

DECEMBER 2018

LTN 9E | HANDLING COMPLAINTS (ENGLAND)

Introduction

1. This Legal Topic Note is intended to assist local councils deal with formal complaints they receive about their operations and services. Appendix 1 outlines the steps in a complaints handling procedure that are recommended for local councils.

The Local Government Ombudsman (LGO) is responsible for handling complaints against principal authorities and some other public sector organisations which do not include local councils. The LGO has no jurisdiction in respect of a local council except where it is (i) working jointly with a principal authority through a joint committee which includes representatives of the principal authority or (ii) exercising the functions of a principal authority. An explanation of the process of complaints to the LGO is set out in Appendix 2. The LGO has produced useful guidance on the subject of complaints procedures for principal authorities. A copy of the full guidance may be obtained from the LGO's website via the following link <https://www.lgo.org.uk/information-centre/reports/advice-and-guidance/guidance-notes>. This Note draws on the guidance for principal authorities.

2. In the context of a complaint against a principal authority, the LGO offers the following definition:

'A complaint is an expression of dissatisfactionabout the council's action or lack of action or about the standard of a service, whether the action was taken or the service provided by the council itself or a person or body acting on behalf of the council.'
3. A complaint against a local council may arise for the reasons given in paragraph 3 above. It may also be triggered by an allegation of administrative fault such as not following procedures or standing orders, inadequate service, no service, delay or making a mistake.
4. When a complaint is made against a local council, member(s) of the council or staff are likely to be mentioned or complained about. However, a complaint against a council should be treated as a complaint against the body corporate of the council, not as a complaint against individual employees or member(s) of the council. See also paragraphs 8 and 11- 13 below.

5. Occasionally it might be necessary to notify the council's insurers of a complaint immediately. This could be appropriate if a complainant seeks redress for personal injury, damage to property or other financial loss (e.g. in respect of libel) or where the council is at risk of being held liable in law to pay damages or to provide another legal remedy. It is important that the council takes instruction from its insurers as to how to respond to the complaint. The insurance policy for a council is likely to include cover for the council's legal expenses in defending a legal claim or the threat of a legal claim against a council (and any related formal complaint against the council). The failure by a council to notify its insurers as soon as a legal claim is threatened or made, may invalidate its insurance policy. Often, the legal expenses insurance cover for councils does not apply to all types of legal claims. For example, most legal expenses insurance policies do not provide legal expenses cover for the defence of a judicial review claim. Further guidance about judicial review is set out in Legal Topic Note (LTN) 15 – Legal Proceedings. If a formal complaint about a council threatens legal action, and the council does not have insurance cover to defend allegations which may subsequently give rise to a legal claim, it is recommended to seek professional legal advice as to how to respond to the complaint and any remedies offered. See also paragraph 25 below.

Who is a local council's complaints procedure for?

6. Residents who live in or near a council's area and who are affected by a council's decisions are likely to be the main users of a council's complaints procedure. A council's complaints procedure should also be available to other individuals, organisations (e.g. a business, charity) or unincorporated bodies (e.g. a residents' or allotment tenants' association). Anyone aggrieved with a local council is likely to communicate this verbally or in writing. It is generally in the interests of the complainant and the council to try resolve the matter informally through the normal channels of communication, rather than deferring to the council's formal complaints procedure.
7. A complaint against a council that involves a complaint about the conduct of its employees must be handled in accordance with its complaints procedure. If, following the outcome of the complaint, the council decides that there may be a need to take disciplinary action, this should be in accordance with its internal disciplinary procedure. For more information and guidance see LTN 22 - Disciplinary and Grievance Arrangements.

When is a local council's complaints procedure not appropriate?

8. Other bodies have responsibility for certain types of complaint. These are summarised below.

Type of conduct	Refer to
Alleged financial irregularity	Local electors have a statutory right to object to a Council's audit of accounts (s. 16 Audit Commission Act 1998).
Alleged criminal activity	The police.
Members' conduct alleged to breach the code of conduct adopted by the council.	The district or the unitary council (which includes a London borough council) is responsible for handling complaints that relate to a member's failure to comply with the council's code of conduct.

9. Sometimes other internal procedures, statutory requirements or litigation (including the examples given in paragraph 6 above) may run in parallel or be used as an alternative to dealing with complaints against a local council, whether they are raised through the usual channels of communication or formally. The following examples illustrate such scenarios. If a person is unhappy with a council's response to his request for information or the Information Commissioner has communicated with the council for this reason, the council may have appointed a committee or sub-committee which is responsible for handling the council's responses to requests for information. A company that is complaining about a council's late payment of its invoice is unlikely to submit a formal complaint because the company will be relying on contractual terms for prompt payment which it may take legal action to enforce if the matter cannot be resolved in routine correspondence. An allotment tenant may lodge a formal complaint against a council because he is unhappy it has terminated its tenancy. Irrespective of the determination of any formal complaint, a decision about the lawfulness of the termination of the tenancy may be available to the former tenant if he is able to issue a legal claim against the council.
10. A council's complaints procedure is not a means of redress for its members or staff. Members and staff are expected to work together professionally even if they hold differences of opinion and views.
11. Members are free to raise matters of concern in respect of council business by

the submission of motion(s) on the agenda for relevant meeting(s) where the issue can be formally considered and resolved. Alternatively if a member has concerns about the conduct of a member of staff, he should notify the committee or sub-committee that has responsibility for staff management. The staffing committee or sub-committee is responsible for deciding whether the member's concerns raise disciplinary issues to be dealt with in accordance with the council's disciplinary procedure.

12. If an employee has a complaint about the workplace, he may raise this in accordance with the council's internal grievance procedure. For more information and guidance see LTN 22 - Disciplinary and Grievance Arrangements.

Complaints Procedures for Local Councils

13. The LGO confirms that a good complaints system is:
 - well publicised, easily accessible and easy to use;
 - helpful and receptive;
 - not adversarial;
 - fair and objective;
 - based on clear procedures and defined responsibilities;
 - thorough, rigorous and consistent;
 - decisive and capable of putting things right where necessary;
 - sensitive to the special needs and circumstances of the complainant;
 - adequately resourced;
 - fully supported by councillors and officers;
 - provides responses that are proportionate; one size does not fit all;
 - timely; and
 - regularly analysed to spot patterns of complaint and lessons for service improvement.

It is recommended that the complaints procedure for a local council is documented in writing and that, in practice, it reflects the above features.

14. A council's complaints procedure should require formal complaints to be submitted in writing. A council may design a standard form for complainants to use when submitting their complaint. As a minimum, the form should require the complainant to confirm the (i) detail of his complaint, including relevant events, dates, names of relevant members, staff, or contractors of the council etc. and (ii) his contact details. An explanation of the council's complaints procedure, including the complaint form to be used (if there is one), should be well publicised and accessible via its publication scheme. For further information

about publication schemes see LTN - 37 - Freedom of Information and NALC's legal briefings issued in 2008.

15. Once submitted, a complaint may be processed by a council exclusively through written communications. However if a council wants to offer the complainant an opportunity to make verbal representations, this should be confirmed in its written complaints procedure. Verbal representations by the complainant will lengthen the period for dealing with the complaint.
16. A complaint against a local council must be properly investigated. The complainant may or may not provide evidence to support his complaint even if the complaint is submitted using a complaints form that has been drafted by the council and which asks for this information. A council will need to set aside a reasonable period of time to investigate the complaint and to gather evidence. The period set aside for investigation of the complaint must be specified in the council's written complaints procedure.
17. The LGO recommends that any complaints procedure should consist of at least 2 stages which permits the complainant to appeal the outcome of complaint. This may be impractical for small councils with few members and staff. The fairness and timeliness of a local council's response to a complaint is however more important than the number of stages in its complaints procedure. If a council adopts a 2-stage complaints process, this must be confirmed in its written complaints procedure. Staff or members previously involved in the original decision should not participate in the determination of an appeal.
18. A council may delegate responsibility for handling and determining complaints to staff. Many councils may prefer complaints to be handled by members. If so, they are advised to appoint a committee or sub-committee responsible for considering and determining complaints. Guidance about a council's powers to delegate the discharge of its functions to a committee, sub-committee or staff is given in LTN 1 - Councils' powers to discharge their functions.
19. If the complaints procedure provides an opportunity for the complainant to attend a meeting to make representations about his complaint, he is likely to feel more comfortable speaking to an officer of the council or at a meeting of a sub-committee or a small committee, rather than a meeting of the full council.

20. It is good practice to set deadlines for complaint handling and local councils should not leave this open-ended. The LGO recommends that this takes no longer than 12 weeks from receipt to resolution. Clearly, some flexibility may be required to deal with lengthier and more complex complaints and this should be explained in a council's written complaints procedure.

Data protection and confidentiality

21. To ensure compliance with its obligations in the Data Protection Act 1998 ('the 1998 Act'), a council cannot disclose the identity, contact details or other personal data about an individual complainant unless he consents or disclosure is otherwise fair and lawful under the 1998 Act e.g. for the purpose of discharging the council's functions, or for the performance of contractual obligations. Councils should ensure that agendas and minutes do not disclose personal data or financial, sensitive or confidential information that relates to an individual complainant or a third party in the agendas or minutes of its meeting. For guidance about the preparation of agendas and minutes, see also LTN 5 – Parish and Town Council Meetings. Further guidance about the 1998 Act is available in LTN 38 - Data Protection. The LGO advises that the identity of a complainant should only be made known to those in the council who need to consider the complaint. In other words, a council is expected to treat a complaint in confidence.
22. A complaint against a local council is personal to the complainant and should be treated as confidential unless the complainant confirms that he waives his right to confidentiality. The meeting of a relevant committee or sub-committee considering the complaint or inviting the complainant to make representations will need to exclude the public. This would not preclude the committee or sub-committee from inviting the complainant to speak at a meeting or requesting the attendance of clerk (or other nominated officer) to represent the position of the council.
23. Annex 1 further explains paragraphs 14 – 23 and outlines the steps to be incorporated into a local council's written complaints handling procedure.

Determination of complaints and remedies

24. With reference to paragraph 6 above, if a complainant has threatened to take legal action against a council or legal proceedings have already begun, the council is recommended to seek professional legal advice about how to respond to the complaint. It may need professional legal advice about any remedial steps that it may wish to offer the complainant if the complaint is upheld.

25. If a council upholds a complaint, it should, where possible, avoid an admission of wrongdoing. If the complainant decided to take legal action against the council (e.g. to obtain a court order which requires the council to pay damages or perform another legal remedy), an admission of wrongdoing may expose the council to legal liability.
26. If a council upholds a complaint, it is appropriate for the council to give the complainant an explanation of the matters complained of. It may decide to apologise to the complainant. In addition, the council may explain what steps it intends to take to reduce the risk of the matters complained of being repeated.
27. If a complaint against a local council is upheld, the council may offer a remedy which, as far as possible, puts the complainant back in the position he would have been in but for the matters complained of. If the matters complained about have caused the complainant to suffer financial loss, the council may want to offer financial compensation. Any offer or acceptance of financial compensation should confirm the council's payment is full and final settlement of the dispute and any claims which the complainant has against the council and without admission of legal liability.
29. If it is not appropriate for the council to offer compensation for some or all of the financial loss suffered by the complainant, it may, as an alternative, make an offer of goodwill or some other gesture. For example, in the case of a frequent user of the council's community hall or sports facility, the council may offer use of the facility for free or at a reduced rate.
30. The general power of competence (ss.1-8 Localism Act 2011) provides statutory authority for a council which is eligible to exercise the power of competence (Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012/965) to offer a range of remedies. If the remedy offered by the council facilitates, or is conducive or incidental to the exercise of the council's statutory functions or powers, any local council may rely on s.111(1) of the Local Government Act 1972.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
1	Councils' powers to discharge their functions	Explains delegations of council functions to committees, and staff.

15	Legal Proceedings	Explains when the remedy of Judicial Review may be sought by a complainant (in the absence of any other appeal mechanism).
22	Disciplinary and Grievance Arrangements	Provides guidance on procedures for disciplining an employee or dealing with a grievance from and employee.
37	Freedom of Information	Explains publication schemes and other obligations of a council under the Freedom of Information Act 2000.
38	Data Protection	Explains rights and obligations of a council under the Data Protection Act 1998 and defines personal data.
80	Members' conduct and the registration and disclosure of their interests (England)	Explains councillors' obligations under the Localism Act 2011.

APPENDIX 1 – OUTLINE COMPLAINTS PROCEDURE FOR USE IN COMPLAINTS AGAINST THE COUNCIL

Before processing a complaint

1. All formal complaints against a local council must be communicated in writing. A council may design a standard form for complainants to use when submitting their complaint.
2. The complainant must be asked at the outset to confirm if he wants the complaint to be treated confidentially. If the complainant is required to use a complaint form that has been designed by the council, the form should include this question. It is unlikely that the complainant will waive confidentiality. Even if he does so, the council must comply with its obligations under the Data Protection Act 1998 to safeguard against the unlawful disclosure of personal data.
3. The council's written complaints procedure should be accessible to the complainant. In any event, it should be well publicised and accessible via the council's publication scheme. A council's complaints procedure should confirm the following information.
 - the requirement to submit a complaint in writing (which may require the complaint to use a complaint form designed by the council).
 - the postal address or email that the complaint must be sent to. In most cases, it will be appropriate for the complaint to be addressed to the clerk or other nominated officer. If the complaint concerns the clerk or other nominated officer, it should be sent to the Chairman of the relevant committee or sub-committee established for the purposes of determining complaints.
 - that receipt of the complaint will be acknowledged in writing within a specified timeframe.
 - who will be dealing with the complaint (e.g. title of member of staff, a particular committee or sub-committee).
 - the timeframe for investigating the complaint.
 - whether there is an opportunity for the complainant to make verbal representations (and bring a friend when doing so) and when this will occur.
 - the timeframe for determining the complaint.
 - whether there is an opportunity to appeal the outcome of the complaint and an explanation of the appeal process.

Receipt of the complaint

4. The clerk or other nominated officer (or if the complaint concerns them, the Chairman of the council's complaints committee or sub-committee) shall:
 - acknowledge receipt of the complaint in writing within the timeframe specified in the council's complaint's procedure;
 - confirm to the complainant if the complaint will be treated as confidential (which is the most likely to be the case) and
 - confirm the next steps in the complaints procedure.

Investigating the complaint

5. The council will need to investigate the facts of the complaint and collate relevant evidence.
6. If the council's complaints procedure permits the complainant to make verbal representations, the complainant should be invited to a meeting with the clerk or nominated officer, or as the case may be, a meeting of the complaints committee or sub-committee. Before the meeting and within the period specified in the council's complaint procedure (i) the complainant shall provide the clerk or nominated officer, or as the case may be, the complaints committee or sub-committee with any new information or other evidence relevant to the complaint and (ii) the clerk or nominated officer, or as the case may be, complaints committee or sub-committee shall provide the complainant with new information or evidence relevant to the complaint.

Meetings with the complainant (if applicable)

7. If a council's complaints procedure permits the complainant to make verbal representations at a meeting with the clerk or nominated officer, or as the case may be, to a meeting of the complaints committee or sub-committee, the clerk or nominated officer or, as the case may be, chairman of the meeting should explain how the meeting will proceed.
8. The complainant should outline the grounds for complaint and, thereafter, questions may be asked by the clerk or other nominated officer or by members if this is a meeting of the complaints committee or sub-committee.
9. The clerk or other nominated officer (or if the complaint concerns them, another member of staff or a member) will have an opportunity to explain the council's position and questions may be asked by the complainant.
10. The clerk or other nominated officer, or as the case may be, the complaints

committee or sub-committee and then the complainant should be offered the opportunity to summarise their respective positions.

11. The complainant should be advised when a decision about the complaint is likely to be made and when it is likely to be communicated to them.

After the complaint has been decided

12. Within the timeframe specified in the council's complaint's procedure, the council should write to the complainant to confirm whether or not it has upheld the complaint. The council should give reasons for its decision together with details of any action to be taken by the council if this appropriate. If the council's complaints procedure includes an appeal stage, the council should notify the complainant in writing of the right to appeal its decision.

APPENDIX 2 - COMPLAINING TO THE LOCAL GOVERNMENT OMBUDSMAN (LGO)

1. The relevant legislation is the Local Government Act 1974 ('the 1974 Act'). The LGO has no jurisdiction in respect of a local council unless it is working jointly with a principal authority through a joint committee which includes representatives of the principal authority (section 25(4)(b)) of the 1974 Act) or it is exercising the functions of a principal authority (section 25(7) of the 1974 Act). It might be useful for parish councils to know something about the jurisdiction of the LGO so that they can assist members of the public (including, perhaps councillors) to complain to the LGO where appropriate. The key points to remember are:
 - parish councils are unable to lodge complaints as a public body (section 27(1) of the 1974 Act) about another local authority or public body defined at section 25 of the 1974 Act but this does not prevent individual councillors from making complaints about another local authority or public body in their personal capacity. In their official capacity, if so requested by member(s) of the public, a parish councillor could represent them in making complaints. Please note:-
 - complaints must be made in writing;
 - complaints must be made within 12 months of notice of the matters which are subject to the complaint;
 - complainants must first give the authority in question notice of the complaint and give them an adequate opportunity to investigate and reply to the complaint. This usually entails exhausting that authority's complaints procedure;
 - the Ombudsman may not investigate matters which are or have been subject to a right of appeal; and
 - the Ombudsman may not investigate matters where the complainant has or has had a remedy by way of court proceedings.
2. The most common application of the Ombudsman's lack of jurisdiction where the subject matter of the complaint is subject to a right of appeal or court proceedings is in respect of judicial review. Many councils claim that the Ombudsman does not have jurisdiction in certain cases due to the availability of judicial review. In these circumstances the Ombudsman can rely on section 26(6) of the 1974 Act which states that:-

'A Local Commissioner may conduct an investigation notwithstanding the existence of such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect the person affected to resort or have resorted to it.'

