

Birdlip Parish Council



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.

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.'