

# Local Government and Social Care Ombudsman Code Consultation

## Draft response Shropshire Council

Response deadline: 23 November 2023

1. **The joint Code aims to provide a national standard for councils to work to, helping to clarify requirements, simplifying internal processes, and giving assurances to the public and local Members about how complaints must be handled. Does it achieve this? Yes/No (opportunity for comments)**

It is the view of Shropshire Council that whilst the standards set out in the Code provide clear expectations and may have positive benefits for members of the public and local Members, it does not necessarily simplify internal processes because the Council already has complaints processes that have been streamlined as a result of service reviews over recent years. We do though understand that this may not be true for other Local Authorities where additional stages have been added to the complaints process or where there are different ways of working across service areas and no centralised complaints function.

However, there are additional expectations included in the Code, which rather than simplify, will add additional administrative burdens for Shropshire Council. These include:

- Increasing complaint numbers by promoting the option of complaining in all Council surveys.
- Setting a 10 day response timescale (Shropshire Council's stage 1 response timescale is currently 30 working days). This will re-direct resources from pressing front-line services into responding to complaints and may reduce complaint response quality.
- Taking every expression of dissatisfaction as a complaint. We find many members of the public will express dissatisfaction on their first contact with the Council, when all they really intended was to raise a request for a service. We may also decide to process feedback as a comment or refer into another process e.g. an information request, insurance claim, or appeal, if we believe that is the most appropriate way to resolve an enquiry.
- Once a complaint response has been issued new elements will have to be taken as a new complaint (complainants commonly try to add to complaints over time as the issues they raise are addressed, and take a new slant in order to try to achieve their desired outcome in a different way).
- Working to try and assess all complainants needs and protected characteristics and applying reasonable adjustments (this is in place for social care where information is available about a complainant's circumstances, but to apply this across all corporate complaints is a significant additional requirement/function). It is very difficult to determine an individual's needs and vulnerabilities through a corporate complaint about universal services such as a highways issue and staff would require significant additional training to do this.
- Taking social media comments as formal complaints (these are often very difficult to interpret with limited information).
- Additional requirements around remedies. Although the Council works to try and remedy a legitimate complaint through action and working with the complainant, a wider approach to remedies (such as paying time and trouble) is challenging without additional budget and resources. The power to award payments in situations of maladministration is currently vested in a single officer (the Monitoring Officer) and if the number of requests became significant it would be quite impossible for them to address.
- We currently expect each service to take responsibility for complaint actions. Tracking all actions from complaints across the whole organisation will require new IT system requirements and additional staff resource. We anticipate that the Code will increase complaint numbers leading to significant additional work in this area.
- There will be considerable work required to ensure all third-party providers are working in line with the new Code. This will require a review of all contract arrangements.

Shropshire Council has a significant budget deficit, in the same way as other local authorities, and finding the resources to reduce complaint response timescales and expand the complaints function will be very challenging when the priority should be focusing on front-line services to minimise complaints arising in the first place.

2. **The joint Code sets out clear expectations for the level of staffing, oversight and governance for councils to have a good complaint handling service.** Do you agree? ~~Yes~~/**No** (opportunity for comments)

The oversight and governance expectations are clear, but we disagree that there is any clear expectation in terms of staffing levels. The role of the Complaints Officer (Complaints Manager) and the expectation at stage 2 are clearly explained but it is likely that the approaches taken through the Code will significantly increase the numbers of complaints the Council is required to handle and the amount of work involved in case managing each complaint. Over recent years the Council has seen a change in the profile of those making complaints, with the impact of wider environmental factors such as the COVID pandemic and the cost of living crisis contributing to more people who are persisting with their complaints regardless of the response they receive and any evidence of injustice being found. Therefore, the level of staffing required is unknown and will take some time to determine. Current staffing levels will be insufficient to meet the increased expectations set out. The Code's requirements mean that the current posts may need to be reviewed.

In addition to the staffing levels required centrally to administer complaints processes, Shropshire Council has significant concerns about the increasing pressure on service specialists across the organisation. There are large numbers of 'single service specialists'. When these individuals are unavailable due to leave, sickness or other priority work, complaint responses can be delayed. This issue also makes the shorter recommended timescales for complaint responses very challenging to achieve.

The reporting and oversight expectations are clear, and Shropshire Council feels able to implement the reporting and lead Member roles (reporting into the Governing Body). Shropshire Council's current way of working is not significantly out of line with the expectations and it will be straightforward to integrate the self-assessment into existing reporting.

3. **The joint Code encourages councils to have a learning culture and improve their complaint handling service.** Will it support your council to achieve this? ~~Yes~~/**No** (opportunity for comments)

We try to encourage a learning culture currently, but the Code will further emphasise the importance of this approach and provide something to refer to when needed. However, there is a gap between the desire to learn and improve and the ability to allocate staff and resources to deliver improvement. As you are aware, local authority teams and services across the country are extremely stretched and finding it difficult to cover core requirements at a time of increasing public needs. Identified improvements and actions cannot always be delivered in shorter timescales and need to be integrated into service plans.

Guidance in this area would be appreciated to understand whether the current approach taken is in line with expectations or whether more granular reporting of learning and actions is required, and how this will be understood and evaluated by the Ombudsman and/or by OfLOG.

4. **We believe the joint Code provides a clear definition of what constitutes a complaint and what should be classed as an upheld complaint.** Do you agree? ~~Yes~~/**No** (opportunity for comments)

The webinar on the Code highlighted that there is some confusion in this area. There are a considerable number of appeals processes and other processes that may be used to highlight

dissatisfaction and work towards remedial action. The complaints process is not always the most appropriate course of action to achieve the outcome the customer requires. A formal complaint investigation is not required in all instances. The Code implies that any expression of dissatisfaction should be a complaint, but also acknowledges that service requests need to be considered separately (many customers requesting a service for the first time can call their request a complaint). There is a need for this to be clarified within the anticipated guidance to ensure a more consistent approach across local authorities and prevent an unnecessary and extreme increase in “complaint” volumes.

Complaints are increasingly complex and multifaceted as the people we serve have more complex needs and access services and support from more than one source. Some complaints can have 20+ different points. We currently offer findings on each element of a complaint with an overall summary finding so we can clearly communicate with the customer. Under the Code, a complaint with 19 not upheld findings and one upheld will be classed as upheld. This is a concern and will skew understanding of where there are real issues to address, and the expectations of those complaining and of the wider public. We anticipate that the code, as it currently stands, will result in many more complaints being upheld, even if there has been no fault in the way the service has been provided. For example, an element of dissatisfaction such as being slow to respond to an email may turn the whole complaint into an upheld case. There are significant concerns with this approach. We also question whether a complainant who had had just one out of twenty aspects of their complaint upheld would consider it to be upheld overall. More guidance on this will be helpful. An unplanned incentive of this could be that Local Authorities may be tempted to split complaints up to provide finding for each element, and this will not necessarily benefit the customer.

5. **The Code encourages organisations to resolve complaints satisfactorily at an early stage and before they come to an Ombudsman.** Do you agree? **Yes/No** (opportunity for comments)

The Code clearly encourages early resolution as a way of minimising the number of complaints progressing through the complaints process to stages 2 and beyond. The Ombudsman’s guidance on remedies is helpful but there are significant challenges in implementing this guidance when local authorities’ budgets are so stretched. Where action can be taken to put someone back in a position they would have been before an error/injustice using practical steps such as service support, delivery of an action etc. this feels achievable. Where payments are required as a symbolic gesture or for time and trouble, the budgets are not readily available. Where cases progress through the process and there is a finding of fault by the Ombudsman it is clear that a financial award is required, but where a complaint is being considered at stage 1 by a manager responsible for that service, it is an incredibly difficult decision to propose an award for a complainant knowing that may well impact on the budget available to deliver a service to another customer. Currently the power to make payments in situations of maladministration under Section 92 of the Local Government Act 2000 is reserved to the Monitoring Officer. This is deliberate so as to avoid more junior members of staff feeling pressurised to make payments in circumstances where, for example, a councillor is involved. It may well be impracticable for the Monitoring Officer to approve such payments in cases of maladministration.

There is also a risk that local authorities will take very different approaches and inconsistency will occur. To achieve consistency, it would be better if there were set costs calculations and approaches that could be applied. It is accepted that each case is different and standard approaches are challenging to achieve, but without them there is a risk of unfairly discriminating against local authorities with budget challenges (local authorities that can afford payments will see fewer stage 2 and Ombudsman cases).

6. **We will provide further guidance on how the Code should be used by councils. What guidance would you find useful when implementing the Code within your council?** (free text option)

Additional guidance will be helpful in the following areas:

- Guidance for Stage 2 reviews will be helpful. The Code suggests that new elements of complaint should be considered as part of the stage 2 review. However, a service area response is needed before a complaint may be reviewed. The independent officer reviewing the complaint has no jurisdiction/delegated authority over service areas and the allocation of their resources or approach to action-based remedies.
- Working with third-party providers. We accept that the Ombudsman offers some information within its Link Officer guidance but this is fairly high level and does not reflect the more detailed work that is required to achieve a consistent approach within local authorities working with high numbers of external providers across vastly different types of service provision.
- Working to try and assess all complainants' needs and protected characteristics and applying reasonable adjustments (to apply this across all corporate complaints is a significant additional requirement/function). It is very difficult to determine an individual's needs and vulnerabilities through a corporate complaint such as a highways issue. It will be important to understand the level of work that is expected. There are rapidly increasing numbers of long-term complainants who are vulnerable with high levels of needs. Many have poor mental health or behavioural and other health needs that require a level of support complaints officers are not trained or equipped to deal with. Many fall below the thresholds required to receive social care support. Complainants often threaten to harm themselves or others and it is essential that the Ombudsman understands that, however effectively a local authority works to provide complaint responses, these customers will still return frequently with new issues of perceived dissatisfaction.
- With that in mind we would also welcome more guidance on when it is legitimate for a Council to classify an individual as vexatious. It is increasingly common for staff to be subject to quite extreme and abusive communications, something we know the Ombudsman states it will not tolerate for its own staff.
- As mentioned above, there is a risk that without more detailed guidance on remedies the approaches local authorities take will be driven by available budgets, leading to an inconsistent approach and one which disadvantages, those with fewer resources.
- More guidance on the local authority functions and processes that can be considered to fall outside of the complaints process will be beneficial. For example, due to changes in national policy we see more and more people try to complain rather than use the planning appeals/enforcement processes.
- It would be helpful to have more guidance on the expectations around learning and actions. This can be delivered and reported very differently.

**7. Do you have any other comments you would like to make about the LGSCO's intention to introduce this statutory Code, including the decision to do this jointly with the Housing Ombudsman? (free text option)**

We are aware of the LGA's concerns around whether the LGSCO has the statutory power to enforce the Code. Whether the Code becomes statutory or good practice guidance, it sets a level of public expectation that is high, and out of line with the resources local authorities currently have. We wish to apply high standards but there are limits to what can be achieved. We are aware that we can't deliver everything we would like to, and the public reporting of failures does not address the underlying issues. It serves to increase the feeling of public dissatisfaction and therefore lead to even more complaints and the need to invest time in complaints handling rather than direct front-line service provision.