



## Governance and Audit Committee – 7 September 2016

### Annual letter from Local Government Ombudsman

#### Purpose of report

To consider the annual letter from the Local Government Ombudsman to East Northamptonshire Council.

#### Attachment(s)

Appendix A – Full text of 2015/16 LGO Letter for ENC

Appendix B – Anonymised

#### 1.0 Background

- 1.1 As councillors will be aware, the Local Government Ombudsman (LGO) produces an annual letter setting out statistics about complaints relating to this council that have been referred to the LGO. This year's letter was published in July and covers the period April 2015 to March 2016.
- 1.2 Best practice in complaints handling recommended by the LGO, and followed by this council, includes ensuring that people find it easy to find information about how to make a complaint about their council and the council making people aware that could refer their complaint to the LGO. The LGO has noted that the effectiveness of a council's response on both these issues will affect the number of complaints referred to the LGO so it is difficult to make meaningful comparisons between authorities in relation to the volume of complaint. The LGO has also indicated that having a significant proportion of complaints relating to planning services is a typical pattern for rural district councils.

#### 2.0 2015/16 Annual Letter

- 2.1 The full text of the letter can be found at Appendix A. A list of all the complaints together with a summary of the complaint and outcomes can be found by visiting the LGO website and searching Ombudsman's' Decisions at: <http://www.lgo.org.uk/decisions>
- 2.2 To put these results in context, the following table compares the numbers of complaints referred to the LGO for the past three years:

Services Area	2015/16	2014/15	2013/14
Planning and Development	5	10	6
Benefits and Tax	1	3	2
Corporate and Other	2	2	1
Environmental Services and Public Protection	3	4	2
Housing	1	0	0
Highways and Transport	0	0	1
<b>TOTAL</b>	<b>10</b>	<b>19</b>	<b>14</b>

2.3 Only 15-30% of complaints referred to the LGO are subject to a full investigation The following table compares the numbers of complaints referred for investigation or other action for the past three years:

Action	2015/16	2014/15	2013/14
Investigation	4	6	3
Incomplete or Invalid	1	0	1
Advice Given	1	0	1
Referred back for Local Resolution	5	7	3
Closed After Initial Enquiries	3	6	7
<b>TOTAL</b>	<b>14</b>	<b>19</b>	<b>15</b>

Please note the following interpretations:

- *Advice given:* These are cases where the LGO gave advice about why they would not look at a complaint - usually because the body complained about was not within the LGO's scope or another complaints handling organisation or advice agency was best placed to help them.
- *Closed after initial enquiries:* These complaints are where LGO has made an early decision that they could not or should not investigate the complaint, usually because the complaint is outside LGO's jurisdiction The LGO's early assessment of a complaint may also show there was little injustice to a complainant that would need an LGO investigation of the matter, or that an investigation could not achieve anything, either because the evidence we see shows at an early stage there was no fault, or the outcome a complainant wants is not one the LGO could achieve, for example overturning a court order.
- *Incomplete/invalid:* These are complaints where the complainant has not provided the LGO with enough information to be able to decide what should happen with their complaint, or where the complainant tells the LGO at a very early stage that they no longer wish to pursue their complaint.
- *Referred back for local resolution:* The LGO works on the principle that it is always best for complaints to be resolved by the service provider wherever possible. Furthermore, the Local Government Act 1974 requires LGO to give authorities an opportunity to try and resolve a complaint before they will get involved. Usually the LGO will tell complainants how to complain to an authority and ask them to contact it directly. In many instances, authorities are successful in resolving the complaint and the complainant does not re-contact the LGO .

Also the figures for received and actions may differ as a complaint may be received in one year but the action not completed until the following year.

2.4 The LGO will class a complaint as upheld when they find some fault in the way the local authority acted. This includes complaints where a local authority acknowledged fault in their local investigation and offered to take action to put it right, but the person still wanted an independent review of the complaint by the LGO. In 2015/16 1 complaint referred for full investigation was upheld by the LGO. This compares to 4 (all relating to one issue) in 2014/15 and 1 in 2013/14.

2.5 For 2015/15 the LGO has provided additional information about the resolution of complaints. This distinguishes between those complaints that are upheld because the LGO finds fault (as in 2.4) and those where the LGO finds grounds to say that fault caused injustice that ought to be remedied. In 2015/16 the LGO found no upheld complaints caused injustice that ought to be remedied in relation to this council. The

LGO will now also report the compliance rate of each council i.e. the proportion of remedied complaints where LGO recommendations are believed to have been implemented. This was 100% for ENC.

- 2.6 The complaint that was upheld but no finding of injustice that needed to be remedied related to a complaint relating to planning enforcement action taken in 2009 which subsequently was the subject of a mediation agreement. The Council agreed to review the continuing need for an enforcement notice. It was at fault because the wording of the agreement it signed was not explicit, and it delayed in carrying out the review. But, a Planning Inspector had upheld the Enforcement Notice. So, officers could not withdraw this on the basis that the Council had been wrong to issue it, as the complainants wished.

### **3.0 2015-16 Annual Review of Complaints**

- 3.1 In its annual review of complaints the LGO noted the following general information/trends as well as making specific comments about each area of service they deal with.:

- A similar level of complaints overall as previous years but with a decrease in housing related complaints
- 51% of complaints investigated are upheld (a 5% increase on the previous year) and the LGO is most likely to find fault in complaints about benefits and tax (64%).

The full annual review document can be found at: <http://www.lgo.org.uk/information-centre/reports/annual-review-reports/local-government-complaint-reviews>

### **4.0 Equality and Diversity Implications**

- 4.1 There are no equality and diversity implications arising from this report.

### **5.0 Legal Implications**

- 5.1 There are no legal implications arising from this report.

### **6.0 Risk Management**

- 6.1 Failure to manage complaints effectively not only reduces the opportunities to learn from the information they provide but also could have a negative impact on the council's reputation and increase costs via compensation payments. The review of the complaints process will help reduce this risk.

### **7.0 Financial Implications**

- 7.1 There are no new direct financial implications arising from this report.

### **8.0 Constitutional Implications**

- 8.1 There are no constitutional implications arising from this report.

### **9.0 Customer Services**

- 9.1 The LGO has always encouraged organisations to see the positive value of complaints, an approach which is reflected in the Council's own complaints process which was reviewed in 2014 in accordance with their best practice guidelines.


### **10.0 Corporate Outcomes**

- 10.1 An effective complaints process with regular monitoring activity and learning to improve processes contributes to the corporate outcome of High Quality Service Delivery

## 11.0 Recommendation

- 11.1 Councillors are recommended to note this report and request a similar report be produced annually.

*[Reason: To meet the terms of reference of this Committee to receive external regulatory body reports and to demonstrate best practice in making reports available to councillors and the public.]*

<b>Legal</b>	Power: Local Government Act 1974			
	Other considerations:			
<b>Background Papers:</b> Previous Annual Letters from the LGO for 14/15 and 15/16				
<b>Person Originating Report:</b> Sharn Matthews, Monitoring Officer ☎ 01832 742108 ✉ smatthews@east-northamptonshire.gov.uk				
<b>Date:</b> 16/ 8/16				
<b>CFO</b> 23/8/16		<b>MO</b>		<b>CX</b>

21 July 2016

*By email*

David Oliver  
Chief Executive  
East Northamptonshire Council

Dear David Oliver,

### **Annual Review Letter 2016**

I write to you with our annual summary of statistics on the complaints made to the Local Government Ombudsman (LGO) about your authority for the year ended 31 March 2016.

The enclosed tables present the number of complaints and enquiries received and the decisions we made about your authority during the period. I hope that this information will prove helpful in assessing your authority's performance in handling complaints.

Last year we provided information on the number of complaints upheld and not upheld for the first time. In response to council feedback, this year we are providing additional information to focus the statistics more on the outcome from complaints rather than just the amounts received.

We provide a breakdown of the upheld investigations 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. In addition, we provide a compliance rate for implementing our recommendations to remedy a fault.

I want to emphasise that these statistics 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, alongside an annual review of local government complaints. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

### **Effective accountability for devolved authorities**

Local government is going through perhaps some of the biggest changes since the LGO was set up more than 40 years ago. The creation of combined authorities and an increase in the number of elected mayors will hugely affect the way local services are held to account. We have already started working with the early combined authorities to help develop principles for effective and accessible complaints systems.

We have also reviewed how we structure our casework teams to provide insight across the emerging combined authority structures. Responding to council feedback, this included reconfirming the Assistant Ombudsman responsible for relationship management with each authority, which we recently communicated to Link Officers through distribution of our manual for working with the LGO.

## **Supporting local scrutiny**

Our corporate strategy is based upon the twin pillars of remedying injustice and improving local public services. The numbers in our annual report demonstrate that we continue to improve the quality of our service in achieving swift redress.

To measure our progress against the objective to improve local services, in March we issued a survey to all councils. I was encouraged to find that 98% of respondents believed that our investigations have had an impact on improving local public services. I am confident that the continued publication of our decisions (alongside an improved facility to browse for them on our website), focus reports on key themes and the data in these annual review letters is helping the sector to learn from its mistakes and support better services for citizens.

The survey also demonstrated a significant proportion of councils are sharing the information we provide with elected members and scrutiny committees. I welcome this approach, and want to take this opportunity to encourage others to do so.

## **Complaint handling training**

We recently refreshed our Effective Complaint Handling courses for local authorities and introduced a new course for independent care providers. We trained over 700 people last year and feedback shows a 96% increase in the number of participants who felt confident in dealing with complaints following the course. To find out more, visit [www.lgo.org.uk/training](http://www.lgo.org.uk/training).

## **Ombudsman reform**

You will no doubt be aware that the government has announced the intention to produce draft legislation for the creation of a single ombudsman for public services in England. This is something we support, as it will provide the public with a clearer route to redress in an increasingly complex environment of public service delivery.

We will continue to support government in the realisation of the public service ombudsman, and are advising on the importance of maintaining our 40 years plus experience of working with local government and our understanding its unique accountability structures.

This will also be the last time I write with your annual review. My seven-year term of office as Local Government Ombudsman comes to an end in January 2017. The LGO has gone through extensive change since I took up post in 2010, becoming a much leaner and more focused organisation, and I am confident that it is well prepared for the challenges ahead.

Yours sincerely



Dr Jane Martin  
Local Government Ombudsman  
Chair, Commission for Local Administration in England

**Local Authority Report:** East Northamptonshire Council  
**For the Period Ending:** 31/03/2016

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
0	1	1	0	2	0	1	5	0	10

## Decisions made

Decisions made				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate	Total
1	1	5	3	3	1	25%	14

### 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.

The compliance rate is the proportion of remedied complaints where our recommendations are believed to have been implemented.

### Complaints Remedied

by LGO	Satisfactorily by Authority before LGO Involvement	Compliance Rate
0	0	100%

- [Decisions](#)
- [Planning](#)
- [Enforcement](#)
- 14 000 412

## East Northamptonshire Council (14 000 412)

Category : [Planning](#) > [Enforcement](#)

Decision : **Upheld**

Decision date : **12 May 2015**

### The Ombudsman's final decision:

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**Summary:** The Council agreed to review the continuing need for an enforcement notice. It was at fault because the wording of the agreement it signed was not explicit, and it delayed in carrying out the review. But, a Planning Inspector had upheld the Enforcement Notice. So, officers could not withdraw this on the basis that the Council had been wrong to issue it, as the complainants wished.

### The complaint

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1. The complainants, to whom I shall refer as Mr and Mrs W, complained about:
  - the Council's decision to issue an enforcement notice in January 2009;
  - the 2010 review of its decision to issue the Enforcement Notice;
  - about the involvement of the Leader of the Council in a briefing email that the Executive Director sent to all local councillors in December 2010; and
  - the Council's review of the need for the Enforcement Notice following a meeting between them and officers and members in February 2013.

### What I have investigated

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2. Mr and Mrs W approached the Ombudsman in April 2014. But, I have exercised her discretion to look at matters from February 2013 when the Council agreed to review matters. This was only slightly outside the 12 month restriction on the Ombudsman's discretion I have set out in my paragraph 3 below. And Mr and Mrs W continued to correspond with the Council throughout 2013 and early 2014.

## The Ombudsman's role and powers

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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)
4. The Ombudsman cannot investigate a complaint if someone has appealed to a tribunal or a government minister or started court action about the matter. (Local Government Act 1974, section 26(6))
5. The Planning Inspector acts on behalf of the responsible Government minister. The Planning Inspector considers appeals about a planning enforcement notice.
6. 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'. She provides a free service, but must use public money carefully. She may decide not to start or continue an investigation if she believes:
  - o it is unlikely she would find fault, or
  - o the fault has caused no injustice to the person who complained, or
  - o the injustice is not significant enough to justify her involvement, or
  - o it is unlikely she could add to any previous investigation by the Council, or
  - o she cannot achieve the outcome the person wants. (Local Government Act 1974, section 24A(6))

## How I considered this complaint

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7. I have considered what Mr and Mrs W told me about their complaint, together with the information that the Council provided in response to my enquiries.
8. I have written to Mr and Mrs W and the Council with my draft decision and considered their comments.

## What I found

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9. Following an enforcement investigation the Council served an Enforcement Notice on Mr and Mrs W in 2009. The Notice required them to cease the use of their home as a garden services business. It also required them not to park

more than two commercial vehicles on the site at any one time. Mr and Mrs W appealed the Notice. But, the Planning Inspector upheld this in November 2009.

10. Mr and Mrs W continued to make complaints about the Enforcement Notice to the Council throughout 2010. They eventually complained to the Ombudsman. But, the Ombudsman decided that the matter was outside his jurisdiction.
11. But, the Council agreed that it had mishandled a complaint that Mr and Mrs W had made via a local councillor. It offered £1,000 in compensation because it accepted that its fault had caused the relationship between Mr and Mrs W and their neighbours to worsen.
12. In December 2010 the Leader of the Council asked the Executive Director to send a briefing email to all district councillors. In her email the Executive Director said that:
  - neighbours had complained about the large number of commercial vehicles parked on the site;
  - a Planning Officer had suggested that if they reduced the number of vehicles to two, there would be no need for enforcement action; but Mr and Mrs W had wished to keep three vehicles on the site;
  - during 2010 the Council had failed to follow its complaints procedure in investigating Mr and Mrs W's complaints. This fault had exacerbated a dispute between them and their neighbours;
  - the Council had offered compensation of £1,000 for the distress they had suffered, and for additional work they had to undertake, as a result of the Council's fault. But, Mr and Mrs W had not responded to this offer;
  - as Mrs W had made angry telephone calls to a number of different officers, she had asked Mrs W to contact only her in future;
  - the Deputy Leader was now reviewing the case, and councillors should discuss any enquiries with him.
13. Mr and Mrs W were unaware of this email at that time. They continued to complain to councillors and to request information from the Council. In December 2012 they asked for a mediation meeting. In an effort to draw a line under the matter, the Council's Chief Executive agreed to this.

## What happened

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### February 2013

14. The mediation meeting took place at the end of February 2013. Both officers and Mr and Mrs W signed a written agreement. This said that: "the Enforcement Notice dated 6 January 2009 will be reviewed by the new Head of Planning Services and another planning officer, both of whom will not have been previously involved in the case. Mr and Mrs W may have a representative present at the site visit by the above officers."
15. The agreement went on to say that the review might result in:
  - "no change to the Notice";
  - "the Notice being withdrawn, and not replaced"; or
  - "the Notice being withdrawn and a new notice issued - for which a new appeal process might be available".

## **March 2013**

16. During early March Mrs W contacted the Council's Executive Director on several occasions. She:
  - o asked when the site meeting in relation to the review would take place;
  - o asked for permission to do work in her own garden, (which the Enforcement Notice did not cover); and
  - o and sought to include the historical matters in the review.
17. In her various responses the Executive Director:
  - o repeated the purpose of the review;
  - o explained that a new Interim Head of Planning Services was about to start work for the Council; and
  - o refused to respond further to Mrs W's requests for permission to work in her own garden.
18. In mid to late March there was an exchange of emails between the Executive Director with regard to whether the Council had made an earlier offer to review the continuing need for the Enforcement Notice in March 2010. Towards the end of the month the Executive Director responded that she had to look through a number of large files to confirm when the Council had previously offered to review matters.

## **April 2013**

19. At the beginning of the month the new Interim Head of Planning Services contacted Mr and Mrs W to arrange a site visit. But, they said they would only agree a date for the review when they had received the information that Mrs W had asked the Executive Director for.
20. The Executive Director responded reminding Mr and Mrs W that the review was separate from any issues they might have with the reasons for issuing the original Enforcement Notice. She said that the Interim Head of Planning Services would take no further action until they contacted her for a date for the review to take place.
21. There followed an email exchange between Mrs W and the Interim Head of Planning Services about Mrs W's wish that the review should look back at the circumstances in which the Council had issued the original Enforcement Notice. The Interim Head of Planning Services refused to agree to this. She said that the review would look at the current business use of the property only. But, she would look at the matter with an open mind. She would bring another Planning Officer who had no previous involvement in Mr and Mrs W's case.

Late in April the Executive Director prepared copies of two lever arch files of information for Mrs W to take away after she had viewed the originals to check that nothing was missing.

22. In emailing Mrs W about the information in the files, the Executive Director also reiterated the purpose of the review. She said that the offer of a site visit by the Interim Head of Planning Services would remain open for a further three weeks. After this period the Council would undertake the review anyway. Mrs W responded that she did not consider a review could take place without a site visit, and repeated historical complaints.

## **May 2013**

23. Early in May Mrs W viewed the files at the Council's offices and took receipt of the copies of these documents. She continued to email officers and councillors saying she considered that the review should take account of the historical issues. The Executive Director:
- again reiterated that the purpose of the review was to consider Mr and Mrs W's continuing business needs;
  - said that if Mr and Mrs W declined the offer to discuss these, officers would base the review on the planning file only; and
  - repeated that the Council would not respond further to old complaints.
24. At the end of May Mrs W complained about the involvement of the Leader of the Council in the Executive Director's email to all district councillors in December 2010. She had only become aware of the email on reading the documents that the Executive Director had provided. She considered that the Leader should not have become involved as he had declared a professional conflict of interest. He was both a landscape gardener, and an employee of the local MP. Mr and Mrs W could have potentially contacted their MP in relation to their complaint about the Council's enforcement action.

## **June 2013**

25. Throughout June the Executive Director and Mrs W continued to exchange emails about the terms of the mediation agreement.
26. The Executive Director told me that by the end of June officers had decided to conduct the review without Mr and Mrs W's participation. But, the Interim Head of Planning Services was about to leave the Council's employment. So, the review did not take place.

## **September 2013**

27. The Council appointed a new permanent Head of Planning Services. But, it still did not carry out the review. The Executive Director said this was because:
- Mr and Mrs W were still pursuing their complaints via different routes within the Council; and
  - the new Head of Planning Services had other urgent priorities to address as a result of a long period of interim management of that service area. So, she did not ask him to address the matter.

## **February 2014**

28. The Deputy Monitoring Officer responded to Mrs W's complaint about the Leader's actions in December 2010. (He dealt with matters because the Executive Director was also the Monitoring Officer.) He said that there was no evidence to indicate that the Leader had done anything more than ask the Executive Director to send a briefing email to all councillors. He had had no input into the content of this.

## **March 2014**

29. Early in March Mrs W complained to the Council's Chief Executive that the Executive Director had abused her position. She had covered up officers' failings and defamed Mr and Mrs W's characters.
30. The Chief Executive responded in mid-March re-stating the Council's willingness to review the continuing need for the Enforcement Notice. But, he said that this would not include a review of previous complaint issues.

## **June 2014**

31. During June Mr and Mrs W continued to provide further information about their previous complaints and asked for compensation. The Chief Executive sent a final response repeating that the Council would not revisit historic complaints. In addition the Executive Director renewed the Council's offer of compensation dating from 2010 which Mr and Mrs W had never accepted.

## **Post June 2014**

32. The Executive Director has told me that:
  - Mr and Mrs W have not responded to this offer;
  - during Mr and Mrs W's dialogue with the Chief Executive they did not make any requests for the review to go ahead. (But, this may have been because they believed the Council had carried this out, and agreed the continuing need for the Enforcement Notice without telling them); and
  - the Council remained willing to undertake the review. This would take into account the fact that the property was rented out, and Mr and Mrs W now lived elsewhere; and
  - the current Head of Planning Services would carry this out. This officer had not been involved in the matter so far.

## **Was there fault and, if so, did this cause injustice requiring a remedy?**

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33. I accept that the wording of the mediation agreement did not make clear that the review would only look at the continuing need for the Enforcement Notice. I consider that officers should have ensured that this was clear before signing the agreement. This was fault.
34. But, as I have explained in my paragraph 6 above, it is not enough for the Ombudsman to find fault by the Council. She must also be able to conclude that this fault caused significant injustice to the complainant(s).
35. Mr and Mrs W did not suffer injustice through lack of clarity in the mediation agreement. The Planning Inspector had upheld the Enforcement Notice at appeal. So, it was not open to the Council to take any view other than that the requirements of the original Notice were appropriate and reasonable.
36. I do not consider that Mr and Mrs W suffered injustice through fault by the Council in relation to the Executive Director's email to councillors in December 2010. It was simply a briefing email which did not affect what happened subsequently.

37. In accordance with the Executive Director's email correspondence with Mrs W, the Council could have conducted the review in early June. The delay in reaching the decision to do so was minor. But, because of staffing issues the Council was facing, it meant that the review was effectively put on hold indefinitely. However, Mr and Mrs W did not accept the terms on the basis of which the Council proposed to carry this out. So, I do not consider that they suffered significant injustice through this delay. I am also mindful that the Council remains willing to carry out the review.

## Decision

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38. I consider that overall there was some fault in the Councils actions. But, I do not consider that Mr and Mrs W suffered sufficient injustice to justify me in pursuing matters further. The Ombudsman could not in any case put Mr and Mrs W back in the position they were in prior to the issue of the Enforcement Notice.
39. So, I have completed my investigation.

## Parts of the complaint that I did not investigate

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40. I have not looked at anything that happened before February 2013. This was for the reasons I have explained in my paragraphs 3 and 4 above.

Investigator's decision on behalf of the Ombudsman

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

*The Local Government Ombudsman  
PO Box 4771  
Coventry  
CV4 0EH*