

TRANSPORT FOR LONDON

AUDIT COMMITTEE

**SUBJECT: ANNUAL REPORT OF THE LOCAL GOVERNMENT OMBUDSMAN**

**DATE: 29 SEPTEMBER 2009**

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**1 PURPOSE AND DECISION REQUIRED**

1.1 The purpose of this paper is to inform the Audit Committee of the Annual Report of the Local Government Ombudsman, including TfL's response, and also to provide an update on the status of specific actions in Surface Transport arising from the last Ombudsman's report previously reported to the Committee. The Committee is requested to NOTE the contents of this report.

**2 BACKGROUND**

2.1 The Annual Report of the Local Government Ombudsman (LGO) was published on 14 July 2009. Copies of both the LGO report and the Commissioner of Transport's response are attached as Appendices 1 and 2.

2.2 As previously reported to the Committee, in December 2008 TfL received a report from the LGO following an investigation into complaints from three motorists who had each received a Penalty Charge Notice (PCN) from TfL for traffic contraventions identified on the red route between September 2006 and April 2007.

2.3 Following the investigation by the LGO, the Ombudsman concluded that there was maladministration leading to injustice in each of the three complaints. As a result, TfL implemented a number of specific actions including:

- a) Improved management of escalated complaints and enhanced risk-based contract monitoring activities by TfL Officers;
- b) Reviews of unallocated payments, and
- c) Enhanced training activities.

2.4 In addition to these specific points, a number of organisational changes have been made to improve the general complaints and recovery service going forward. For example, TfL has taken over control of the bailiff operation and in future all of debt recovery (bailiff activity) will be delivered through new contracts with additional customer focused contractual requirements.

### 3 SUMMARY OF THE ANNUAL REPORT

- 3.1 The Annual Report includes a summary of the complaints from the three motorists noted above whose cheques were not properly reconciled to outstanding penalties. In addition to these complaints, which had already been reported and responded to by TfL, the report also included comments on the use of discretion over penalty charge notices and response times.

#### Use of discretion over penalty notices

- 3.2 This issue related to an incident where a Parking Enforcement Officer was unable to cancel a parking ticket for a vehicle which appeared to be illegally parked in a disabled parking bay in circumstances where a passenger on crutches returned to the vehicle before the ticket had been completed. The Officer was unable to use discretion in this case because TfL's written instructions prevented this. The business rules in this area have subsequently been reviewed to ensure that more discretion can be used in extenuating circumstances.

#### Response times

- 3.3 The report noted that the average response time for TfL replies to written enquiries was 39.1 days – a deterioration from the previous year's 30.3 days. Only a quarter of enquiries were answered within the LGO's target period of 28 days. While there are a number of mitigating factors contributing to this level of delay, including reliance upon third party contractors and system issues, the Commissioner has acknowledged that response times need to improve.

- 3.4 A number of positive factors are highlighted by the report. These include:

- Low number of complaints re high volume of transactions

The report acknowledged the low level of complaints received in comparison to the volume of transactions processed. Some 3.65 million PCNs have been issued since the commencement of enforcement activities in 2001. The three significant complaint reports received therefore represent a minute fraction of the overall transaction activity.

- Low Emission Zone (LEZ)

No complaints relating to contraventions of the LEZ were sent to the LGO during the year. The success of this scheme has to a significant degree been based upon a proactive communications campaign combined with a policy of sending warning letters to those who contravene for the first time.

- TfL action taken prior to LGO involvement

The report recognises that TfL has on occasion taken swift action to settle complaints before the LGO needed to become involved.

## **4 TfL RESPONSE AND CURRENT POSITION**

- 4.1 Since the issue of the LGO's report into the three LGO complaints in December 2008, TfL committed to delivering a range of improvements to address the concerns raised by the LGO in relation to penalty charge processing activities. These service improvements focussed on delivering enhancements to core business processes supporting penalty charge reconciliation, cash allocation and the management of customer complaints and representations identification.
- 4.2 A re-focussed contracts management team developed, and continues to deliver, a robust risk-based monitoring strategy to oversee the delivery of the service and to drive through necessary change within that service. Significant improvements in customer satisfaction and service performance have been achieved.
- 4.3 The implementation of the Driver Charter in July 2009 has led to changes in the way TfL enforces road traffic contraventions on the Transport for London Road Network. The Driver Charter has supported educating the road user through stakeholder engagement which in turn has led to a significant reduction in the numbers of unnecessary PCNs being issued to road users.
- 4.4 There have been no related LGO complaints since December 2008.

## **5 INTERNAL AUDIT**

- 5.1 In response to the three LGO complaints received in December 2008, TfL Internal Audit was asked to carry out a full audit of complaint handling within the Congestion Charging and Traffic Enforcement Directorate. This work has subsequently been completed, with a final audit report being issued in July 2009.
- 5.2 A number of improvement actions were agreed by management in response to Internal Audit findings. These included:
- a) Weekly monitoring of the unallocated payment queues;
  - b) Regular monitoring by TfL of the handling of representations and correspondence;
  - c) Case and evidential review training;
  - d) Weekly reviews of the complaints log; and
  - e) Development of a performance indicator strategy.
- 5.3 All of the above actions have been assessed by Internal Audit as "satisfactorily addressed" within the target implementation dates. One agreed action – the introduction of a revised complaints procedure for Contracted Services – had not been addressed at the time of the Internal Audit final review. It was decided to defer this until Autumn 2009 when a consolidated complaints procedure for Road Network Compliance, Congestion Charging and the Low Emission Zone could reflect the Driver Charter media campaign. In the interim, there are discrete

complaints procedures in place and the underlying issue had been addressed by other management actions.

## **6 RECOMMENDATION**

6.1 The Audit Committee is asked to NOTE the contents of this report.

## **7 CONTACT**

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# Transport for London



Mr Tony Redmond  
Local Government Ombudsman  
10<sup>th</sup> Floor  
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7 July 2009

Dear 

**Re: Annual Review 2008/2009**

**Peter Hendy CBE**

Commissioner of Transport

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Thank you for your letter and review of 28 April 2009. I am pleased that you mark our progress in certain areas and also the proactive approach TfL takes to tighten its procedures where these have been deemed to be lacking. TfL strives to offer the customer a first class experience of our often complex services and the dialogue between us is an essential part of our self improvement.

Although it is always disappointing to receive any complaint from the public, I am pleased to note that you have placed those complaints we do receive within the context of the overall volumes of transactions taking place.

I was particularly pleased by the very low level of complaints in relation to the London Low Emission Zone (LEZ). Combining a proactive communications campaign with warning letters for first time contraventions, we have managed to drive up the levels of compliance with the emissions standard from 60-75% to 95-97% for affected vehicles with only very limited actual enforcement. In this regard, LEZ offers a model for the successful implementation of future schemes.

I was of course disappointed by the errors that led to the issuing of three reports on our failure to reconcile cheques that we had received from motorists against outstanding penalties. My team have discussed these cases with your staff at some length, and I appreciate your positive response to the actions we have taken in response to your reports. I am satisfied that the extensive work we have done with our service providers, and the more rigorous approach to contract management in the Congestion Charging and Traffic Enforcement (CC&TE) Directorate, will ensure that there is no recurrence of these regrettable episodes.

**MAYOR OF LONDON**



VAT number 756 2769 90

I was interested to read your comments regarding the use of discretion when dealing with representations against penalties. We are currently undertaking a review of our business rules to ensure we do exercise more discretion and consistently consider mitigating circumstances when reviewing representations. Similarly, we are clear that we will always immediately cancel a penalty charge, even if was correctly issued, if we make any error in the subsequent handling of the case. It is very important to me that we set and maintain high standards in our processing of such cases.

I note your comments regarding our response times relative to the agreed 28 day target, where we fully acknowledge that we must do better. There were a couple of one-off systems issues during the period and it is also the case that a number of our responses rely on timely input from our contractors, which sometimes is not forthcoming. This means that from time-to-time we will need to discuss potential revisions to the timeline with your team. Clearly that will be a last resort and, on response times more generally, I am confident that process improvements we have put in place will deliver better overall results for 2009/10.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Peter Hendy', written in a cursive style.

Peter Hendy

Local Government  
**OMBUDSMAN**

**The Local Government Ombudsman's  
Annual Review**

**Transport for London**

**for the year ended  
31 March 2009**

**The Local Government Ombudsman (LGO) provides 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, the Ombudsmen aim to get it put right by recommending a suitable remedy. The LGO also uses 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

<b>Section 1: Complaints about Transport for London 2008/09</b> .....	<b>3</b>
Introduction .....	3
Enquiries and complaints received .....	3
Complaint outcomes .....	3
Liaison with the Local Government Ombudsman .....	5
Training in complaint handling .....	5
Conclusions .....	6
<b>Section 2: LGO developments</b> .....	<b>7</b>
Introduction .....	7
Council First .....	7
Statement of reasons: consultation .....	7
Making Experiences Count (MEC) .....	7
Training in complaint handling .....	7
Adult Social Care Self-funding .....	8
Internal schools management .....	8
Further developments .....	8
<b>Appendix 1: Notes to assist interpretation of the statistics 2008/09</b> .....	<b>9</b>
<b>Appendix 2: Local authority report 2008/09</b>	

# **Section 1: Complaints about Transport for London 2008/09**

## **Introduction**

This annual review provides a summary of the complaints we have dealt with about Transport for London. 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 2008/09 and a note to help the interpretation of the statistics.

## **Changes to our way of working and statistics**

A change in the way we operate means that the statistics about complaints received in 2008/09 are not directly comparable with those from 2007/08. Since 1 April 2008 the new LGO Advice Team has been the single point of contact for all enquiries and new complaints. The number of calls to our service has increased significantly since then. It handles more than 3,000 calls a month, together with written and emailed complaints. Our advisers now provide comprehensive information and advice to callers at the outset with a full explanation of the process and possible outcomes. It enables callers to make a more informed decision about whether putting their complaint to us is an appropriate course of action. Some decide to pursue their complaint direct with the authority first.

This means that direct comparisons with some of the previous year's statistics are difficult and could be misleading. So this annual review focuses mainly on the 2008/09 statistics without drawing those comparisons.

## **Enquiries and complaints received**

Of the 226 enquiries and complaints received by our Advice Team in 2008/09, 74 were passed back to your Authority to attempt to resolve in the first instance as the complainant had yet to exhaust your complaints procedure, and it seemed that they would not be disadvantaged by doing so before complaining to me if they remained dissatisfied at the end of that process. A further 59 enquiries were dealt with by the provision of advice. The 93 remaining enquiries were treated as investigable complaints and passed on to an investigative team for consideration.

## **Complaint outcomes**

This year I made 114 decisions on complaints that had been received against your Authority. 100 of these complaints were about traffic enforcement (congestion charge, parking etc) and highway management, and 11 were about public transport.

## **Reports**

When we complete an investigation, we generally issue a report. This year we issued three reports against your Authority. All three reports were about your Authority's failure to reconcile cheques which you had received from motorists against outstanding penalties. The cheques were cashed

but despite the motorists contacting Transport for London on numerous occasions in an attempt to satisfy your Authority that payment had been made, enforcement of the penalties continued. The three complainants were each contacted by bailiffs and two had their vehicles clamped and had to pay the penalties a second time before their vehicles were released. As a result of my enquiries, a total of £1,780 in refunds and compensation was paid to the three motorists.

I am pleased to note that Transport for London has taken steps to ensure that similar complaints are unlikely to occur as a result of my report.

### **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 2008/09, 27.4% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements. Of the 111 decisions (this figure excludes reports) we made on complaints against your Authority, 33 were local settlements (30%). A total of £14,476 was paid in compensation and refunds to complainants.

As I have noted in previous years, the number of complaints we receive about congestion charging and traffic enforcement is low considering the volume of transactions processed by Transport for London. Just over half a million PCNs were issued for parking, bus lane and moving traffic offences. Over 15 million valid congestion charge payments were made during the year and nearly 1.5 million penalties issued. Against this volume of activity we received a total of 93 complaints. I also note that whilst your Authority dealt with almost 200,000 applications for discount from the congestion charge during the year – we received just one complaint about this issue.

The Low Emission Zone (LEZ) came into existence in February 2008. The introduction of the charging scheme was phased and I understand your Authority initially sent warning letters to owners of vehicles which were in contravention of the regulations rather than issuing penalties. No complaints about contraventions of the LEZ were passed to our investigative team during the year, albeit we did receive one complaint from a vehicle owner who alleged he had been given wrong information on your website about the introduction of the scheme. Your Authority accepted that information on its website had been altered and this had led to confusion on the part of the complainant.

One complaint which I received was that your Authority had failed to properly consider exercising discretion to cancel a parking penalty. A Parking Enforcement Officer was in the process of issuing a parking ticket to a vehicle left in a disabled parking bay but which was not displaying a blue disabled badge. While the Officer was writing the ticket the motorist returned to the car accompanied by a passenger who was on crutches. The officer noted the circumstances in her pocket book but said that as she had completed the issuing of the ticket she could not cancel it. She advised the motorist to make representations against the issue of the penalty. The motorist did so but the representations were rejected.

The complainant had no statutory right of appeal against the issue of the parking penalty in these circumstances and so the matter fell into my jurisdiction. The handling of representations made to your Authority was carried out by a contractor. My investigator interviewed Notice Processing Officers working for the contractor who had dealt with the representations on behalf of your Authority. He found that the Officers had no discretion to allow the representations made by the motorist. Their written instructions from Transport for London were that if the vehicle was not displaying a blue disabled badge, the representation must be rejected. This was administrative fault as the written instructions given to the Notice Processing Officers fettered their discretion to consider representations made by motorists. Following my investigation you agreed to cancel the penalty and refund the charges which had by this time been paid. A payment was also made to the complainant in recognition of the time and trouble which he had been put to. I am pleased that you

have now changed the way in which these matters are considered by Notice Processing Officers and that they have been given proper discretion to cancel penalties where appropriate to do so.

My investigators have noted that your Authority has on occasion taken swift action to settle complaints without them having to become involved. The largest settlement made this year came after a complaint had been made to us but before we had commenced formal enquiries. The complainant alleged that your Authority had wrongly impounded his car (a high performance sports car); had failed to give him information about how it could be returned; and had not taken reasonable care of the vehicle while it was impounded. While not admitting that the original penalties had been wrongly issued, or the vehicle wrongly impounded, your Authority accepted that it had not corresponded with the complainant properly. It agreed to cancel all the penalties and outstanding charges – a total of £4,340.

### **Other decisions**

About a third of the complaints which are passed on to investigative staff by the Advice Team are out of jurisdiction. This is because a considerable proportion of the complaints received by the Team are about the issue of Penalty Charges where aggrieved motorists have a statutory right of appeal to a Parking Adjudicator. Complainants are often told of this when they make enquiries of the Advice Team but nonetheless request that their complaints are passed on for investigation. On receipt, my investigators continue to consider if they should exercise the discretion open to them to investigate complaints where a complainant had yet to exercise their statutory right of appeal where it did not seem appropriate to compel them to do so. Similarly, my investigators are often able to provide advice about how an individual may get their appeal rights reinstated where they say that they have yet to be notified of one of the stages in the enforcement process of Penalty Charges.

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

The average time for your Authority to reply to our written enquiries last year was 39.1 days which is disappointing given that you achieved an average response time of 30.3 days last year, very close to our target period of 28 days which 58% of London Boroughs manage to attain. Some enquiries took in excess of 11 weeks to answer, and only a quarter were answered within the target period.

My officers have continued to liaise with yours in an effort to achieve service improvements. For example, I note that at the suggestion of one of my officers, your Authority was willing to change the wording of letters sent to motorists to demonstrate that their representations against a Penalty Charge had been fully considered, and to make your Authority's views clearer and decisions more transparent.

Members of my investigate team met with your senior officers at the turn of the year and were informed that you were reorganising the way you deal with traffic and congestion charge enforcement. We will continue to provide feedback on your performance based on what we learn from those who make complaints to us about your Authority.

### **Training in complaint handling**

I am pleased that during 2008/09 we provided training in Good Complaint Handling and Effective Complaint Handling to staff from your Authority. Your officers also attended seminars which we put on for link officers.

I have enclosed some information on the full range of courses available together with contact details for enquiries and bookings.

## **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  
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**June 2009**

## **Section 2: LGO developments**

### **Introduction**

This annual review also provides an opportunity to bring authorities up to date on developments – current and proposed – in the LGO and to seek feedback. It includes our proposal to introduce a ‘statement of reasons’ for Ombudsmen decisions.

### **Council First**

From 1 April 2009, the LGO has considered complaints only where the authority’s own complaints procedure has been completed. Local authorities have been informed of these new arrangements, including some notable exceptions. We will carefully monitor the impact of this change during the course of the year.

### **Statement of reasons: consultation**

The Local Government and Public Involvement in Health Act 2007 made provision for the LGO to publish statements of reasons relating to the individual decisions of an Ombudsman following the investigation of a complaint. The Ombudsmen are now consulting local government on their proposal to use statements of reasons. The proposal is that these will comprise a short summary (about one page of A4) of the complaint, the investigation, the findings and the recommended remedy. The statement, naming the authority but not the complainant, would usually be published on our website.

We plan to consult local authorities on the detail of these statements with a view to implementing them from October 2009.

### **Making Experiences Count (MEC)**

The new formal, one stage complaint handling arrangement for adult social care was also introduced from 1 April 2009. The LGO is looking to ensure that this formal stage is observed by complainants before the Ombudsmen will consider any such complaint, although some may be treated as exceptions under the Council First approach. The LGO also recognises that during the transition from the existing scheme to the new scheme there is going to be a mixed approach to considering complaints as some may have originated before 1 April 2009. The LGO will endeavour to provide support, as necessary, through dedicated events for complaints-handling staff in adult social care departments.

### **Training in complaint handling**

Effective Complaint Handling in Adult Social Care is the latest addition to our range of training courses for local authority staff. This adds to the generic Good Complaint Handling (identifying and processing complaints) and Effective Complaint Handling (investigation and resolution), and courses for social care staff at both of these levels. Demand for our training in complaint handling remains high. A total of 129 courses were delivered in 2008/09. Feedback from participants shows that they find it stimulating, challenging and beneficial in their work in dealing with complaints.

### **Adult Social Care Self-funding**

The Health Bill 2009 proposes for the LGO to extend its jurisdiction to cover an independent complaints-handling role in respect of self-funded adult social care. The new service will commence in 2010.

### **Internal schools management**

The Apprenticeship, Skills, Children and Learning Bill (ASCL) 2009 proposes making the LGO the host for a new independent complaints-handling function for schools. In essence, we would consider the complaint after the governing body of the school had considered it. Subject to legislation, the new service would be introduced, in pilot form, probably in September 2010.

### **Further developments**

I 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 local 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.

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**June 2009**

# Appendix 1: Notes to assist interpretation of the statistics 2008/09

## Introduction

This year, the annual review only shows 2008/09 figures for enquiries and complaints received, and for decisions taken. This is because the change in the way we operate (explained in the introduction to the review) means that these statistics are not directly comparable with statistics from previous years.

### 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.

**Formal/informal prematures:** The LGO does not normally consider a complaint unless a Authority 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 Authority, the LGO will usually refer it back to the Authority as a 'premature complaint' to see if the Authority can itself resolve the matter. These are 'formal premature complaints'. We now also include 'informal' premature complaints here, where advice is given to the complainant making an enquiry that their complaint is premature. The total of premature complaints shown in this line *does not include* the number of resubmitted premature complaints (see below).

**Advice given:** These are enquiries where the LGO Advice Team has given advice on why the Ombudsman would not be able to consider the complaint, other than the complaint being premature. For example, the complaint may clearly be outside the Ombudsman's jurisdiction. It also includes cases where the complainant has not given enough information for clear advice to be given, but they have, in any case, decided not to pursue the complaint.

**Forwarded to the investigative team (resubmitted prematures):** These are cases where there was either a formal premature decision, or the complainant was given informal advice that their case was premature, and the complainant has resubmitted their complaint to the Ombudsman after it has been put to the Authority. *These figures need to be added to the numbers for formal/informal premature complaints (see above) to get the full total number of premature complaints. They also needed to be added to the 'forwarded to the investigative team (new)' to get the total number of forwarded complaints.*

**Forwarded to the investigative team (new):** These are the complaints that have been forwarded from the LGO Advice Team to the Investigative Team for further consideration. The figures may include some complaints that the Investigative Team has received but where we have not yet contacted the Authority.

## 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 2008/09 will already have been in hand at the beginning of the year, and some forwarded to the Investigative Team during 2008/09 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 Ombudsman 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 Authority.

**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 Ombudsman'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 Ombudsman's jurisdiction.

## Table 3. Response times

These figures record the average time the Authority 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 Authority. The Authority's figures may differ somewhat, since they are likely to be recorded from the date the Authority receives our letter until the despatch of its response.

## Table 4. Average local authority response times 2008/09

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

**LGO Advice Team**

Enquiries and complaints received	Transport and highways	Other	Total
Formal/informal premature complaints	66	8	74
Advice given	49	10	59
Forwarded to investigative team (resubmitted premature)	21	2	23
Forwarded to investigative team (new)	66	4	70
<b>Total</b>	<b>202</b>	<b>24</b>	<b>226</b>

**Investigative Team**

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
01/04/2008 / 31/03/2009	3	33	0	0	34	12	32	114

Response times	FIRST ENQUIRIES	
	No. of First Enquiries	Avg no. of days to respond
1/04/2008 / 31/03/2009	46	39.1
2007 / 2008	70	30.3
2006 / 2007	34	29.6

**Average local authority response times 01/04/2008 to 31/03/2009**

Types of authority	<= 28 days %	29 - 35 days %	> = 36 days %
District councils	60	20	20
Unitary authorities	56	35	9
Metropolitan authorities	67	19	14
County councils	62	32	6
London boroughs	58	27	15
National park authorities	100	0	0

