

HONITON TOWN COUNCIL: COMPLAINTS POLICY

Introduction

1. This Complaints Policy follows the guidance provided by the National Association of Local Councils (NALC), in particular its Legal Topic Note (9E), October 2022, which is intended to assist local councils deal with formal complaints they receive about their operations and services.
2. In the context of a complaint against a principal authority, the Local Government Organisation (LGO) offers the following definition: 'A complaint is an expression of dissatisfaction ... about 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 the Council may arise for the reasons given in paragraph 2 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 the Town Council, member(s) of the Council or staff are likely to be mentioned or complained about. However, a complaint against the 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.
5. Residents who live in or near the Council's area and who are affected by the Council's decisions are likely to be the main users of the Council's complaints procedure. The 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).
6. Anyone aggrieved with the Council is likely to communicate this verbally or in writing. A Complaint must be in writing.

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7. The Council will adopt a three-stage approach to complaint handling. It is generally in the interests of the complainant and the Council to try to resolve the matter informally through the usual channels of communication rather than deferring to the Council's formal complaints procedure. If the initial resolution is not satisfactory the Complaint should be referred to the relevant Committee for a decision. If that decision remains unsatisfactory the Complaint can be referred to the Council's Appeal Committee, which decision will be final.
8. A complaint against the 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.
9. 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.27 (1) of the Local Audit and Accountability Act 2014).
Alleged criminal activity	The police.
Members' conduct alleged to breach the code of conduct adopted by the council.	East Devon District Council which is responsible for handling complaints that relate to a member's failure to comply with the council's code of conduct.

10. Sometimes other internal procedures, statutory requirements or litigation may run in parallel or be used as an alternative to dealing with complaints against the 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 the Council's response to their request for information or the Information Commissioner has communicated with the Council for this reason, the Council may have appointed a committee which is responsible for handling the council's responses to requests for information.

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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 they are 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 they are able to issue a legal claim against the council.

11. 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.
12. 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, they should notify the HR committee that has responsibility for staff management. The HR 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.
13. If an employee has a complaint about the workplace, they may raise this in accordance with the council's internal grievance procedure.
14. The LGO confirms that a good complaints system is:
 - a. well publicised, easily accessible and easy to use;
 - b. helpful and receptive;
 - c. not adversarial;
 - d. fair and objective;
 - e. based on clear procedures and defined responsibilities;
 - f. thorough, rigorous and consistent;
 - g. decisive and capable of putting things right where necessary;
 - h. sensitive to the special needs and circumstances of the complainant;
 - i. adequately resourced;
 - j. fully supported by councillors and officers;
 - k. provides responses that are proportionate; one size does not fit all;

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- l. timely; and
- m. regularly analysed to spot patterns of complaint and lessons for service improvement.

This complaints procedure for the Council is documented in writing and that, in practice, it reflects the above features.

15. The Council's complaints procedure requires formal complaints to be submitted in writing. The Council will expect any format when submitting a complaint. However, as a minimum, the Complaint should confirm:
 - (i) detail of their complaint, including relevant events, dates, names of relevant members, staff, or contractors of the council etc. and
 - (ii) contact details.
16. An explanation of the Council's complaints procedure, is publicised and accessible on the Council's website.
17. Once submitted, a complaint may be processed by the Council exclusively through written communications. However Council offers the complainant an opportunity to make verbal representations. However, verbal representations by the complainant may lengthen the period for dealing with the complaint.
18. A complaint against the Council will be properly investigated. The complainant may or may not provide evidence to support their complaint. The 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 is likely to vary but is unlikely to be more than 1 month.
19. The LGO recommends that any complaints procedure should consist of at least two stages which permits the complainant to appeal the outcome of complaint. The Council encourages complaints in the first instance to be dealt with informally by Officers. If that is not possible the Council may refer and the complainant may request that the complaint be referred to Members at a Committee. If the complainant remains unsatisfied they may Appeal and ask for the complaint to be referred to the Appeals Committee, which will be convened for that purpose; the minimum Membership of which will be three Members and a quorum of three Members. Members previously involved in the original decision at committee will not participate in the determination of an Appeal committee. The fairness and timeliness of the

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Council's response to a complaint is however more important than the number of stages in its complaints procedure.

20. The Council delegates responsibility for handling and determining complaints to staff in the first instance. If the complaint cannot be resolved to the satisfaction of the complainant, the complaint can be referred to Members at a Committee. If the complainant remains unsatisfied the complaint can be Appealed and heard by a specifically organised Appeals Committee.
21. The complainant may take the opportunity to attend a Committee or Appeals Committee meeting to make representations about their complaint. Alternatively complainants may feel more comfortable speaking to an officer of the Council or at a small committee, rather than a meeting of the full council.
22. It is good practice to set deadlines for complaint handling and the Council should not leave this open-ended. The LGO recommends that this takes no longer than 12 weeks from receipt to resolution. The Council will try to respond to a complaint within 1 month but where that is not possible some flexibility may be required to deal with lengthier and more complex complaints and/or when referral to committee/s is necessary.

Data protection and confidentiality

23. To ensure compliance with its obligations in the Data Protection Act 2018 (the 2018 Act), the Council cannot disclose the identity, contact details or other personal data about an individual complainant unless they consent or disclosure is otherwise fair and lawful under the 2018 Act e.g. for the purpose of discharging the Council's functions, or for the performance of contractual obligations. The Council ensures 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. 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, the Council will treat a complaint in confidence.
24. A complaint against the Council is personal to the complainant and will be treated as confidential unless the complainant confirms that they waive their right to confidentiality. The meeting of a relevant committee or Appeals committee considering the complaint or

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inviting the complainant to make representations will need to exclude the public. This would not preclude the committee or Appeals 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.

25. If a complainant has threatened to take legal action against the Council or legal proceedings have already begun, the Council will 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.
26. If the 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.
27. If the 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.
28. 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 they 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 will not offer financial compensation.
29. As 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 services, the Council may offer use of the service for free or at a reduced rate for a period.
30. The general power of competence (sections 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) to offer a range of remedies. If the remedy offered by the council facilitates or is conducive or incidental to the

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exercise of the council's statutory functions or powers, the Council may rely on s.111(1) of the Local Government Act 1972.

31. 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 Council's insurance policy is likely to include cover for the Council's legal expenses in defending a legal claim or the threat of a legal claim against the Council (and any related formal complaint against the Council). The failure of the 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 the 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 the judicial review is set out in NAL Legal Topic Note 15 – Legal Proceedings. If a formal complaint about the 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 ?? below.
32. The Local Government & Social Care 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-andguidance/guidance-notes>. This Note draws on the guidance for principal authorities.

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Appendix 1

Complaints procedure for use in complaints against the Council

Before processing a complaint

1. All formal complaints against the Council must be communicated in writing. The format of the complaint is not prescribed by the Council.
2. The complainant must be asked at the outset to confirm if they want the complaint to be treated confidentially. It is unlikely that the complainant will waive confidentiality. Even if they do so, the council must comply with its obligations under the Data Protection Act 2018 to safeguard against the unlawful disclosure of personal data.
3. The council's written complaints procedure is accessible to the complainant (eg on the Council's website). In any event, the policy is well publicised and accessible via the council's publication scheme and website. The Council's complaints procedure confirms the following information must be provided:
 - a. The requirement is to submit a complaint in writing
 - b. The postal address and contact details of the complainant.

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 chair of the relevant committee.

 - c. The receipt of the complaint will be acknowledged by the Council in writing within 1 week.
 - d. In the first instance the complaint will be delegated to an Officer to try to resolve within 1 month. If it is not possible to informally resolve the complaint, the complainant may want to refer the complaint to a Member committee.
 - e. The next available planned committee meeting will consider the complaint. The complainant will be informed of the decision of the committee within 1 week of the committee meeting.
 - f. The decision of a committee may be Appealed if the complainant is not satisfied.
 - g. A specifically organised Appeals committee will need to be convened, which will take time likely to be 1 month from the date of Appeal.

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h. There is an opportunity for the complainant to make verbal representations (and bring a friend when doing so) to a Member Committee and Appeal committee.

Receipt of the complaint

4. The clerk or other nominated officer (or if the complaint concerns them, the chair of the council's committee) shall:

- a. acknowledge receipt of the complaint in writing within 1 week;
- b. confirm to the complainant if the complaint will be treated as confidential (which is the most likely to be the case); and
- c. 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. The complainant will 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, chair of the meeting should explain how the meeting will proceed.

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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 subcommittee.

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 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 described, 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. The council's complaints procedure includes an appeal stage, the council will notify the complainant in writing of the right to appeal its decision.

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Appendix 2

Complaining to the Local Government and Social Care Ombudsman (LGO)¹

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:

a. 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:

b. complaints must be made in writing; c. complaints must be made within 12 months of notice of the matters which are subject to the complaint;

d. 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;

e. the ombudsman may not investigate matters which are or have been subject to a right of appeal; and

f. 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

¹ National Association of Local Councils (NALC) – Legal Topic Note 9E

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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.’

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