

**Standards Committee  
30 June 2010**

**Council  
15 July 2010**

**Annual Report Of The Council's  
Monitoring Officer - 2009-10**

**Introduction**

1. This is the fifth annual report I have presented to the Standards Committee and the Council. The principal purpose of the annual report is to focus on and assess activity in probity matters, especially formal complaints about alleged breaches of approved protocols and codes of conduct by parish and borough councillors. The Standards Committee has received similar interim reports since 2003. The annual report provides an opportunity to review the effectiveness of current procedures based on real data. The year on which the current report is based is the year from 1 June 2009 to 31 May 2010.
2. So far as the Council's Code of Conduct is concerned, a revised model code was issued by central government in early 2007 and this was the subject of a separate report to the Council and adopted in May 2007. This annual report is therefore the third to be based on the new code.
3. With effect from May 2008 the Local Government and Public Involvement in Health Act 2007 introduced further substantial changes whereby complaints (against both borough and parish councillors) are no longer be made to or investigated by the national body but are made locally and "filtered" by local Assessment and Review Panels (which are Sub-Committees of the Borough Council's Standards Committee) rather than the Board. Cases are referred for local investigations or other action where appropriate. In July 2008 I presented a detailed report to the Standards Committee and the Selection and Constitutional Review Committee and members approved entirely new administrative and legal arrangements for local initial assessment, and review and hearings for complaints. This included a comprehensive set of assessment criteria to guide decision-making.
4. The Standards Board has retained responsibility only for investigation of the most serious cases and as a "strategic regulator." The resource implications of this for local authorities - especially those with large numbers of parish councils - are significant although no increased resources have been provided to local government to cover this.
5. Although the previous Government announced its intention to review the national Model Code of Conduct (on which all local codes are based) this was not completed prior to the General Election. The new Government has stated its intention to "abolish the Standards Board regime" but no further details have been published. It seems likely that the code of conduct and role of local Standards Committees will continue whilst the Standards Board's strategic and monitoring role may be subsumed into an existing regulatory body such as the

Local Government Ombudsman. In the meantime, the existing system remains fully operational.

6. In October 2004 the Council adopted a 'Good Practice Protocol for Councillors when Dealing with Planning Matters'. This protocol sets out detailed best practice rules for this specialist and sensitive area of the Council's work and which go well beyond the general rules set out in the Council's adopted Code of Conduct. The protocol is not part of the Council's Code of Conduct but is overseen by the Standards Committee. The protocol does not apply to Parish Councils.
7. Although I delivered additional training during 2007 to parish councillors and clerks and arranged externally facilitated training for parish and borough councillors on the new local assessment regime during 2008, I have continued to respond to specific requests for further training by individual parish councils. I have delivered such training to all councillors at Biddenden, Bethersden and Rolvenden and further requests are being processed. A "Probity in Planning" update was given by the Monitoring Officer to Borough Councillors in November 2009 and refresher training for Standards Committee members is taking place in June. In addition code of conduct advice continues to be routinely sought and given on an almost daily basis in relation to borough and parish council issues..
8. In April 2006 administration of the Overview & Scrutiny function was transferred to the Head of Legal and Democratic Services and Monitoring Officer along with the handling of all Ombudsman complaints. I have included with this annual report the relevant 2009/10 data for Ombudsman complaints as well.
9. The Local Government Ombudsman investigates complaints by members of the public who consider that they have been caused injustice through maladministration by local authorities and other bodies within their jurisdiction.
10. Under the Terms of Reference of the Council's Standards Committee, regular reports are required to be submitted to that Committee on Local Government Ombudsman complaints and outcomes, as the Standards Committee is responsible for the monitoring of any issues of probity raised in Ombudsman investigations. This report covers the period from 1<sup>st</sup> April 2009 to March 31<sup>st</sup> 2010.
11. This report would normally include a table setting out details of those complaints where the Ombudsman has made a finding against the Council, either with an official report, or under the terms of 'local settlement'. However since there are no such reports for the year 09/10, no table is appended.

### **Analysis of Code of Conduct Complaints**

12. The attached **Appendix 1** gives brief details of all formal allegations/complaints made to the Monitoring Officer in the year 2009/10 regarding borough councillors and parish councillors within the borough.
13. During this period fourteen new formal complaints were made, of which seven related to the Borough Council and seven related to parish councils. A breakdown of the 14 complaints in terms of outcome is as follows:-

- 4 of the complaints (3 parish and 1 borough) were referred to the Monitoring Officer for action other than investigation.
  - 1 complaint (parish) was referred to the Assessment Panel and resulted in 'No Further Action' on account of the matter not justifying formal investigation.
  - 3 complaints (2 borough and 1 parish) were outside the jurisdiction of the Panel, two on account of the alleged conduct being in the councillor's private life and one because it was the parish clerk, not a councillor, who was the subject of the complaint).
  - 6 recent complaints (5 borough, 1 parish) remain undetermined at the time of writing this report.
14. The figures for 2009/10 show a slightly reduced number of overall complaints compared to the preceding year (when there were 16 complaints) although the proportion of Borough Council complaints is significantly higher this year.

To date no complaints under the local "filtering" system have been referred for investigation although several are still awaiting Assessment Panel decisions at the time of writing. Whilst one cannot draw firm conclusions on long term trends from the statistics available, the incidence of complaints has remained at reasonably moderate levels. However the cost in terms of member and senior officer time in handling the current level of complaints locally is very significant. The Standards Board (now Standards for England) recently produced detailed draft proposals to simplify the standards regime and provide more efficient ways to dispose of less serious complaints. These proposals have still not been formally considered by Government, but do provide some grounds for optimism should Government decide to adopt the proposals.

15. No complaints to the Local Government Ombudsman have involved alleged code breaches by councillors. All meeting agendas include a first item (after apologies) seeking declaration of interests. Declarations of personal interests are made and minuted and where appropriate checked against councillors' registered interest forms. Ad hoc advice on interests is regularly sought from the Monitoring Officer and his staff by borough councillors and parish clerks/councillors particularly in relation to Planning Committee matters. This process continues to demonstrate a good general level of understanding by borough councillors and a desire to comply with the code of conduct.
16. On the basis of all the above matters, I am satisfied that the Borough Council's Code of Conduct (and good practice protocol) are widely understood and observed, although controversial proposals within parishes continue to generate a higher than necessary level of complaints about possible code breaches. I am hopeful that more individual parish training events will help reduce the incidence of such complaints.

### **Analysis of Ombudsman Complaints**

17. The Ombudsman resolved **10** complaints against Ashford Borough Council within the period 1<sup>st</sup> April 2009 to 31<sup>st</sup> March 2010, 11 less than last year and there was a decrease in the time taken by the Council to respond to first enquiries from the Ombudsman - from 24.7 days to 18 days.

No complaints were ruled as maladministration by this Council. The outcomes of those complaints resolved by the Ombudsman are detailed below.

0 = Local Settlement.

4 = No, or insufficient, evidence of maladministration.

3 = Ombudsman's discretion (The Ombudsman has exercised his right not to pursue the complaint, i.e. there is no or insufficient injustice to warrant pursuing the matter further).

3 = Outside jurisdiction.

18. A change in the way the LGO operates means that statistics about complaints received in 2008/09, and later, are not directly comparable with those from previous years. Figures for complaints resolved in 2008/09, and later, do not include any premature complaints whereas the figures for 2007/08, and earlier, included premature complaints.

From 2008/09 the LGO changed the way Premature complaints (i.e. those complaints the Council should be given a chance to resolve first) are dealt with and now has two categories – 'Formal' – where the complaint is referred back to the Council to resolve, and 'Informal' – where advice is given to the complainant that their complaint is premature. As Councils are not notified of 'Informal' cases, it will not be possible for them to reconcile the total figure for premature complaints, so the LGO are not including a printout of premature decisions any more.

Where the Ombudsman determines a complaint as "Local Settlement", an agreement will have been negotiated between the Council and the complainant. There were no Local Settlement decisions for 2009/10.

19. There are two decisions relating to this period which were made after the end of the 09/10 period, (these will be included in the LGO statistics for 2010/11) the LGO decision on one of these was 'No, or insufficient, evidence of maladministration' and on the other was 'Outside Jurisdiction'.
20. Two charts are attached at appendices A and B for the Committee's information:
- Ombudsman Complaints by Service
  - Decisions made on Ombudsman Complaints
21. I have attached the Ombudsman's Annual Review 2009/10 (**appendix C**) but unfortunately comparative data from other Kent authorities for the period has not yet been published by the Ombudsman. However it is important to note that the volume of formal complaints made against the Council has halved and this is a positive governance indicator

As has been noted above, there was a significant decrease in the time taken to respond to first enquiries from the Ombudsman, from 24.7 days to 18 days. This is particularly pleasing and is the second consecutive year in which an improvement has been made. The improvement is specifically noted in the Ombudsman's Annual Review letter.

22. Overall, I am pleased to report that the Council's record in relation to Ombudsman case outcomes - including the absence of a single finding of maladministration - remains good. The Council's internal corporate complaints system has been reviewed recently and this may have had some impact on the reduction in volume of complaints, as well as the nature of the outcomes in the complaints which were pursued.

TERRY MORTIMER  
MONITORING OFFICER

June 2010

## Appendix 1.

CODE OF CONDUCT COMPLAINTS JUNE 2009 - MAY 2010			
PART A - CASES INVESTIGATED OR REFERRED FOR INVESTIGATION OR OTHER ACTION			
COUNCIL/ CASE REF	ALLEGATION	DECISION	COMMENTS
ABC/09/15 (ASHFORD)	Failure to treat others with respect (para 3(1))	Refer to Monitoring Officer to send advisory letter on behalf of Panel.	
ABC/09/16 (KENARDINGTON)	Bullying (para 3(2))	Refer to Monitoring Officer to send advisory letter to clerk and offering Monitoring Officer assistance to help resolve ongoing problems.	Monitoring Officer to attend future parish council meeting.
ABC/09/17 (KENARDINGTON)	Bullying (para 3(2))	Refer to Monitoring Officer to send advisory letter to clerk and offering Monitoring Officer assistance to help resolve ongoing problems.	Monitoring Officer to attend future parish council meeting.
ABC/09/20 (KENARDINGTON)	Bullying (para 3(2)) and failure to treat others with respect (para 3(1))	Refer to Monitoring Officer to send advisory letter to clerk and offering Monitoring Officer assistance to help resolve ongoing problems.	Monitoring Officer to attend future parish council meeting.

**PART B - CASES WHERE ASSESSMENT OR REVIEW PANEL DETERMINED NO FURTHER ACTION**

<b>COUNCIL/ CASE REF</b>	<b>ALLEGATION</b>	<b>DECISION</b>	<b>COMMENTS</b>
ABC/09/01 (PLUCKLEY)	Failure to treat others with respect (para 3(1))	No Further Action - not sufficiently serious to warrant publicly funded investigation.	
ABC/09/12 & 13 (ASHFORD)	Failure to treat others with respect (para 3(1)) and bringing office or Council into disrepute (para 5)	No jurisdiction as conduct not in official capacity as a Councillor	An externally facilitated Equality & Diversity training session for borough councilors was arranged following these complaints.

**PART C - COMPLAINTS NOT REFERRED FOR ASSESSMENT**

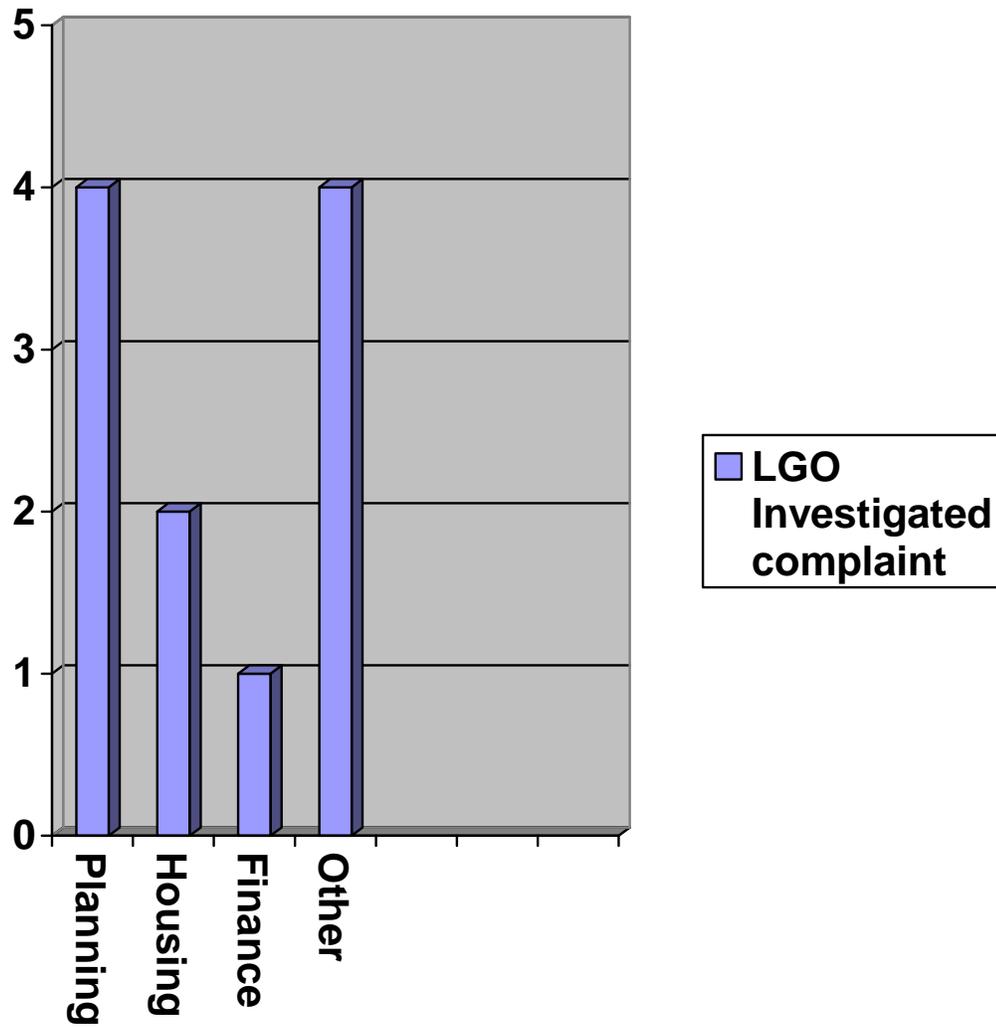
<b>COUNCIL</b>	<b>ALLEGATION</b>	<b>DECISION</b>	<b>COMMENTS</b>
ABC/09/21 (KENARDINGTON)	Bullying of a councillor (para 3(2))	Not referred to Assessment Panel because complaint related to a person who was not a councillor at the relevant time.	

**NOTE:** There are six outstanding complaints not included in the above tables because no Assessment Panel decisions have yet been made upon them.

# Appendix A

Ombudsman Complaints by Service

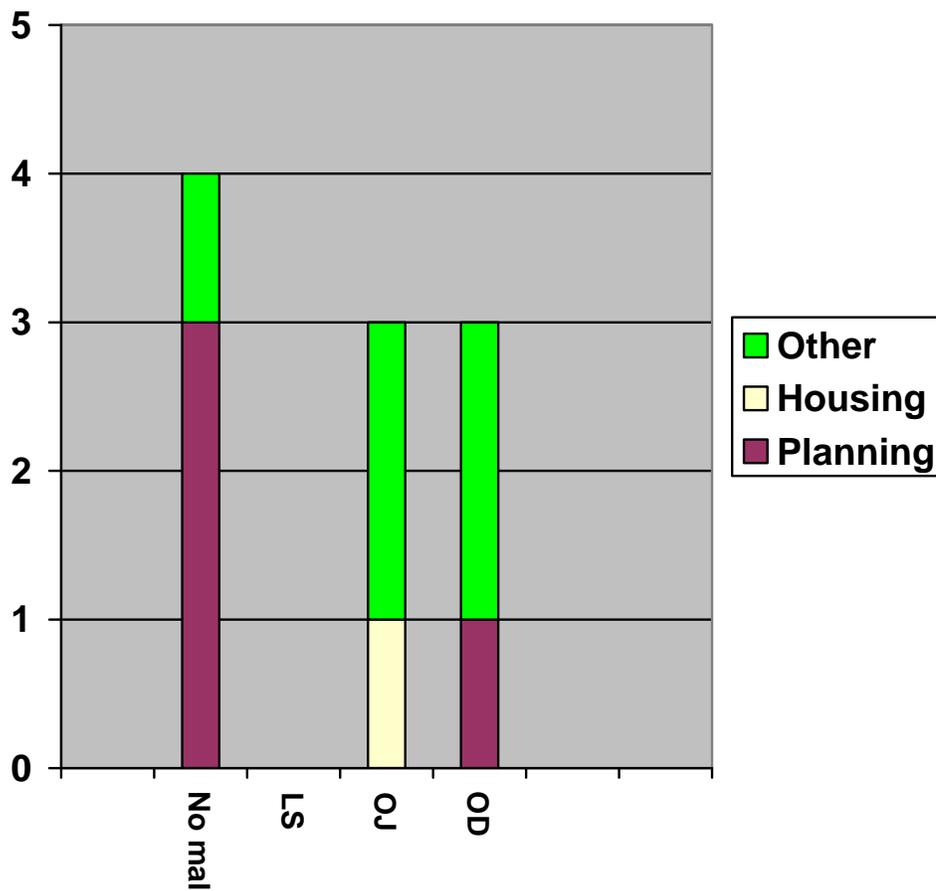
Received between 1<sup>st</sup> April 2009 – 31<sup>st</sup> March 2010



## Appendix B

### Decisions Made on Ombudsman Complaints

1<sup>st</sup> April 2009 – 31<sup>st</sup> March 2010



#### Key

LS Local settlement

OJ Outside Jurisdiction

OD Ombudsman's discretion

No mal No, or insufficient, evidence of maladministration

Local Government  
**OMBUDSMAN**

**The Local Government Ombudsman's  
Annual Review  
Ashford Borough Council  
for the year ended  
31 March 2010**

**Local Government Ombudsmen (LGOs) provide a free, independent and impartial service. We consider complaints about the administrative actions of councils and some other authorities. We cannot question what a council has done simply because someone does not agree with it. If we find something has gone wrong, such as poor service, service failure, delay or bad advice, and that a person has suffered as a result, we aim to get it put right by recommending a suitable remedy. We also use the findings from investigation work to help authorities provide better public services through initiatives such as special reports, training and annual reviews.**

# Contents of Annual Review

- Section 1: Complaints about Ashford Borough Council 2009/10..... 3**
  - Introduction ..... 3
  - Enquiries and complaints received ..... 3
  - Complaint outcomes ..... 3
  - Liaison with the Local Government Ombudsman ..... 4
  - Training in complaint handling ..... 4
  - Conclusions ..... 4
- Section 2: LGO developments..... 5**
  - Introduction ..... 5
  - New schools complaints service launched ..... 5
  - Adult social care: new powers from October ..... 5
  - Council first ..... 5
  - Training in complaint handling ..... 6
  - Statements of reasons ..... 6
  - Delivering public value ..... 6
- Appendix 1: Notes to assist interpretation of the statistics 2009/10 ..... 7**
- Appendix 2: Local authority report 2009/10**

# Section 1: Complaints about Ashford Borough Council 2009/10

## Introduction

This annual review provides a summary of the complaints we have dealt with about Ashford Borough Council. We have included comments on the authority's performance and complaint-handling arrangements, where possible, so they can assist with your service improvement.

I hope that the review will be a useful addition to other information your authority holds on how people experience or perceive your services.

Two appendices form an integral part of this review: statistical data for 2009/10 and a note to help the interpretation of the statistics.

## Enquiries and complaints received

Last year our Advice Team dealt with 17 enquiries and complaints about your authority. This is less than half the number received in 2008/09 which was 35.

Of these enquiries and complaints received, four related to complaints that were deemed to be premature and so were referred back to your Authority for investigation. We provided advice to two other people who contacted the Advice Centre.

Our Advice Team forwarded 11 complaints to the investigative team, half the number referred in 2008/09. One of the complaints forwarded for investigation was one which had been referred to the Authority as premature but was then resubmitted by the complainant, who was not satisfied with the Council's response. This was a significant improvement on last year's figure when seven complaints were resubmitted. There was a wide spread of complaints among those received; four were about the way your Council had dealt with planning applications.

## Complaint outcomes

### Reports

When we complete an investigation, we generally issue a report. This year we did not issue any reports against your Council.

### Local settlements

A 'local settlement' is a complaint where, during the course of our investigation, an authority takes or agrees to take some action that we consider to be a satisfactory response to the complaint. In 2009/10, 26.9% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements. In 2008/9 we closed three complaints as local settlements but this year no complaints were closed in this way.

### **Other decisions**

Four of the complaints which were passed on to investigative staff by the Advice Team were out of our jurisdiction. This was because the complainants had a right of appeal to either a court or to a statutory tribunal and my staff believed it was reasonable for them to have used that right of appeal.

Of the complaints received about planning applications, one was out of jurisdiction because the complainant had a right of appeal and, in addition, because of the length of time that had passed since the events took place. We discontinued our investigation of one because we found that no significant injustice had arisen and found no fault in the way you had dealt with the other two applications.

### **Liaison with the Local Government Ombudsman**

The average time for your Authority to reply to our written enquiries last year was 18 days, an improvement on the average response time last year which was 24.7 days. This is better than our target period of 28 days which 61% of District Councils manage to attain.

### **Training in complaint handling**

I am pleased that during 2009/10 we provided training in Effective Complaint Handling to staff from your Authority.

I would like to take this opportunity to remind the Council that part of our role is to provide advice and guidance about good administrative practice. We offer training courses for all levels of local authority staff in complaints handling and investigation. All courses are presented by experienced investigators. They give participants the opportunity to practise the skills needed to deal with complaints positively and efficiently. We can also provide customised courses to help authorities to deal with particular issues and occasional open courses for individuals from different authorities.

### **Conclusions**

I welcome this opportunity to give you my reflections about the complaints my office has dealt with over the past year. I hope that you find the information and assessment provided useful when seeking improvements to your authority's services.

**Tony Redmond  
Local Government Ombudsman  
10th Floor  
Millbank Tower  
Millbank  
London  
SW1P 4QP**

**June 2010**

## Section 2: LGO developments

### Introduction

This annual review also provides an opportunity to bring councils up to date on developments in the LGO and to seek feedback.

### New schools complaints service launched

In April 2010 we launched the first pilot phase of a complaints service extending our jurisdiction to consider parent and pupil complaints about state schools in four local authority areas. This power was introduced by the Apprenticeships, Skills, Children and Learning Act 2009.

The first phase involves schools in **Barking and Dagenham, Cambridgeshire, Medway and Sefton**. The Secretary of State no longer considers complaints about schools in these areas. In September the schools in a further 10 local authority areas are set to join the pilot phase.

We are working closely with colleagues in the pilot areas and their schools, including providing training and information sessions, to shape the design and delivery of the new service. It is intended that by September 2011 our jurisdiction will cover all state schools in England.

A new team in each office now deals with all complaints about children's services and education on behalf of the Ombudsman. Arrangements for cooperation with Ofsted on related work areas have been agreed.

For further information see the new schools pages on our website at [www.lgo.org.uk/schools/](http://www.lgo.org.uk/schools/)

### Adult social care: new powers from October

The Health Act 2009 extended the Ombudsmen's powers to investigate complaints about privately arranged and funded adult social care. These powers come into effect from 1 October 2010 (or when the Care Quality Commission has re-registered all adult care providers undertaking regulated activity). Provision of care that is arranged by an individual and funded from direct payments comes within this new jurisdiction.

Each Ombudsman has set up a team to deal with all adult social care complaints on their behalf. We expect that many complaints from people who have arranged and funded their care will involve the actions of both the local authority and the care provider. We are developing information-sharing agreements with the Care Quality Commission and with councils in their roles as adult safeguarding leads and service commissioners.

### Council first

We introduced our Council first procedure in April last year. With some exceptions, we require complainants to go through all stages of a council's own complaints procedure before we will consider the complaint. It aims to build on the improved handling of complaints by councils.

We are going to research the views of people whose complaints have been referred to councils as premature. We are also still keen to hear from councils about how the procedure is working, particularly on the exception categories. Details of the categories of complaint that are normally treated as exceptions are on our website at [www.lgo.org.uk/guide-for-advisers/council-response](http://www.lgo.org.uk/guide-for-advisers/council-response)

### **Training in complaint handling**

Demand for our training in complaint handling has remained high, with 118 courses delivered over the year to 53 different authorities. Our core Effective Complaint Handling course is still the most popular – we ran some of these as open courses for groups of staff from different authorities. These are designed to assist those authorities that wish to train small numbers of staff and give them an opportunity to share ideas and experience with other authorities.

The new Effective Complaint Handling in Adult Social Care course, driven by the introduction of the new statutory complaints arrangements in health and adult social care in April 2009, was also popular. It accounted for just over a third of bookings.

Over the next year we intend to carry out a thorough review of local authority training needs to ensure that the programme continues to deliver learning outcomes that improve complaint handling by councils.

### **Statements of reasons**

Last year we consulted councils on our broad proposals for introducing statements of reasons on the individual decisions of an Ombudsman following the investigation of a complaint. We received very supportive and constructive feedback on the proposals, which aim to provide greater transparency and increase understanding of our work. Since then we have been carrying out more detailed work, including our new powers. We intend to introduce the new arrangements in the near future.

### **Delivering public value**

We hope this information gives you an insight into the major changes happening within the LGO, many of which will have a direct impact on your authority. We will keep you up to date through LGO Link as each development progresses, but if there is anything you wish to discuss in the meantime please let me know.

Mindful of the current economic climate, financial stringencies and our public accountability, we are determined to continue to increase the efficiency, cost-effectiveness and public value of our work.

**Tony Redmond**  
**Local Government Ombudsman**  
**10<sup>th</sup> Floor**  
**Millbank Tower**  
**Millbank**  
**London**  
**SW1P 4QP**

**June 2010**

## Appendix 1: Notes to assist interpretation of the statistics 2009/10

### Table 1. LGO Advice Team: Enquiries and complaints received

This information shows the number of enquiries and complaints received by the LGO, broken down by service area and in total. It also shows how these were dealt with, as follows.

**Premature complaints:** The LGO does not normally consider a complaint unless a council has first had an opportunity to deal with that complaint itself. So if someone complains to the LGO without having taken the matter up with a council, the LGO will either refer it back to the council as a 'premature complaint' to see if the council can itself resolve the matter, or give advice to the enquirer that their complaint is premature.

**Advice given:** These are enquiries where the LGO Advice Team has given advice on why the LGO would not be able to consider the complaint, other than the complaint is premature. For example, the complaint may clearly be outside the LGO's jurisdiction.

**Forwarded to the investigative team (resubmitted premature and new):** These are new cases forwarded to the Investigative Team for further consideration and cases where the complainant has resubmitted their complaint to the LGO after it has been put to the council.

### Table 2. Investigative Team: Decisions

This information records the number of decisions made by the LGO Investigative Team, broken down by outcome, within the period given. **This number will not be the same as the number of complaints forwarded from the LGO Advice Team** because some complaints decided in 2009/10 will already have been in hand at the beginning of the year, and some forwarded to the Investigative Team during 2009/10 will still be in hand at the end of the year. Below we set out a key explaining the outcome categories.

**MI reps:** where the LGO has concluded an investigation and issued a formal report finding maladministration causing injustice.

**LS (local settlements):** decisions by letter discontinuing our investigation because action has been agreed by the authority and accepted by the LGO as a satisfactory outcome for the complainant.

**M reps:** where the LGO has concluded an investigation and issued a formal report finding maladministration but causing no injustice to the complainant.

**NM reps:** where the LGO has concluded an investigation and issued a formal report finding no maladministration by the council.

**No mal:** decisions by letter discontinuing an investigation because we have found no, or insufficient, evidence of maladministration.

**Omb disc:** decisions by letter discontinuing an investigation in which we have exercised the LGO's general discretion not to pursue the complaint. This can be for a variety of reasons, but the most common is that we have found no or insufficient injustice to warrant pursuing the matter further.

**Outside jurisdiction:** these are cases which were outside the LGO's jurisdiction.

**Table 3. Response times**

These figures record the average time the council takes to respond to our first enquiries on a complaint. We measure this in calendar days from the date we send our letter/fax/email to the date that we receive a substantive response from the council. The council's figures may differ somewhat, since they are likely to be recorded from the date the council receives our letter until the despatch of its response.

**Table 4. Average local authority response times 2009/10**

This table gives comparative figures for average response times by authorities in England, by type of authority, within three time bands.

**Appendix 2: Local Authority Report - Ashford BC**

**For the period ending - 31/03/2010**

**LGO Advice Team**

<b>Enquiries and complaints received</b>	<b>Housing</b>	<b>Public Finance inc. Local Taxation</b>	<b>Planning and building control</b>	<b>Other</b>	<b>Total</b>
Formal/informal premature complaints	0	1	3	0	4
Advice given	1	1	0	0	2
Forwarded to investigative team (resubmitted prematures)	0	0	1	0	1
Forwarded to investigative team (new)	2	1	3	4	10
<b>Total</b>	<b>3</b>	<b>3</b>	<b>7</b>	<b>4</b>	<b>17</b>

**Investigative Team**

<b>Decisions</b>	<b>MI reps</b>	<b>LS</b>	<b>M reps</b>	<b>NM reps</b>	<b>No mal</b>	<b>Omb disc</b>	<b>Outside jurisdiction</b>	<b>Total</b>
2009 / 2010	0	0	0	0	4	3	3	10

## Appendix 2: Local Authority Report - Ashford BC

For the period ending - 31/03/2010

Response times	FIRST ENQUIRIES	
	No. of First Enquiries	Avg no. of days to respond
1/04/2009 / 31/03/2010	7	18.0
2008 / 2009	11	24.7
2007 / 2008	2	30.0

### Average local authority resp times 01/04/2009 to 31/03/2010

Types of authority	<= 28 days	29 - 35 days	> = 36 days
	%	%	%
District Councils	61	22	17
Unitary Authorities	68	26	6
Metropolitan Authorities	70	22	8
County Councils	58	32	10
London Boroughs	52	36	12
National Parks Authorities	60	20	20