know as an experienced person in the field that all

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decisions should be made applying the balance of probabilities test. It is set out in the Safeguarding Procedure. Even so when drafting its terms of reference it should not set the bar so high that this could be in doubt.

49. The Council told Dr X in its letter of 15 March 2016 it accepted the findings and recommendations of the reviewer. It did not qualify that statement by disagreeing with the reviewer's comments and recommendations about the terms of reference. Therefore it had accepted the criticism the reviewer makes. But it failed to apply that to its review of the Outcomes Letter. It kept the terms of reference the reviewer had criticised. The Council believes it did not act with fault because the reviewer's recommendations said 'in future' it should draft terms of reference more closely reflecting the Safeguarding Policy. I find that it acted with fault in not at least reflecting in the revised outcomes letter the comments about the problems with the terms of reference.
50. It acted with fault in setting the terms of reference and I agree with the reviewer those terms should follow the safeguarding policy more closely to avoid any doubt.
51. Dr X lost confidence in the probity of the investigations because of the faults identified by the reviewer. He believes the terms of reference prevented the Chair from upholding his complaint and he wants that reviewed.
52. Both safeguarding investigations were found wanting by the reviewer. I have to decide if those faults led to a different decision than the Chair would have made but for those faults. The Chair's statement is helpful on this point. Drawing on her knowledge and many years experience of safeguarding and the evidential test needed to support a decision, the Chair says she applied the 'balance of probability' test. The strictly drawn terms of reference did not constrain the Chair from exercising that test but did put the question very clearly on whether Mr Y would have fallen if 1:1 care had been in place. In her view she could not say he probably would or would not have fallen hence she recorded an inconclusive decision. It is for the decision maker to decide on the weight of the evidence whether she can decide something as substantially, partially or inconclusively proven subject to the right evidential test. I find the Safeguarding Chair applied the correct evidential test having considered all relevant information before her. The strictly worded terms of reference created doubt which they should not. Even on the less strict test of 'probability' a decision maker may still find they cannot reach anything but an inconclusive view.
53. Dr X's loss of confidence given that both safeguarding investigations resulted in criticisms on review means he may not have confidence in what the Safeguarding Chair says now. I understand that. However, it is clear to me that in drawing on her professional expertise and experience and exercising her professional judgement the Safeguarding Chair applied the correct test to the evidence collected. But for the faults in the process I cannot say a different decision would have been made.
54. Dr X asked the Council to remedy his complaint by reviewing the question using the correct evidential test. That may have restored his confidence in the Council's decisions but it could not guarantee the decision he hoped for. I put this to the Council and suggested a peer review may help. However, it declined to put this to a further review. The Safeguarding Chair's statement expressing her clear understanding of the evidential test to be applied means I cannot challenge the merits of her decision or recommend a further review.

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### **Recommended and agreed action**

55. To remedy the injustice arising from the faults identified I recommend and the Council agrees to:
- Apologise to Dr X for inconvenience time and distress to which he has been put;
  - Pay to Dr X £500 for the time and inconvenience caused by the faulty safeguarding investigations.

### **Final decision**

56. The Council failed to conduct two safeguarding investigations without fault and failed to set out clear terms of reference resulting in a loss of confidence in the decisions and avoidable inconvenience and anxiety.

### **Investigator's decision on behalf of the Ombudsman**



## **The Ombudsman's final decision**

Summary: The Council's delivery partner and its contractor delayed in providing Mr B with a quote for replacement doors. As a result he may have lost out on grant funding.

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## **The complaint**

1. The complainant, whom I will call Mr B, complains that, because of the failure of a delivery partner, he has been disadvantaged in the Council's Energy at Home scheme which would have provided a larger grant for replacement doors (alongside cavity wall insulation) if it had been completed in 2015/16. The grant available with the current delivery partner is less and the Council has refused to match the former grant level.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

## **How I considered this complaint**

3. I have considered all the information provided by Mr B together with information provided by the Council.
4. I sent my draft decision to Mr B and the Council and considered their comments.

## **What I found**

5. In December 2015 Mr B enquired about funding for cavity wall insulation and replacing his porch doors under the Council's Energy at Home scheme.
6. Under the scheme, the Council helps people install energy-saving home improvements such as insulation, energy efficient glazing and external doors or heating system upgrades. It also helps them access grants and find an installer to carry out the work.
7. Mr B was referred to Company X for an assessor to visit his property and prepare an energy assessment report.
8. Mr B says the assessor told him he would qualify for funding towards cavity wall insulation with a £200 contribution from himself, and a £1000 grant towards the cost of replacing his porch doors.

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9. On 8 February 2016 Company X followed its normal process of sending out a request to quote to two sub-contractors. They did not reply which meant the next stage in the process (Company X contacting the customer) was not triggered.
  10. On 15 March 2016 Mr B telephoned Company X and it chased up the contractors.
  11. On 16 March 2016 one of the contractors said it could not provide a quote for the porch doors. Company X explained to the other contractor that it would ideally like all quotes accepted by 21 March 2016.
  12. On 22 March 2016 the contractors gave Mr B a quote for the cavity wall insulation and a two panel sliding porch door. They explained they could not find a supplier to provide a four panel sliding door which Mr B needed. Company X recorded in its notes that Mr B would get back to them regarding the quote.
  13. Mr B spoke to Company X again on 29 March 2016 to discuss the quotes and the possibility of using the funding to replace his front door instead of the porch doors. He could not accept a quote for the two panel sliding door as this would leave a very narrow entry and exit. Company X told him it was no longer possible to access the grant before the end of March deadline.
  14. Mr B made further enquiries about pursuing the scheme in September 2016. The Council explained that, although the scheme was still running, Company X was no longer the delivery partner. With regard to the cavity wall insulation, the current grant terms were different to those previously available but the Council agreed to match any shortfall so Mr B would not pay any more than he would have done under the previous scheme. However, there is no grant currently available for the cost of installing doors. Mr B considers the Council should fund the installation of a new front door as he has missed out on grant funding for this. The Council has declined. It did however agree to add him to a waiting list in case funding becomes available in future.

### **Analysis**

15. If Mr B had received a grant in 2015/16, he would have paid £200 towards cavity wall insulation and received £1000 grant funding towards a front door or porch.
16. The information pack given to Mr B at the outset explains the procedure for the Energy at Home scheme as follows:
  - At stage 1 the Energy at Home Advice Service helps applicants with information, advice and guidance on the energy-saving home improvements they might want to make together with details about the Energy at Home scheme and what grants and finance options are available;
  - At stage 2 the Advice Service refers the applicant to Company X who makes an appointment for an assessor to visit. The assessor then sends the applicant a home energy assessment report;
  - At stage 3, if the applicant has decided which measures he wants to install, he can contact Company X to arrange a quote. Company X provides the applicant with a quote for the works including the full cost of the works, the amount of grant the applicant is eligible for and the amount he needs to pay himself;
  - At stage 4, if the applicant decides to proceed, he receives a form and grant guidance notes. He must complete and return the form if he wants to use the Home Energy Top up Grant. The form provides details of ownership of the property and any planning requirements;
  - At stage 5 the applicant should contact Company X to arrange the installation.



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17. Mr B only got as far as stage 3 of the process. He received a quote from Company X. But, when he spoke to them on 29 March 2016, it was too late for him to obtain an alternative quote for a front door instead of porch doors then complete the grant application and have this approved before the grant deadline.
  18. Mr B says the delay was caused by the contractors who did not provide a quote until 22 March 2016 despite this being requested on 8 February 2016. In addition, when the contractors did provide a quote he says it was unworkable because it was for a two panel door rather than a four panel door.
  19. The Council says the delay in providing the quote appears to stem from the combination of a request for an unusual measure (four panel door) and the high volume of work that Company X was dealing with at the time. It says Company X was under considerable pressure because of the number of people referred into the scheme and the fact that the grant deadline was approaching.
  20. I find the contractors were not at fault in providing a quote for a two panel door. They explained they could not find a supplier for a four panel door and therefore gave this quote as an alternative. The other contractors were also unable to provide a quote for a four panel door. However, I find the contractors' delay in providing a quote was fault.
  21. I accept Company X chased up the quote as soon as Mr B telephoned but it should have done so sooner. I appreciate Company X was under a great deal of pressure at the time but this does not alter the fact that it was at fault in failing to chase up the quote.

### **Injustice**

22. Mr B says he lost out on a £1000 grant towards a new front door which he would have accepted as an alternative to porch doors.
23. Even if the contractors had quoted sooner, I cannot say for certain that Mr B would have completed all the necessary steps before the deadline. He would have had to refuse the quote and request an alternative quote for a front door, receive and accept the alternative quote, complete a grant application form and return it to the Council who would then decide whether or not the grant should be approved.
24. There was no obligation on the Council to provide funding until Mr B had accepted a quote and obtained a grant. I cannot therefore conclude he definitely lost out on the £1000 grant as a result of the delay in obtaining the quote. However, he will always have the uncertainty of not knowing whether, but for the fault, the outcome could have been different.
25. Mr B says Company X told him a visit from the contractor would guarantee the grant funding. The Council says Company X does not know why he was under this impression as this is not the normal process. Clearly, a contractor's visit would not secure grant funding as Mr B would have had to apply to the Council for a grant and have this approved. However, there is clearly a conflict of evidence about who said what to whom. In the absence of tangible evidence to support one version of events over the other, I cannot reach a conclusion on this point.
26. Mr B says he was told there was no time limit for obtaining a grant. In the absence of tangible evidence to prove exactly what was said, I cannot reach a conclusion on this point. However, Company X's notes of a telephone conversation with the contractors on 16 March 2016 states, "we would ideally like

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all quotes to be accepted by the 21<sup>st</sup>". This suggests Company X was aware of the end of March deadline.

### **Agreed action**

27. The Council has agreed to pay Mr B £250 in recognition of his uncertainty about whether, but for the faults identified, the outcome could have been different.

### **Final decision**

28. I uphold Mr B's complaint. The Council's delivery partner and its contractor were at fault in failing to ensure he received a quote within a reasonable time.
29. The Council has provided a satisfactory remedy for the injustice suffered by Mr B so I have completed my investigation.

### **Investigator's decision on behalf of the Ombudsman**



## **The Ombudsman's final decision**

Summary: The Council was at fault in the way it conducted a safeguarding investigation. The Council has agreed to a remedy to acknowledge the impact of this fault.

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## **The complaint**

1. A care provider, which I shall refer to as CP, complains about the way the Council conducted a safeguarding investigation about a deceased resident in a nursing home it owned.
2. In particular CP complains the Council:
  - a) had no legal authority to reopen the safeguarding investigation;
  - b) did not conduct the second safeguarding investigation properly;
  - c) did not take into account the representations it made that the second report was biased; and
  - d) did not deal with its complaint properly.
3. CP claims to have suffered damage to its reputation and consequential financial losses.

## **The Ombudsman's role and powers**

4. We investigate complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

## **How I considered this complaint**

6. I read the papers submitted by CP and spoke to its Compliance Manager, Mr P, over the telephone. I also considered the Council's comments about the complaint and the supporting documents it provided. I sent a draft version of this statement to both parties and have taken into account the comments received by the Council in response.

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## What I found

### Policy background

7. At the time of the events complained of the relevant safeguarding guidance was, “No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse”
8. The statutory guidance says an adult protection investigation should find out facts, and assess the needs of the vulnerable adult for protection, support and redress. It should also decide what follow up action should be taken.
9. In this context the “No Secrets” guidance stipulates the importance of ensuring that robust local safeguarding procedures are in place to facilitate effective joint working and sharing of information.
10. The Council had a multi-agency policy and procedure in place that reflected these principles. The purpose of the Council’s policy was to “set out how all individuals and agencies with responsibility for the well being and protection of adults at risk should work together to safeguard them from abuse, exploitation and/or mistreatment.
11. The Council also had a comprehensive multi agency procedure in place that it followed when dealing with the safeguarding investigation that is the subject of this complaint.

### The facts

12. Home Z is a nursing home owned by CP, a limited company. This complaint has been brought on behalf of CP by its Compliance Manager, Mr P.
13. Mr D was a resident at Home Z. He was 85 when he moved there in October 2012. Mr D had dementia and was blind. He had a number of other conditions including insomnia, lymphodema, impaired hearing and psychosis.
14. Mr D’s placement at Home Z was funded by the NHS because his health care needs were so complex.
15. Mr D often demonstrated challenging behaviour which staff at Home Z found difficult to manage within their existing staff ratios. Mr D’s insomnia and dementia meant he would often wander into other residents’ rooms at night. From February 2013, the NHS gave Home Z extra funding to provide Mr D with 1:1 support during the night.
16. This support was stopped by the manager of Home Z in July 2013. He did not tell anyone else at Home Z or Mr D’s son, whom I shall refer to as Mr E. The circumstances of this and the repercussions were a key factor in the subsequent safeguarding investigations. There was also uncertainty about the purpose of the 1:1 support and the level and time it was provided to Mr D at various times he was there.
17. On 24 December 2013, Mr D fell whilst alone in his room at night and was admitted to hospital the following day. He passed away in hospital on 3 January 2014. The primary cause of death was subsequently recorded by HM Coroner as pneumonia.
18. On 7 January 2014, the Council received a safeguarding referral from the Care Quality Commission (“CQC”). Mr E had complained to the CQC about the circumstances leading up to his father’s death and CQC had referred this on to the Council as the lead agency with responsibility for safeguarding. Mr E’s initial complaint was about the lack of 1:1 support on 24 December 2013. He said the

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fall would not have happened if the 1:1 support had been in place. He also said the home was negligent in the way it dealt with his father once he was found in his room that night. He also raised other concerns about the quality of care received by his father while at the home which he said was neglect.

19. The Council started a safeguarding investigation in accordance with its procedures. A report was produced on 1 October 2014. This report concluded no 1:1 support was being provided at the time of the fall on 24 December 2013. However, it could not conclude that significant harm occurred as a result of this. The report also found there was "no neglect in resulting in significant harm" arising from the care Mr D received at Home Z.
20. Mr E was not satisfied with the report or its outcome and recommendations. He submitted a complaint to the Council. He maintained his view that if his father had been in receipt of 1:1 support, this would have prevented him from falling on 24 December 2013.
21. In response to this complaint, the Council asked an independent person, whom I shall refer to as Ms B, to undertake a review of the report. In March 2015, Ms B recommended the safeguarding investigation should be reopened because the original report had not focussed enough on the fall and whether it could reasonably have been prevented.
22. On 21 May 2015, the Council's Head of Safeguarding met with Mr E to discuss what the terms of reference for the second investigation should be. A multi agency meeting was convened on 2 June 2014 to request the further involvement of the various agencies and discuss the terms of reference. Ms G, the Operations Director employed by CP, attended this meeting.
23. The agreed terms of reference were:

*"The investigation will review and analyse whether the allegation of neglect could be substantiated if the following were identified:*

  - a) *The falls risk assessment and/or consequent falls prevention strategies were inadequate; and/or*
  - b) *Mr D continued to require 1:1 supervision; whether for his falls risk or some other reason; and/or*
  - c) *The fall on 24 December 2013, or some other occurrence that caused Mr D harm would not have happened had Mr D received 1:1 supervision".*
24. On 6 August 2015, the Council circulated a draft version of the second investigation report to all parties including Mr E and Ms G. CP says the Council also sent it to HM Coroner which it should not have done. CP was dissatisfied with the outcome of the second investigation. On 2 September 2015, Ms G sent the Council a list of factual inaccuracies and requested the report be amended.
25. Five safeguarding adults planning meetings were held on 10 August, 11, 15 and 29 September and 8 October 2015. The purpose of these meetings was to "consider the responses/factual inaccuracies report from CP and make changes where agreed by those present". I have seen the transcribed notes from these meetings. Both Mrs G and Mr E were present along with representatives from other agencies and the author of the report. Detailed discussions took place and Ms G's views on the draft report were discussed in great detail and a number of changes made to reflect these.
26. The main issues raised by CP and discussed at the meetings were:

- Staffing ratios
  - Relevance and recording of sleeping patterns
  - The link between 1:1 support with changes in behavior
  - How the fall was documented by care staff
  - Issues around medication – both recording and the possible effect on Mr D's behaviour
  - Recording practices of falls at the home
  - Circumstances of the removal of the 1:1 support
  - Relevance of Mr D being locked in his room on a particular occasion
  - Fraud aspects of the case
27. The investigator produced her final report on 12 October 2015. The overall conclusion was that the allegation was partially substantiated. In relation to the terms of reference the findings are set out below (with my commentary on the conclusions added in bold):
- "The investigation will review and analyse whether the allegation of neglect could be substantiated if the following were identified:*
- a) *The falls risk assessment (**Substantiated**) and/or consequent falls prevention strategies were inadequate (**Unsubstantiated – this was later changed to Substantiated**); and/or*
  - b) *Mr D continued to require 1:1 supervision; whether for his falls risk or some other reason (**Substantiated**); and/or*
  - c) *The fall on 24 December 2013, or some other occurrence that caused Mr D harm would not have happened had Mr D received 1:1 supervision (**Inconclusive**)".*
28. I accept CP's view that the outcome of the second investigation was less favourable to CP than the first one had been.
29. CP wrote a formal letter of complaint to the Council on 1 December 2015. The complaint was founded on two key issues:
- "1. The investigation unnecessarily deviated from the scope of the terms of reference whilst excluding important factors of focus. The evidence gathered has not been properly evaluated.*
- 2. The key points we raised repeatedly were not listened to or included in the final report and the subsequent determination. As a result allegations outlined in the terms of reference have not been considered in a consistent or logical method to reach a fair outcome"*
30. The complaint highlighted many areas of concern. CP invited the Council to change all of the outcomes to "Not substantiated"
31. The Council responded, in accordance with Stage 1 of its complaints procedure on 29 April 2016, but did not amend the overall recommendations in favour of CP.
32. The Council attached to its response an amended outcome letter, to replace the one sent in October 2015. This letter told CP the Council had received a complaint about the outcome of the second investigation from Mr E as well as CP. In response, the Council had commissioned Ms B (who had previously been involved when she reviewed the first safeguarding investigation following Mr E's



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complaint) to consider Mr E's complaint. The Council's Head of Safeguarding had considered CP's complaint.

33. The Head of Safeguarding said she had taken into account both her own enquiries and the Independent Complaint investigators report when re-issuing the outcome letter. This letter provided more detailed explanation about each of the individual findings. One of the outcomes had also changed. One of the allegations was changed from "not substantiated" to "substantiated".
34. Again, I accept CP's view that this revision was not in favour of CP.
35. On 14 July 2016, CP sent a further formal complaint to the Council. This detailed letter claimed "the draft report and subsequent final report were contrived for purely political purposes; the resulting investigation activities sought only to justify a predetermined outcome and not consider relevant information and formulate an objective evaluation. We believe the intention was to appease and to avoid further complaint from Mr E and to provide him with grounds for harm or litigation against the company".
36. CP also expressed dissatisfaction with Ms B's involvement in the matter. She was commissioned by the Council to carry out the review of the first safeguarding investigation as well as responding to Mr E's complaint about the outcome of the second investigation. CP was asked to comment on the propriety of this.
37. Included in the letter were 12 questions CP wanted the Council to answer: CP was effectively asking the Council to conduct a full review of all matters raised since June 2015. CP also requested that the Council should ensure "that a suitably clinically qualified professional is involved or consulted in the consideration of our complaint".
38. The Council responded on 4 August 2016. It explained that, "the aim of the Stage 2 review is to ensure that all matters raised in the original complaint have been comprehensively and accurately addressed." The Council concluded that nothing further could be added to the response provided on 29 April 2016. CP then complained to the Ombudsman.
39. Meanwhile, in June 2016, HM Coroner, following an inquest into the death of Mr D, recorded the cause of death as "accidental". CP says that this was brought to the attention of the press and CP has been exposed to negative press coverage which has had an impact on its reputation as well as financial losses.

### **Was there fault leading to injustice?**

40. The purpose of my investigation is to ascertain, based on evidence, whether there has been any fault by the Council in the way it reopened and conducted the safeguarding investigation and the way in which it reached its decision. If so I then have to consider whether the complainant has suffered an injustice as a result.

### **The Council was not entitled to reopen the safeguarding investigation**

41. There is no specific guidance, either within the national guidance or Council policy, about if and when safeguarding investigations can be reopened. But as the main purpose of such an investigation is to prevent future harm I would expect a Council, if new evidence is presented, to be able to look into it further. Indeed the Ombudsman may have found fault if the Council had not commissioned the second report.
42. I do not agree with CP that a "double jeopardy" situation arose. The second investigation focused on areas not covered by the first report. The second

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investigation was restricted to areas specifically identified in terms of reference upon which CP was invited to comment. I have not found evidence of any complaint from the home about these terms of reference, other than the involvement of Mr E in their drafting.

The investigation was conducted in such a way as to give the impression of bias and the outcome was pre-determined

43. I have seen no evidence of bias or that the outcome was pre-determined. CP was consulted when the terms of reference were set for the second investigation. I have seen evidence that all of CP's many representations and concerns were taken into consideration. The second report was shared with CP whilst it was at its draft stage and several meetings took place where CP was provided with the opportunity to set out every one of these in some considerable detail. There were clearly some differences of opinion about what was relevant but the investigator was entitled to form her own view. CP does not agree with the outcomes but I do not find fault in the way they were reached.
44. It is clear Mr E was adamant the fall that took place on 24 December was preventable and it is clear that he is keen for the responsible agencies to be held to account. It is also clear that some of his complaints have made the Council take steps that they would not have done otherwise, such as commissioning Ms B to review the first safeguarding investigation and changing one of the outcomes from the second investigation from "unsubstantiated" to "substantiated". However, this does not mean there is bias and I have not seen evidence of this. Mr E presented the Council with information and the Council was duty bound to consider it.
45. Whilst there is no evidence of bias, the very fact the safeguarding investigation was reopened and the outcomes from the second investigation had to be changed is evidence the Council did not conduct the process properly. This is fault.
46. CP is not happy that as part of the second investigation the investigator did not interview particular members of staff at Home Z. This was a professional decision for the investigator to make and this is not one I can question. I do not consider the decision was irrational.
47. CP has also expressed concern about the involvement of Ms B. The Council has told me that she is a solicitor, entirely independent of the Council and was asked to review complaint from Mr E about the second safeguarding because she already had the in depth knowledge of the case from when she reviewed the first investigation. I consider this to be a reasonable position and do not criticise the Council for this.
48. Similarly, I have found no evidence of a pre-determined outcome. Quite the opposite. The Council has responded to representations from all sides, including many put forward by CP, and has gone to great lengths to ensure all parties have had their say and their concerns and arguments taken into consideration.

The outcome from the second investigation did not take into account CP's representations that it was biased

49. CP claims the investigation was biased in favour of Mr E and the outcome that he wanted to achieve. Mr P has told me Mr E wanted the outcome of the safeguarding investigation to be critical of Home Z. I cannot comment on this but I have seen evidence that Mr E thought the fall which he believes directly contributed to his father's death was preventable.

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50. CP says the Council was unduly influenced by Mr E. In support of this CP says the Council only reopened the safeguarding investigation to appease Mr E. It also claims he was too involved with the process generally, including being involved with drafting the terms of reference for the second investigation and being able to attend the post review meetings where the draft report was discussed.
51. The Council was not prohibited either in law or by its own procedures to involve Mr E as much as it did during the process. One of the guiding principles that underpins safeguarding is to involve the person who has suffered harm as much as possible and practicable. As Mr D himself was no longer alive, the Council effectively accepted Mr E to speak for his father. I therefore do not criticise the Council for involving Mr E as it did.

**The Council's complaints process was unfair and exposed the company to serious loss of reputation**

52. I have found no evidence that the Council did not thoroughly look into CP's complaint.
53. I note the Stage 2 response did not address each and every point that CP had asked it to, but the Council had reached a point where it felt nothing further could be gained from investigating matters again. I do not criticise the Council for this.
54. Following the inquest, CP was the subject of negative press coverage but this is not attributable to the Council's actions in the way it conducted the safeguarding investigations.

#### **My overall finding**

55. However, I cannot ignore the fact both safeguarding investigations were reviewed by independent persons who identified problems with the process and the outcome. Whilst the Council acted properly in rectifying these issues, they should not have happened in the first place. This is fault. I consider CP has suffered an injustice from this because of the time and trouble involved in the second investigation.

#### **Conclusion**

56. I am satisfied the Council carried out its responsibility to conduct a thorough investigation into the circumstances that led to the death of Mr D. This was the primary purpose of the exercise. The independent investigator appointed by the Council has demonstrated to my satisfaction that she listened to the representations made by all parties, including CP and Mr E and came to her own decision and conclusions. It is not my role to conduct a further investigation into the circumstances into the death of Mr D.
57. However, there were failings in the process and it was unnecessarily lengthy and this was due to fault by the Council.

#### **Agreed action**

58. The Council has agreed to apologise to CP for the length of time it took to complete the safeguarding investigation. The Council has also agreed to pay CP £500 to acknowledge the impact of the fault, particularly the time and trouble spent attending meetings during the second safeguarding investigation

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## **Final decision**

59. The Council was at fault in the way it conducted a safeguarding investigation.

## **Investigator's decision on behalf of the Ombudsman**



08 August 2017

**Complaint reference:**  
16 019 162

**Complaint against:**  
Bath and North East Somerset Council

## **The Ombudsman's final decision**

**Summary:** The Council failed to explain that Mr B would have to pay more than his usual respite charge for a residential placement. It should therefore write off the outstanding care fees. It also took too long to recover these care fees which caused additional confusion and distress.

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## **The complaint**

1. The complainant, Mrs X, complains on behalf of her father, Mr B. She complains that the Council failed to communicate respite charges with Mr B before he went into respite care. She also complains that the respite care was extended by two weeks because of the Council's delay and it took 18 months to invoice him for the care.

## **The Ombudsman's role and powers**

2. We may investigate complaints from a person affected by the matter in the complaint, or from someone the person has authorised in writing to act for him or her. If the person has died or cannot authorise someone to act, we may investigate a complaint from a personal representative or from someone we consider suitable to represent the person affected. (*section 26A or 34C, Local Government Act 1974*)
3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

5. I have:
  - Read the papers submitted by Mrs X and discussed the complaint with her.
  - Considered the Council's comments about the complaint and the supporting documents it provided.

- Shared my draft decision with Mrs X and the Council and considered their comments.

## **What I found**

### **Law and Guidance**

6. The statutory guidance in place at the time was the Charging for Residential Accommodation Guide (CRAG) in support of the National Assistance (Assessment of Resources) Regulations 1992. Relevant sections of the guidance in this complaint:
  - *“Admissions to residential accommodation should be deemed temporary or permanent depending solely on the needs and circumstances of individual service users. As such councils’ or users’ resources should play no part in the decision. Knowing whether they are permanent or temporary will matter a great deal to residents and carers. Hence, decisions about the status of admission should be made, agreed and shared, openly with them – or others on their behalf if appropriate - and put in writing”.*
  - *“The LA must ensure that the resident is given a clear explanation, usually in writing, of how the assessment of his ability to pay has been carried out. This should explain the usual weekly assessed charge. They should also inform the resident of the reasons why the charge may fluctuate, particularly where a new resident’s charge may vary in the first few weeks of admission because, for instance, of the effect of benefit paydays on Income Support/Pension Credit or the withdrawal of Attendance Allowance or Disability Living Allowance (Care component). The resident should, however, be informed of why the charge may fluctuate. There is also no requirement to specify the assessed charge in the contract with the home”.*

### **Events leading to the complaint**

7. Mr B has a number of care and support needs. In 2014 he was living at home with his wife, Mrs B, and receiving support from carers in his home, he was also attending a day centre. As part of this package, Mr B was eligible six weeks of residential respite care a year. Mr B contributed £92.91 per week towards his care. At this point, he was also assessed as having the mental capacity to make decisions about his own care.

#### **Mr B went into respite care**

8. In 2015 carers became concerned about Mr B’s increasing support needs and asked his occupational therapist (OT) to complete an assessment. The OT decided that Mr B needed to have a specialist stair lift installed or move his bedroom downstairs. Mrs B said that she did not want to do this, but would think about her options while Mr B was in a period of his planned respite care.
9. Mr B contracted a chest infection and was admitted to hospital in February 2015. On 16 February 2015 Mr B went into his planned residential respite care which was due to end on 23 February.
10. On 24 February 2015 Mrs B told the Council that she could not have Mr B home because she felt that she could *“no longer cope and felt that this would be a long term decision”*. The Council’s notes state that the social worker discussed costs of alternative care homes and the social worker agreed to research options. But the notes are not clear whether Mr B’s contribution was discussed. Mrs B confirmed that she was not willing to move the bedroom downstairs or make the necessary

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adaptations for Mr B to return home at that point. The Council negotiated a further week of respite care while it arranged a residential placement.

#### Mr B moved to a different care home

11. Mr B entered his new care home on 2 March 2015. The Council states it was a permanent care placement, Mrs X disagrees. She states that it was a temporary arrangement.
12. On 9 March 2015 Mrs X emailed the Council and said that Mr B was not happy with the placement. She said that Mrs B would like Mr B to move home and is prepared to make the necessary adaptations to their home to allow this to happen. The Council acknowledged this and arranged for two stair lift specialists to complete an assessment. Unfortunately they did not have any availability to complete the assessment until 18 March 2015.
13. On 12 March 2015 the social worker sent an update email to Mrs X about Mr B's move home. At the end of the email it also said, *"as regards the placement I have had finance contact me and have determined that your father is currently on a trial period at the home and therefore his DP has stopped and he will be assessed under CRAG"*. Mrs X did not respond to this section of the email. She said she did not know what it meant. She said she thought that Mr B should continue to pay his £92.91 per week which he had previously done for his respite care. On 26 March 2015 the Council sent Mrs X a financial assessment form to complete. This form explained that Mr B would have to contribute towards the cost of his care and that the Council would calculate exactly how much.
14. On 31 March 2015 Mrs B decided that she would move the bedroom downstairs while waiting for the stair lift to be installed so that Mr B could move home sooner. The Council explained that the OT would still need to complete an assessment to ensure it was suitable and that the correct hoist was in place. It also explained that she was on annual leave for a couple of weeks.
15. The OT returned from annual leave, assessed Mr B's discharge plans and he moved home on 11 April 2015.

#### The Council completed the financial assessment

16. On 19 May 2015 the Council sent Mrs X a letter setting out the outcome of its financial assessment. It said that while Mr B was in residential care between 2 March and 11 April 2015 he should pay £228.34 per week towards his care. It said it would send an invoice for the charges he owes for that period in due course. It then sent Mrs B two invoices totalling £1337.42.
17. Mrs X was unhappy that the Council had invoiced Mr B for the time spent in residential care above his usual £92.91 per week. She said that this was not explained to the family before Mr B went into residential care and that it was only ever intended to be a temporary placement.
18. The Council responded and explained that Mrs B had requested for it to be a longer term placement and therefore it had treated it as such. It was also satisfied, because of the email of the 12 March 2015, that it had explained that there would be a charge for the care home. Therefore it did not uphold their complaint. Mrs X responded and explained she disagreed with the Council's decision and she did not receive a response. The Council also did not pursue the outstanding care fees until over 12 months later in November 2016.

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19. After receiving correspondence from the Council in November 2016 seeking the outstanding care fees Mrs X complained to the Council again. She thought that the matter had been resolved and the care fees had been written off.
  20. The Council responded in March 2017 and said it was entitled to chase the care fees because it had told Mrs X and Mrs B about them. It said, as part of the complaint, it completed a review of the file. It discovered that while Mr B was in residential care he continued to pay his £92.91 per week towards his personal budget. It therefore reduced the outstanding fees to £834.86 and advised Mrs X to approach the Ombudsman if she remained dissatisfied.

### **Analysis**

21. After reviewing the file the Council was correct when it told Mrs X that Mrs B asked the Council to keep Mr B in residential care permanently in February 2015. Therefore the Council was entitled to reach the view that it was a permanent move. But I have seen no evidence that it properly explained the financial result of this to Mrs X, Mr B or Mrs B before him moving into residential care. The Council states that it has introduced new procedures to ensure that service users are informed of care fees before they go into care as part of a pre-assessment process.
22. The first time the Council gave the family charging information was on 12 March 2015 via email. Two weeks after Mr B moved into residential care and four days after the family said they would like Mr B to move home. This information was also not sufficient; it only said Mr B "*will be assessed under CRAG*". This did not provide the family with enough information to satisfy the Council's duty in line with government guidance. The Council did not give satisfactory information on charging until it sent an email on 26 March 2015, nearly four weeks after Mr B moved into residential care. This is fault.
23. The Council should have provided the family with more information about charging prior to them making a decision about moving him into residential care. This would have allowed them to have made an informed decision. Given that Mrs B made the decision that she wanted Mr B to return home shortly after he moved into residential care. On balance, I think it is likely than not that she would have wanted her husband to move home from respite care instead of residential care if she had known about the increased charges. Therefore the Council should write off the remaining care fees because it did not adequately explain that Mr B would have to pay more than his usual £92.91 per week towards the cost of his care.
24. I appreciate that Mr B remained in residential care longer than his family wanted him to because he needed to wait for necessary adaptations to the home. But I have found no evidence of unreasonable delay by the Council. Once it received notice by the family that they wanted Mr B to move home, it arranged the necessary assessments. Unfortunately, there was a waiting list getting the necessary appointment and a period of annual leave with the occupational therapist but the Council are not at fault here.
25. The Council also took too long to resolve this complaint and did not adequately signpost the family to the Ombudsman when they initially complained. This has added to the distress that the family has experienced.

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### **Agreed action**

26. In recognition for the faults identified above the Council, within six weeks of my final decision, has agreed to:
- Apologise to Mrs B, Mr B and Mrs X for failing to appropriately explain Mr B's residential care fees with them or handle their complaint correctly.
  - Write off the outstanding £834.86 invoice.
  - Issue a guidance note to social workers about the importance of explaining care fees to service users before decisions are made and keeping accurate case notes to evidence this.

### **Final decision**

27. The Council failed to explain that Mr B would have to pay more than his usual respite charge for a residential placement. It should therefore write off the outstanding care fees. It also took too long to recover these care fees which caused additional confusion and distress. The Council has agreed to my recommendations and therefore I have completed my investigation.

### **Investigator's decision on behalf of the Ombudsman**



## **The Ombudsman's final decision**

Summary: There was fault by the Council in the conduct of mediation carried out by trading standards officers. That led a suspicion of bias and a loss of confidence in the process. There was also fault in record keeping and the provision of information, but that did not lead to significant injustice requiring remedy.

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## **The complaint**

1. The complainant, whom I shall call Mr B, complains the Council treated him unfairly in connection with his complaint against a trader it had approved under its 'Buy with Confidence' scheme.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

4. I considered all the information provided by Mr B about his complaint. I made written enquiries of the Council and took account of the information it provided in response.
5. I provided Mr B and the Council with a draft of this decision and considered all comments received in response. I then made limited further enquiries of the Council.

## **What I found**

### **The Buy with Confidence (BWC) scheme**

6. BWC is a national register of businesses vetted, approved and monitored by council trading standards officers to try to ensure that they operate in a legal, honest and fair way. The Council takes part in this scheme. Its website explains



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that while it cannot guarantee the businesses which subscribe to the scheme will never let a customer down, if this happens trading standards will offer support.

### Background

7. Mr B engaged a builder to build a basement at his property. The builder he selected was registered with the BWC scheme. The work was finished around January 2013 but subsequently there was water ingress and the basement began to develop mould. Mr B tried unsuccessfully to work with the builder to get these problems resolved. The builder had offered a ten-year guarantee on his work, but by late 2014 the matter was not resolved and Mr B asked the builder for a refund.

### Trading standards become involved in Mr B's case

8. In December 2014 the builder who had carried out the work at Mr B's home contacted Trading Standards (TS) to say he had had complaint from Mr B. TS then called Mr B to talk to him about what had happened. As the builder was a member of the BWC the Council was able to offer mediation. Mr B and the builder agreed to a joint independent investigation of the work prior to the mediation meeting.

### Mediation

9. The mediation meeting was facilitated by two officers from TS. I will return to this point later in this statement.
10. A chartered surveyor had completed an independent report, with the agreement of both parties. The builder was unable to confirm he had taken the necessary steps to ensure the effectiveness of the tanking product he had used. The surveyor's report concluded the water ingress and failure of the basement was a direct result of the builder using inappropriate construction details for the water proofing tanking system he had chosen. The surveyor considered both parties had been slightly naïve in their approach to the works: no architect had been involved. To remedy the water ingress, the only option would be stripping out the basement including removing stairs and any fixtures, followed by installation of a suitable tanking system by an approved fitter.
11. The cheapest quotation for the necessary works to rectify the cellar was about £8,000. The notes from the mediation meeting record that while the builder agreed the basement needed to be stripped out, he reported he had suffered financial loss of £5,500 due to loss of profit from the original works, the costs of attempts made at repair, and the survey. The builder therefore offered to pay Mr B a settlement sum £4,000 to cover the cost of stripping the cellar and preparing it for damp-proofing.
12. Mr B said he wished to consider the offer and he then initially accepted it. However when the builder sent the cheque he also sent a letter which imposed conditions on the settlement. Mr B considered the conditions meant the payment was not solely for what had been specified at mediation but also covered costs of possible future defects in the side extension the builder had constructed, effectively cancelling the 10 year guarantee on the works. Mr B consulted his solicitor and advised the Council the terms were unacceptable.
13. Mr B asked TS to comment on the letter the builder had sent him. The Council said it had played no part in the drawing up of the conditions the builder was seeking to impose but it was prepared to suggest that the builder clarify the terms if Mr B wished it to do so. However it advised that if agreement between the parties could not be reached, the remaining option would be civil action.



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### Civil proceedings

14. Mr B took the builder to the county court. The court made a judgment in Mr B's favour, requiring the builder to pay him a greater sum of money than he had offered at mediation.
15. The builder is no longer a member of the BWC. He failed to pay the county court judgment against him and so no longer satisfied the conditions for membership of the scheme.

### What happened next

16. Mr B complained to the Council about its role in what had happened. Responding, the Council advised Mr B that TS had only become involved because the builder was a member of its BWC scheme. Membership offers benefits to members such as advice and assistance and mediation and the builder in this case had asked for help and advice from the Council as he was entitled to do.
17. Regarding the conditions the builder had attached to the settlement proposal, the Council said the builder's letter referred to the basement project (thus excluding issues relating to the extension works) and indicated that he could not be held liable for any remedial works done by a third party. When responding to Mr B's complaint later, the Council told him the builder had sought its advice about whether the letter was acceptable in legal terms, and said he had been required to seek advice due to his membership of the BWC scheme. In fact what happened was that the builder had sent the Council a copy of the offer letter he proposed to send to Mr B and had asked for its views. The Council has no record of any advice provided to the builder in response. If it gave advice and did not record it, that was fault in record keeping. If it did not give any advice, it was fault to tell Mr B it had done so. It was also fault to tell Mr B the builder had been required to seek advice because of his membership of the scheme when there was no such requirement. However these faults did not lead to significant injustice for Mr B. It was always a matter for the builder to make his offer with whatever terms and conditions he wished to impose, and for Mr B to choose to accept or reject what was offered. It was not for the Council to say what either side should do, and there is no evidence that it did so.
18. The mediation offered by the Council under the BWC scheme is not a legally binding arbitration service. So ultimately in cases of dispute it will be for the court to decide where responsibility lies. The Council was not obliged to offer mediation but in seeking to provide this it was trying to assist the parties in reaching agreement. The Council's aim was not been to identify the cause of the issues, nor to apportion blame, but to seek to reach agreement in respect of a compensation payment. The Council made clear mediation was not binding on either party, and when agreement could not be reached, Mr B was able to take legal proceedings. Ultimately this did not provide the outcome he had hoped for but that was not the fault of the Council.
19. However, there was fault in the mediation process, which the Council has acknowledged. When Mr B arrived for the mediation meeting he saw the TS officer involved in the mediation talking to the builder. In its consideration of what had happened the Council acknowledged Mr B may have suffered a loss of confidence in the process, since they may have been thought to be talking about the case. The Council accepted that the mediation meeting had not been carried out by a trained mediator. It has since taken steps to employ a trained mediator, and they will be supported at such mediation meetings by a TS officer who has no prior knowledge of the case under review.

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20. The Council has confirmed this was the first case where a BWC member had requested that the TS team provide mediation to help resolve an issue, as they may do under the terms of the scheme. The evidence shows the Council was trying to assist with achieving resolution via mediation, but it was not properly equipped to do so. That was fault. While on balance I am satisfied that the fault did not lead to Mr B being given incorrect advice about his options, it did cause him a loss of faith in the process and concern that the Council was biased in favour of the builder.
21. Regarding membership of the BWC scheme, before membership is agreed the Council carries out a number of checks. These include checks with Companies House, with credit agencies, and with the Disclosure and Barring Service (formerly the Criminal Records Bureau). Complaint history is reviewed and references are required from customers. The builder employed by Mr B had applied to the Council to join the scheme in 2009 and all relevant checks were made. The builder was accepted onto the scheme. In accordance with the terms and conditions of membership, the Council conducted re-audits periodically. In this case the Council's records include re-audit forms from 2012, 2014 and 2015. The records from 2014 and 2015 are incomplete and this failure in record-keeping was fault. But I cannot conclude that fault led to significant injustice to Mr B.
22. Mr B considers the Council was indifferent to his complaint because it was the first the Council had received against this builder. The Council has confirmed that Mr B's complaint was the first it had received against the builder, but the Council's actions do not evidence indifference.
23. Mr B takes the view that the builder lacked the appropriate skills, knowledge and expertise to fulfil the requirements of the contract and ought not to have accepted it. But it is not the Council's role to micro-manage the workload of traders, and failure by the builder is not evidence of a lack of due diligence by the Council. The builder continued to meet the conditions of membership of the BWC scheme until he failed to comply with the county court judgment.
24. Mr B also has concerns about the terms and conditions of the builder's contract, in particular a clause which states that any dispute arising from the works is to be referred (by either party) to a person nominated by the President of Arbitrators, whose decision will be final and binding upon both parties. Mr B considers this clause meant he could not use mediation or court proceedings. It was of course matter for Mr B whether he chose to enter into the contract with the builder, accepting its terms and conditions, and whether he wanted to seek arbitration as set out in the contract. But in any event he was not precluded from participating in the mediation offered by the Council and he subsequently took legal proceedings.

### **Agreed action**

25. In recognition of the loss of faith caused to Mr B by the failings in the mediation process described above I recommended that within four weeks of the date of the decision on this complaint the Council issues him with a formal written apology. The Council has agreed with my recommendation.
26. I commend the action the Council has already taken to improve the mediation service it offers under the BWC scheme, set out at paragraph 19 above.
27. The Council has also confirmed that in 2016 it reviewed the administration of the BWC scheme and appointed a new officer with responsibility for delivery of the scheme, leading to procedural improvements. The Council has undertaken to

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ensure all self-assessment review forms will be signed off by the officer. I therefore made no further recommendation in respect of the fault in record keeping identified by my investigation.

### **Final decision**

28. The action agreed above will provide a suitable remedy for this complaint.

### **Investigator's decision on behalf of the Ombudsman**



**Complaint reference:**  
16 001 307

**Complaint against:**  
Bath and North East Somerset Council

## **The Ombudsman's final decision**

Summary: On completing a mine stabilisation scheme the Council commissioned the Council failed to ensure the complainant received the same Completion Pack and associated documents including the warranty it issued to all other affected households and all the documents relating to later remedial works.

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## **The complaint**

1. In brief the complaint is when it completed a project to stabilise former stone mines affecting the complainant's home the Council failed to:
  - provide the complainants with the same warranty and completion certificate it issued to other home owners in the area on completion of the stabilisation project;
  - begin a stage two investigation when the complainants complained in May 2015 and referring the investigation back to stage 1.
2. The complainants, whom I shall refer to as Mrs X and Mr Y, say because of the failings they could not insure their home. They say they face difficulty if they try to sell their home without these documents which other affected home owners have received. There is also confusion about whether they have all documents relating to later remedial works which future home buyers may wish to see.

## **The Ombudsman's role and powers**

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

5. In considering this complaint I have:
  - Reviewed the information presented with the complaint;
  - Put enquiries to the Council and reviewed its responses;

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- Read the notes of a colleague's interview with a Council officer;
  - Reflected on the comments received in response to the first and second draft decisions.

## **What I found**

### **The mining stabilisation project**

6. Mrs X and Mr Y own a house in an area historically affected by subsidence following the closure of stone mines. The Council applied to the Government for funding under its Land Stabilisation Scheme for a scheme to stabilise mines affecting the area. It received funding and the Council agreed a scheme (the Scheme) to complete the work. It commissioned contractors to carry out the work and appointed a project manager.
7. On its website the Council says the Scheme was a major project by the Council to stabilise abandoned stone mines and preserve the health and safety of the area. It says that when the Scheme completed stabilisation works under a property the owner received a Statement of Completion. This, it says, certified the Scheme had stabilised the mines beneath the property. It says a copy of the completion statement is available from its Land Charges Team or available to view at the Bath Record office.
8. The Council undertook publicity and work to identify owners of affected land and property. The Mineral Workings Act 1985 gives owners the right to claim for compensation caused by any works undertaken. Reflecting that right the Scheme included a blanket insurance scheme for all affected properties.
9. In 2010 the scheme completed works to stabilise the mines. On 3 December 2010 the Council wrote to property owners. The letter says the Council had been working with the Association of British Insurers to produce a circular for its members. The circular or guidance recommends that on completion of the Scheme normal underwriting conditions should be applied to properties in the area. The Council enclosed a copy of the circular and said it might be useful for owners when they took out, renewed or changed the insurance on their property. The letter referred to the Completion Pack sent to owners of properties affected by the Scheme.
10. Mrs X and Mr Y say they did not receive the Completion Pack and the Completion Certificate. They did not receive the warranty that states the completed work had a design life of 100 years. The Scheme issued the Completion Pack and these associated documents to other home owners in January 2010. The Council says under the Scheme it had responsibility for issuing the warranties. It has no record of issuing one for Mrs X and Mr Y's property.
11. Under the terms set by the Council the Scheme arranged for insurance to protect property owners against any failure of the stabilisation works. House owners may make claims for any work needed because of subsidence through the insurance company. The insurance company would assess the damage, agree any repairs covered by the insurance policy and carry those out. The insurance policy governs the procedures by which loss adjusters decide on remedial work.
12. Mrs X and Mr Y say without the warranty the Council issued to other house owners the British Association of Insurers told them they could not buy property insurance.



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### **Subsequent Damage to Mrs X and Mr Y's property**

13. Several years after the Scheme's completion Mrs X and Mr Y's home experienced damage from subsidence. Cracks appeared in the walls and this led to significant structural repair work. Further cracks appeared. A report in December 2015 recommended filling the hairline cracks but said the property needed no further work.
14. Mrs X and Mr Y say they have not made any claim against any insurance policy. They did not know who contacted the insurance company. The Council contacted the insurers and arranged for the survey. In an email in January 2016 from the Council's Divisional Director the Council says "...I assume we will need a full structural engineer report to confirm the findings of the works and the insurance backed warranty for the works. Can you please ensure I am copied in to all correspondence?" The Council's involvement in arranging the repairs is clear from this email.
15. Mrs X and Mr Y says that in March 2017 the Council told them it or the contractors would provide the paperwork certifying the remedial works but they did not receive that paperwork. The Council says the insurers and their contractors have not sent that paperwork and officers continue to chase them for it. The Council says it is not responsible for the insurers and their contractors' failure to provide this paperwork. However Mrs X and Mr Y point out they did not commission the insurance or the remedial works so they have no legal standing to force them to issue the paperwork. There is confusion about what paperwork is missing.

### **The Council's actions**

16. The Council arranged for all the properties involved in the scheme to be issued with a blanket completion statement for the restoration project as part of the Completion Pack. All owners received a warranty stating the work done had a design life of 100 years.
17. The Council says the contractors it appointed to complete the Scheme should have given Mrs X and Mr Y the Completion Pack and associated documents. It has encouraged the contractors to contact Mrs X and Ms Y. It says it contacted the insurers covering the Scheme and arranged more recent work as a gesture of goodwill. It does not have to involve itself in claims under the blanket insurance.
18. Officers say the contractor or the loss adjuster should provide a completion certificate or warranty for the latest repairs.

### **The Council's complaint handling**

19. The Council uses a two-stage complaints process. Mrs X and Ms Y first raised their concerns with their local councillor after they had asked the Council to provide a completion certificate and received no response. This was in late May 2015. The councillor told them he would take the matter up with the Council's Chief Executive. Mrs X and Mr Y believed this counted as the first stage of the complaints procedure. The councillor told them he had sent four emails to the relevant officers and received only one reply. In April 2016 the Council said it had no record of a formal complaint from Mrs X and Mr Y.
20. In April 2016 Mrs X sent a complaint to the Ombudsman. The Ombudsman treated it as a premature complaint which meant it had not previously been put to the Council for a response. Mrs X wanted the Council to treat it as a stage two complaint but the Council disagreed and sent a stage one reply. I find no fault in

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that. The reply included a copy of the contractor's report which said no work would be done apart from filling and painting over the cracks.

21. Mrs X asked the Council to raise the complaint to stage two. In response the Council said it would take it back to stage one as there had been new developments and the Property Services Team was best placed to try and resolve the matter.

#### **The insurance claim**

22. The Council commissioned the Scheme. The property insurance scheme arranged by the Council should cover any resulting claims for damage to property. House owners can claim compensation for any further damage or damage not accepted by the insurer under the Mineral Workings Act 1985.
23. The Council referred the concerns about the damage experienced since completion of the Scheme to the Scheme insurers. Following further cracks the insurers commissioned a structural report.
24. The insurers have dealt with the insurance claim and work has been carried out. It is however, far from clear how the Council explained the process to Mrs X and Mr Y, and what information it gave them to help them understand the procedure it would follow. It is also unclear whether all documents relating to the remedial works have been issued and officers say they have not. This has caused confusion for Mrs X and Mr Y.

#### **Documents**

25. On 6 March and 27 April 2017 the Council finally sent copies of the documents including the warranty Mrs X needed to take out property insurance. However, it did not send the completion certificate for the remedial works although the Council wrote telling Mrs X on 7 March 2017 it (or the contractors) would provide the certificate. In commenting on my draft decision the Council says the contractors are the insurer's contractors and not Council contractors. Therefore in its view they cannot instruct them. However, officers have been liaising with the contractors and insurers on behalf of Mrs X. The Council says it has been promised documents that have not been sent. It says it is willing to help the complainants but has no control over a third party.

#### **Analysis – has there been fault leading to an injustice?**

26. My role is to consider how the Council dealt with issuing the paperwork for the original scheme, and how it has ensured Mrs X and Mr Y received all relevant paperwork for the remedial works. Paperwork for those remains outstanding.
27. The Council sought funding for the Scheme. It commissioned the Scheme and appointed its project manager. It has final responsibility for the Scheme and for ensuring all affected households received the Completion Pack and associated documents. Mrs X and Mr Y did not receive that Completion Pack and associated documents and the Council cannot produce any evidence to show it was sent.
28. The Council says it has never had copies of the Completion Packs or associated documents. It should at least have had an example of one for its records and evidence all affected households had received one.
29. The Scheme provides continuing insurance for affected properties. However, without evidence of this being an affected property (as shown by the Completion Pack and associated documents) Mrs X and Mr Y could not prove they have this protection. Recent work appears to have been funded through this insurance scheme. Anyone interested in buying their home in future will want to see the



warranty stating the original Scheme's works have a life expectancy of 100 years. This should have been given in 2010; it has taken the Council until March 2017 to provide a copy.

30. So I find fault in the failure to provide a Completion Pack and associated documents within a reasonable time which caused concern for the future sale of the property and insuring it. Once the Council provided documents in March and April 2017 Mr and Mrs X have successfully insured the property.
31. In March 2017 the Council promised it or the insurers or their contractors would provide the paperwork for the remedial works. It still has not done so. The Council argues it cannot help because the contractors were commissioned by the insurers. That may make it difficult but the Council is responsible for ensuring the insurers it commissioned to provide the cover delivers the service through its contractors. If it fails to do so the Council should consider all options on how best to ensure Mrs X and Mr Y receive the paperwork. It should consider whether as the commissioner of the insurance it can make a complaint to the Financial Services Ombudsman or sue in the courts for a breach of contract. It may wish to offer Mrs X and Mr Y support in presenting their own complaint to the Financial Services Ombudsman (given it is they who are suffering the injustice caused by its absence). It cannot simply say it is nothing to do with the Council. It commissioned the insurance and so is responsible for the delivery of work under it.
32. I find fault in the Council's failure to recognise its responsibility for the issue of paperwork following remedial works it referred to the insurers. To remedy that I have added recommendations to those already agreed with the Council.

### **Recommended and agreed action**

33. To remedy the injustice arising from the fault found in this statement I recommend and the Council agrees to within six weeks of my final decision:

- Apologise to Mrs X and Mr Y;
- Pay Mrs X and Mr Y £250 in recognition of the time and inconvenience to which they have been put in trying to obtain the documents;

And I further recommend that within two months of my final decision the Council:

- Provides or through its insurers and their contractors provides a copy of the paperwork promised in March 2017; or
- If its insurers fail to provide the paperwork to consider making a complaint to the Financial Services Ombudsman or help Mrs X and Mr Y present a complaint to the Financial Services Ombudsman sharing with that Ombudsman any information the Council may have to assist in the investigation of the complaint against the insurers.

### **Final decision**

34. The Council failed to ensure the complainants received without undue delay the Completion Pack and associated documents on completion of the Scheme and the paperwork relating to more recent remedial work which has led to injustice for which I have recommended a remedy.

### **Investigator's decision on behalf of the Ombudsman**



## **The Ombudsman's final decision**

**Summary:** The Council failed to offer an available suitable care home placement. This resulted in a more expensive placement and the family funding an unmanageable top-up. The Council will refund top-up payments already made and cover the full cost for the duration of the stay.

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## **The complaint**

1. The complainant, who I will call Mr B, says the Council failed to identify an available suitable nursing home to meet his mother's assessed care needs to facilitate her discharge from hospital.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

4. I considered:
  - Information provided by Mr B and discussed the complaint with him.
  - The Council's response to my enquiries.
  - The Care and Support statutory guidance issued by the Department of Health.
  - Responses to a draft of this decision.

## **What I found**

5. Mr B's mother, Mrs C, was in hospital. Mrs C previously lived in a retirement apartment with 24 hour care available. Mrs C could not return there as she needed nursing care.

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6. Mr B asked the Council for a list of nursing homes in its area so he could start to look at possible options. Mr B visited three suitable homes but they did not have vacancies.
  7. The Care and Support guidance says a council “must ensure that at least one accommodation option is available and affordable within the person’s personal budget and it should ensure that there is more than one of those options.” Although there were accommodation options available, the Council accepts there was not an available option that was suitable to meet Mrs C’s assessed needs. One particular home that the Council identified was too far for Mr B to travel and meet Mrs C’s need to maintain their relationship.
  8. Mr B found an available nursing home outside of the Council’s borough, which was suitable to meet all of Mrs C’s assessed needs. The Council records this as being Mr B’s preference. The home was above the Council’s usual cost rate. The Council discussed a top-up with Mr B and gave him an information leaflet. Mr B reluctantly agreed to pay the extra £200 per week and signed the top-up agreement; but he made clear he would pay it “for now” and would be appealing the decision.

### **Was there fault and injustice**

9. Although the Council records refer to the chosen nursing home being Mr B’s preference, on balance I do not consider it was a true preference. Mr B showed he was willing for Mrs C to live in a care home in the Council’s borough, and at its usual cost rate, but none were available. This was fault as the Council must ensure at least one suitable option is available.
10. The Council says it is likely that a suitable placement would have come available within its cost rate within a few days. There is no evidence the Council suggested this to Mr B. Although nobody was placing pressure on Mr B he understandably felt pressure to move his mother away from a hospital setting that was no longer needed, and to get her settled in a more permanent homely environment. That is not to say he would not have waited a few more days if given a realistic option.
11. The Council gave Mr B clear information about the payment of third party top-ups. Mr B did agree and sign up to this. However, Mr B told the Council it was a lot of money to commit but that he would pay it for now to get Mrs C moved. The Council should ensure the person paying the top-up is willing and able to do so for the duration of the stay, there is no evidence the Council satisfied itself of this given Mr B’s comments. This was fault. The Council should be acting in Mrs C’s best interests and it is unlikely to be in her best interests to move twice. The Council was on notice the placement was unlikely to be a suitable long term option because of the large top-up.
12. A top-up must never be because of a lack of choice; but that is what happened here. This was fault of the Council.
13. Because of the Council’s commissioning failures Mr B agreed to an unmanageable top-up payment. This has caused conflict between Mr B and his siblings. It has placed Mr B under a lot of stress, and has been a financial hardship.

### **Agreed action**

14. To acknowledge the impact of its fault, the Council will:
  - a) Apologise to Mr B;

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- b) Take responsibility for the full cost of Mrs C's stay for the full duration at the current placement, minus any client contribution;
- c) Arrange a re-assessment of Mrs C's needs, including a risk assessment about the possibility of moving her to a suitable available placement.
- If the assessment decides Mrs C cannot be moved then the Council will have to fund the current placement in full minus any client contribution from Mrs C, for the full duration of the stay.
  - If Mrs C can be moved, the Council must fund the current placement until the move takes place, minus any client contribution.
  - If Mrs C can be moved but Mr B prefers she stay where she is then the family will have to agree to fund the top-up. The Council must be satisfied the family are willing and able to do so for the full duration of the stay.
- d) Refund Mr B all top-ups he has paid for the current placement;
- e) If it does not already have one, produce an information leaflet for residents and their families. This should cover the process of choosing care placements, usual cost rates, and out of borough care placements. This should be produced within four months of the Ombudsman's final decision.
15. Actions a - d should be completed within one month of the Ombudsman's final decision.

### **Final decision**

16. I found fault causing an injustice to Mr B. I consider the agreed actions are sufficient to acknowledge this.

### **Investigator's decision on behalf of the Ombudsman**



Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Standards Committee	
MEETING/ DECISION DATE:	18 <sup>th</sup> January 2018	EXECUTIVE FORWARD PLAN REFERENCE:
		E
TITLE:	Investigation into Complaint 09-17 BANES	
WARD:	All	
LIKELY TO BE TAKEN IN EXEMPT SESSION		
<p>List of attachments to this report:</p> <p>Appendix 1 - Hearing Procedure (Open)</p> <p>Appendix 2 - Public Interest Test (Open)</p> <p>Appendix 3 - Report of Investigation Officer (Exempt)</p>		

## **1 THE ISSUE**

- 1.1 The Committee is asked to consider the complaint set out in the report of the Reporting Officer.

## **2 RECOMMENDATION**

- 2.1 The Committee is asked to consider the report of the Reporting Officer.

## **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 3.1 None.

## **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

- 4.1 Following receipt of the complaint and consideration by the Monitoring Officer and Independent Person, a Reporting Officer was appointed to report on the concerns raised.

- 4.2 The Reporting Officer has completed their enquiries and their report is attached at exempt Appendix 3.
- 4.3 The Committee is asked to consider the report under the procedure attached at Appendix 2.

## **5 THE REPORT**

- 5.1 An equality Impact Assessment has been completed as required.

## **6 RATIONALE**

- 6.1 Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate, the Monitoring Officer will report on the complaint to the Standards Committee, which will conduct a Local Hearing before deciding whether the Member has failed to comply with the Code of Conduct, and, if so, whether to take any action in respect of the Member.

## **7 OTHER OPTIONS CONSIDERED**

- 7.1 Local Resolution was considered as not appropriate.

## **8 CONSULTATION**

- 8.1 The Independent Person and Standards' Committee chair have been consulted.

<b>Contact person</b>	<i>Maria Lucas, Monitoring Officer &amp; Head of Legal &amp; Democratic Services (01225) 395171</i>
<b>Background papers</b>	<i>None.</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	



## **BATH AND NORTH EAST SOMERSET COUNCIL STANDARDS COMMITTEE**

### **HEARING GUIDANCE AND PROCEDURE**

#### **A. INTRODUCTION**

Standards Committees need to have an efficient and effective hearing process. This guidance and procedure aims to ensure the committee deal with all the issues that need to be resolved in a way that is fair to all and provides a consistent approach. Members should bear in mind that a Standards Committee Hearing is a formal meeting of the Authority and is not a Court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The Standards Committee should work at all times in a fair, independent and politically impartial way. This helps to ensure that members of the public and Councillors have confidence in its procedures and findings. The Chair and the Committee have the ability to amend the procedures as necessary from time to time in the circumstances of individual cases to ensure the procedures are fair and independent

#### **Interpretation**

In this guidance the following definitions apply:

‘Subject member’ means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise.

‘Investigator’ means the person investigating the complaint appointed by the Monitoring Officer.

‘Legal Adviser’ means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority or from outside the authority.

#### **B. LEGAL FRAMEWORK**

The Local Government Act 2000 and associated regulations contained the specific details for conducting Standards Committee hearings prior to 2012. While these were repealed by the Localism Act 2011, the guidance they contained is still a good example of best practice and complies with the common law principle of natural justice.

#### **Common Law Principles**

The basic principles contained within the concept of ‘procedural fairness’ are the “right to a fair hearing” and the “absence of bias”. Case law *Ridge-v-Baldwin* (1964) AC 40 states that the matter:

- Must be heard by an unbiased tribunal
- Notice of the charge must be given and

- The accused must be heard in relation to the charge.

The Standards Committee must also ensure fairness and flexibility of application and process. As only a reprimand can be issued, it is unlikely that Article 6 of the Human Rights Act (the statutory right to a fair trial) applies.

If a member has a conflict of interest or a real possibility of bias, the member should have to withdraw from participation. Members should take advice from their legal adviser at an early stage if they have any concerns about participation.

The Standards Committee must do everything it reasonably can to ensure that the subject member receives a fair hearing. This means that where members are taking procedural decisions, these must be taken in the light of that over-arching obligation. This could be relevant before a hearing, as well as at the hearing. Examples of procedural decisions include a request by the subject member to call various witnesses to give evidence, or a request to introduce additional evidence at a late stage.

### **C. SETTING UP THE HEARING**

#### **Pre-hearing process**

In readiness for convening a meeting of the Standards Committee, the Monitoring Officer will conduct a written “pre-hearing process”, requiring the Member concerned to give their response to the Investigating Officer’s report in order to identify what is likely to be agreed and what is likely to be in contention at the Hearing. This will also consider the witnesses required.

**Who must be present?** There must be three members for a Standards Committee to be quorate, at least one of whom should be an independent member. Where a hearing concerns a member of a parish council, it is best practice for a parish council member to be present. The Standards Committee should invite the Independent Person to attend the hearing so they can consult the Independent Person before deciding what action, if any, to take in respect of the matter.

**Rights of the member:** The subject member must be “given an opportunity to present the evidence in support of his case” and to be “given the opportunity to make representations at the hearing”. These are very important rights that help to ensure that the member is given a fair hearing. It is essential that the member be given an opportunity to put his case and to present evidence that is relevant to the matters before the Standards Committee. The subject member may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the committee, another person.

**Legal Advice:** The Committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the

outcome. The substance of any legal advice given to the committee should be shared with the subject member and the investigator if they are present.

**Witnesses and other evidence:** The Standards Committee should consider the purpose of any witness and whether it is necessary for them to attend. The Standards Committee should ask the relevant parties to provide outlines or statements of the evidence their witnesses intend to give. This will allow the Committee to decide how many witnesses may reasonably be needed and to identify the issues they will be dealing with at the hearing. While the subject member must be allowed to present their case, the Standards Committee should avoid time being wasted on irrelevant matters or witnesses. Some members may find it difficult to focus on the issues set out in the report. They may be tempted to bring in a variety of matters that are only of tangential relevance to the hearing or sometimes of no relevance at all. The committee's primary task is to decide whether or not the member breached the Code of Conduct. It is unlikely to be a good use of the committee's time to hear oral evidence that is either undisputed or not relevant to the alleged breach of the Code of Conduct.

Character evidence is likely to be relevant only to the third stage of the process, in relation to any appropriate sanction. Such evidence is usually undisputed and may be most conveniently dealt with on paper, through written testimonials. Under Local Hearing - Procedure A the only witnesses permitted are people referred to in the evidence, and not, for example, character witnesses.

The Standards Committee may also choose not to hear from certain witnesses if it believes that they will simply be repeating evidence of earlier witnesses or if a witness will not be providing evidence that will assist the Standards Committee to reach its decision. The over-arching principle is that the Standards Committee has the right to govern its own procedures as long as it acts fairly. The Standards Committee (and, in particular the Chair) must strive to ensure that it does not lose control of the hearing.

**Agreed facts:** A pre-hearing process aimed at establishing what facts are agreed and what witnesses are required should prevent the Standards Committee being taken by surprise by unexpected disputes of fact on the day of the hearing. If such a dispute arises, the committee can refuse to allow the member to raise the matter. This may be the appropriate course where the committee is not satisfied with the reasons given by the member for failing to raise the issue before the hearing, and further considers that it would not be possible to deal with the matter without an adjournment. However, in an appropriate case, the committee can adjourn the proceedings to allow further evidence to be obtained.

## **D. THE HEARING**

The Committee will follow the following stages:-

- (1) Formal introductions
- (2) Making Findings of Fact
- (3) Did the Subject Member fail to follow the Code of Conduct?
- (4) Any sanctions if there has been a breach of the Code of Conduct
- (5) Decision.

### **1. Formal introductions**

After the Chair has formally introduced all the committee members and everyone involved, they will outline how the hearing will be run and deal with any preliminary procedural issues..

**Preliminary Procedural Issues:** The committee should firstly resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process, eg, determine whether the matter should be held in private and the reasons for this; the merits of any new evidence or witnesses etc. If the subject member has not attended, the Chair should suggest the Committee adjourn the hearing to allow them to attend, explaining that if they do not attend the rearranged hearing, then it will go ahead in their absence. If the member does not attend the second time, then the committee should proceed in their absence.

If the Standards Committees consider that, for whatever reason, they do not have sufficient information to deal with the matter fairly then they are able to adjourn the hearing and require the Investigator to seek further information or undertake further investigation. . However the power needs to be used with caution since any adjournment will inevitably lead to delays in resolving the matter.

In the interests of fairness if the Standards Committee is minded to exercise this power, they should give both the subject member and the investigating officer the opportunity to make representations before reaching any final decision.

The committee must come to clear conclusions as to:

- i. The disputed facts
- ii. Whether there has been any breach of the Code of Conduct, and if so
- iii. Whether any sanction should be implemented, and whether any recommendations should be made to the Council.

It is recommended that the committee should withdraw to consider their conclusions separately in relation to each of the first three issues. Where the facts are complicated, it is helpful for the Standards Committees to distinguish between determining any facts in dispute and the question of whether or not there has been a breach of the Code of Conduct. The three-stage process helps committees to do this.

## **2. Making Findings of Fact**

After dealing with any preliminary issues , the committee should then move on to consider whether there are any significant disagreements about the facts contained in the Investigators report. If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.

If there is a disagreement, the investigator should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.

The subject member should then have the opportunity to make representations to support their version of the facts and, with the committee's permission, to call any necessary witness to give evidence.

At any time, the committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member. Questions should be put via the Chair.

If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually. If the subject member disagrees with any relevant fact in the investigators report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. After considering the members explanation for not raising the issue at an earlier stage, the committee may then:

- Continue with the hearing, relying on the information in the investigators report.
- Allow the subject member to make representations about the issue, and invite the investigator to respond to and call any witnesses, as necessary.
- Postpone the hearing to arrange appropriate witnesses to be present, or for the investigator to be present if they are not already.

The committee will usually move to another room to consider the representations and evidence in private. On their return, the chair will announce the committee's findings of fact.

## **3. Did the subject member fail to follow the Code of Conduct?**

The committee then needs to consider whether, based on the facts it has found, the subject member has failed to follow the code. The subject member should be invited to give relevant reasons why the committee should decide that they have not failed to follow the code.

The committee should then consider any verbal or written representations from the investigator. The committee may at any time, question anyone involved on any point they raise on their representations via the Chair. The subject member should be invited to make any final relevant points. The committee will then move to another room to consider the representations. On their return, the chair will announce the committee's decision as to whether the subject member has failed to follow the code.

If the committee decides the subject member has not failed the Code, the committee can move on to consider whether it should make any recommendations to the authority.

#### **4. Sanction**

This stage is only reached if the committee finds that there has been a failure to comply with the Code of Conduct. The committee needs to consider the full range of sanctions available, tailoring any sanction to the facts of the case before them. They must remember that there is no obligation to impose any sanction at all.

The committee will consider any verbal or written representations from the investigator and the subject member as to whether the committee should apply a sanction and what form any sanction should take. The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision. The committee will then deliberate in private to consider whether to impose a sanction on the subject member and, if so what sanction it should be. On their return, the chair will announce the committee's decision.

The committee should consider any aggravating and mitigating factors even if they have not previously identified these. Examples of factors that might be relevant include the member's knowledge of the Code of Conduct at the time of the incident, the consequences of the misconduct; whether the member accepts that they have breached the Code of Conduct, whether an apology has been offered, and whether there is likely to be a repeat of any misconduct. Bullying of officers or trying to gain an improper advantage were regarded in the guidance as particularly serious breaches.

The sanctions available to the Standards Committee are:

- Apology
- Training
- Censure by Standards Committee
- Report to Council and
- Any other appropriate action.

The Standards Committee can combine sanctions, so a member can be required to apologise and undertake training or be recommended to undertake conciliation. Any sanction should include a timescale for compliance and an indication of the consequence if it is not complied with.

**Giving Reasons:** This is an important requirement and failure to give reasons could give grounds for appeal.

In *R v Brent London Borough Council, ex p Baruwa* (1997) 29 HLR 915 at 929, Lord Justice Schiemann observed:

“ It is trite law that where, as here, an authority is required to give reasons for its decision it is required to give reasons which are proper, adequate and intelligible and enable the person affected to know why they have won or lost. That said, the law gives decision-makers a certain latitude in how they express themselves and will recognise that not all those taking decisions find it easy in the time available to express themselves with judicial exactitude.”

The reasons should explain why the committee reached the conclusions it did. The reasons should deal with any evidence or representations made by the parties, particularly those made by the subject member. The committee's reasons should demonstrate that the member has been given a fair opportunity to put his or her case across. The committee should not uncritically accept the findings of fact or the reasoning put forward by the investigator. Reasons should cover each of the stages of the decision: facts, reasoning as to whether or not there has been a breach of the code and, if there has been a breach, decision or sanction.

**Recommendations to the Authority:** After considering any verbal or written representations from the investigator, the committee will consider whether it should make any recommendations specific to the case or in general to the authority, with a view to promoting high standards of conduct among members.

## **5. The Written Decision**

The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

## **E. AFTER THE HEARING**

There is no formal right of appeal.



## PROCEDURE

Members should bear in mind that a Standards Committee Hearing is a formal meeting of the Authority and is not a Court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The Standards Committee should work at all times in a fair, independent and politically impartial way. This helps to ensure that members of the public and Members of the Authority have confidence in its procedures and findings. The Chair and the Committee have the ability to amend the procedures as necessary from time to time as circumstances of individual cases to ensure the procedures fair and independent

The Committee will follow the following stages:-

- (1) Formal introductions
- (2) Making Findings of Fact
- (3) Did the Subject Member fail to follow the Code of Conduct?
- (4) Any sanctions if the Subject Member has been found to have breached the Code of Conduct
- (5) Decision.

### **Stage 1 Formal introductions.**

The Chair will outline how the Committee will be run and deal with any preliminary procedural issues. For example, determine whether the matter should be held in private and the reasons for this.

### **Stage 2 Making Findings of Fact**

The Committee will consider whether there are any significant disputed facts contained within the Investigation Report.

If there are no disputed facts, the Committee will move onto the next stage.

If there is a dispute, the Investigator will be invited to make representations to support the relevant findings of fact in the Report.

The Investigator may call any necessary supporting witnesses to give evidence.

The Subject Member will then have an opportunity to challenge any evidence put forward.

The Subject Member will make representations to support their version of facts and call evidence as necessary.

The Investigator will be given the opportunity to challenge any evidence put forward by the Member.

The Committee can at any time ask any questions or seek clarification from either party via the Chair.

The Committee will retire, along with the monitoring officer, to deliberate on the representations and evidence.

On their return, the Chair will announce the Committee's findings of fact.

### **Stage 3 Did the Subject Member fail to follow the Code of Conduct?**

The Subject Member will be invited to make representations why the Committee should decide that they have not breached the Code of Conduct.

The Committee will invite the Investigator to make any verbal or written representations.

The Committee will raise /clarify issues. The views of the Independent Person will be sought.

The Subject Member should be invited to make any final, relevant points as to whether there has been a breach of the Code of Conduct.

The Committee will retire, along with the monitoring officer, to determine whether there has been a breach of the Code of Conduct.

On their return, the Chair will announce the Committee's decision as to whether the Subject Member has failed to follow the Code.

If the Committee decides that the Subject Member has not failed to follow the Code, the Committee can move onto consider whether it should make any recommendations to the Authority or the Monitoring Officer following the investigation, to promote the high standards of behaviour.

### **Stage 4 If the Subject Member has been found to have breached the Code of Conduct**

The Committee will consider any verbal or written representations from the Investigator and the Subject Member as to:-

- Whether the Committee should apply a sanction;
- What form any sanction should take.

The Committee will raise /clarify issues. The views of the Independent Person will be sought.

The Committee will retire, along with the monitoring officer, to determine whether to impose a sanction and if so, what it should be.

#### **Stage 5      Decision**

On their return, the Chair will announce the Committee's decision.

After considering any verbal or written representations from the Investigator, the Committee will decide whether it should make any recommendations to the Authority with a view to promoting high standards of conduct.

A full written decision will be provided to all parties as soon as reasonably practicable after the Hearing.

## **Access to Information Arrangements**

### **Exclusion of access by the public to Council meetings**

Information Compliance Ref: LGA 1/18

Meeting / Decision: Standards Committee Meeting

Date: Thursday 18<sup>th</sup> January 2018

Author: Maria Lucas

**Report Title: Standards Committee - Report relating to Complaint 09-17  
BANES**

**List of attachments to this report:**

**Appendix A - Hearing Procedure (Open)**

**Appendix B - Public Interest Test (Open)**

**Exempt Appendix C – Report of Investigation Officer and appendices 1-4  
(Exempt)**

The Report contains exempt information, according to the categories set out in the Local Government Act 1972 (amended Schedule 12A). The relevant exemption is set out below.

Stating the exemption:

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual

The public interest test has been applied, and it is concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure at this time. It is therefore recommended that the Report be withheld from publication on the Council website. The paragraphs below set out the relevant public interest issues in this case.

### **PUBLIC INTEREST TEST**

If the Committee wishes to consider a matter with press and public excluded, it must be satisfied on two matters.

Firstly, it must be satisfied that the information likely to be disclosed falls within one of the accepted categories of exempt information under the Local Government Act 1972.

The officer responsible for this item believes that this information falls within the following exemptions and this has been confirmed by the Council's Information Compliance Manager.

The following exemptions are engaged in respect to this report:

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual

Exemptions 1 and 2 above must be considered in conjunction with the Principles of the Data Protection Act 1998 (DPA). It is considered that disclosure of the information in this report would breach the first principle of the DPA, which requires personal data to be fairly and lawfully processed.

Secondly, it is necessary to weigh up the arguments for and against disclosure on public interest grounds. It is considered that there is a public interest in decisions relating to Councillor behaviour.

Other factors in favour of disclosure include:

- furthering public understanding of the issues involved;
- furthering public participation in the public debate of issues, in that disclosure would allow a more informed debate;
- promoting accountability and transparency by the Council for the decisions it takes;
- allowing individuals and companies to understand decisions made by the Council and assist individuals to challenge those decisions.

However there is a real risk that the first Principle of the DPA will be breached by this disclosure, and that the individual/s identified within the exempt appendix could bring a successful action against the Council if the disclosure occurred. Therefore it is recommended that exemptions 1 and 2 in Schedule 12A stand, and that the report be discussed in exempt session and that any reporting on the meeting is prevented in accordance with Section 100A(5A)

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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