

**EAST RIDING AND NORTHERN LINCOLNSHIRE  
LOCAL COUNCILS ASSOCIATION**

<b>Advisory Note</b>	<b>011</b>
<b>Subject</b>	<b>Code of Practice for Local Councils in Handling Complaints</b>
<b>Date of last review</b>	<b>May 2013</b>

*This recommended Code of Practice is based on guidance issued by the National Association of Local Councils in November 2008.*

**Preface**

The Local Government Ombudsman (LGO) has no jurisdiction over parish and town councils in England consequently this Advisory Note is intended to assist member councils to deal with complaints they receive and includes a draft complaints procedure.

**Is a complaints procedure appropriate?**

It will not be appropriate to deal with all complaints from members of the public under a complaints procedure. Councils should consider engaging other procedures/bodies in respect of the following types of complaint:

<b>Type of conduct</b>	<b>Refer to</b>
Financial irregularity	It is a local elector's statutory right to object to the Council's audit of accounts pursuant to s.16 Audit Commission Act 1998. On other matters, councils may need to consult their auditor / Audit Commission.
Criminal activity	The Police
Member conduct	In England a complaint relating to a member's failure to comply with the Code of Conduct must be submitted to the standards committee of the relevant principal authority.
Employee conduct	Internal disciplinary procedure

**Complaints Procedure**

The first task is to determine exactly what a complaint is. Sometimes the word 'complaint' is used by members of the public but sometimes it is not. The Local Government Ombudsman offers the following definition of a complaint:

*"A complaint is an expression of dissatisfaction by one or more members of the public 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."*

A good complaints system is:

- well publicised and easy to use;
- helpful and receptive;
- not adversarial;
- fair and objective;
- based on clear procedures and defined responsibilities;

- quick, 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; and
- regularly analysed to spot patterns of complaint and lessons for service improvement.

### **Confidentiality**

The Local Government Ombudsman advises that the identity of a complainant should only be made known to those who need to consider a complaint. In local councils it may not be feasible to deal with complaints outside some sort of committee structure but, nevertheless, councils should take care to maintain confidentiality where circumstances demand (e.g. where matters concern financial or sensitive information or where third parties are concerned).

### **Time targets**

It is good practice to set deadlines for complaint handling which should not be open-ended. Clearly, some flexibility is required to deal with lengthier and more complex complaints and this could be reflected clearly in a complaints procedure.

### **Remedies**

The purpose of a complaints procedure is to put things right if things go wrong. Section 92 of the Local Government Act 2000 gives councils the power to make payment 'in cases of maladministration.' (Section 92 applies to local councils and the use of the word 'maladministration' is not linked to the use of the word by the ombudsman in this context). The full text of section 92 is as follows:

*'92.— (1) Where a relevant authority consider—*

- a) that action taken by or on behalf of the authority in the exercise of their functions amounts to, or may amount to, maladministration, and*
- b) that a person has been, or may have been, adversely affected by that action,*

*the authority may, if they think appropriate, make a payment to, or provide some other benefit for, that person.'*

It is to be noted that parish councils have the power (i) to make a payment or (ii) to provide some other benefit where action amounts to or may amount to maladministration. 'Maladministration' is a broad concept. It has been described as including 'bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and so on'.

### **The Complaints Procedure**

Amongst the complaints which members of the public make about Parish and Town Councils are those about administration of procedures. The quantity of these complaints is noticeably increasing. It is in the particular interest of the council concerned to settle a complaint because, even if it is unjustified, it will, in the absence of any settlement be raised again. This is bad for the council since it wastes time and affects its good reputation. It is also of general concern to all councils that complaints against any of them should be settled as soon as possible.

Experience suggests that in many cases a complaint will not be pursued if the complainant sees that it has been properly handled. As councils are not subject to the jurisdiction of the Local Ombudsman there is no independent body to which the complainant can turn for

independent formal assessment. Therefore every duly-made complaint **should be dealt with according to an agreed Code** however trivial it may seem at first sight.

For the benefit of good local administration it is suggested that local councils should adopt a standard and formal procedure for considering complaints either made by complainants direct or referred back to the council from other bodies to whom they have been made. The Code set out below is recommended as a way of ensuring that complainants can feel satisfied that at the least their grievance has been properly and fully considered.

Councils are urged to do their utmost to settle complaints and satisfy complainants in the interests of the good reputation of the council. If a complaint is not settled by the council it cannot refer the complaint to any other body for settlement but a complainant may well try to enlist the services of other bodies and provoke considerable expenditure of the time and resources of the council and others in responding to further pressures.

Councils are advised to adopt the Code before any complaints have been notified.

## **CODE OF PRACTICE**

### **Before the Meeting**

1. If a complaint about procedures or administration is notified orally to a Councillor or the Clerk and they cannot satisfy the complainant fully, the complainant shall be asked to put the complaint in writing to the clerk and be assured that it will be dealt with promptly after receipt.
2. If a complainant prefers not to put the complaint to the Clerk he or she shall be advised to put it to the Chairman of the Council.
3. The clerk shall acknowledge receipt of the complaint and advise the complainant when the matter will be considered by the council or by the committee established for the purposes of hearing complaints. The complainant should also be advised whether the complaint will be treated as confidential or whether, for example, notice of it will be given in the usual way (if, for example, the complaint is to be heard by a committee).
- 4(a) On receipt of a written complaint the Clerk or Chairman, as appropriate, shall (except where the complaint is about the Clerk), try to settle the complaint directly with the complainant but shall not do so in respect of a complaint about the behaviour of the Clerk or a Councillor. Complaints about the Clerk will be dealt with under the Council's employment policies and procedures. Where a member of the public wishes to complain about an individual councillor, they shall be referred to the local Standards Committee
- (b) Where the chairman receives a written complaint about his or her own actions, he or she shall refer the complainant to the local Standards Committee. Where the Clerk receives complaint about his or her behaviour he or she shall refer it to the Chairman or appropriate committee.
5. The Clerk or Chairman shall report to the next meeting of the Council any written complaint disposed of by direct action with the complainant.
6. The Clerk or Chairman shall bring any written complaint which has not been settled to the next meeting of the Council and the Clerk shall notify the complainant of the date on which the complaint will be considered, and the complainant shall be offered an opportunity to explain the complaint orally.

7. Seven clear working days prior to the meeting, the complainant shall provide the council with copies of any documentation or other evidence relied on. The council shall provide the complainant with copies of any documentation upon which they wish to rely at the meeting and shall do so promptly, allowing the claimant the opportunity to read the material in good time for the meeting.

#### **At the Meeting**

8. The Council shall consider whether the circumstances of any complaint warrant the matter being discussed in the absence of the public and press but any decision on a complaint shall be announced at the council meeting in public.
9. The chairman should introduce everyone and explain the procedure.
10. The complainant (or representative) should outline the grounds for complaint and, thereafter, questions may be asked by (i) the clerk or other nominated officer and then (ii), members.
11. The clerk or other nominated officer will have an opportunity to explain the council's position and questions may be asked by (i) the complainant and (ii), members.
12. The clerk or other nominated officer and then the complainant should be offered the opportunity to summarise their position.
13. The clerk or other nominated officer and the complainant should be asked to leave the room while members decide whether or not the grounds for the complaint have been made. If a point of clarification is necessary, *both* parties shall be invited back.
14. The clerk or other nominated officer and the complainant should be given the opportunity to wait for the decision but if the decision is unlikely to be finalised on that day they should be advised when the decision is likely to be made and when it is likely to be communicated to them. The Council shall defer dealing with any written complaint **only** if it is of the opinion that issues of law or practice arise on which advice is necessary from the Association. This complaint shall be dealt with at the next meeting after the advice has been received.

#### **After the Meeting**

15. The decision should be confirmed in writing within seven working days together with details of any action to be taken.

The information, advice or guidance contained in this communication has been prepared by ERNLLCA for the benefit of the recipient council or councils and cannot be shared with any other council not in membership of ERNLLCA.

© ERNLLCA

Issued by

**East Riding and Northern Lincolnshire Local Councils Association**

**Suite 8, Waters Edge Business Centre, Maltkiln Road, Barton upon Humber, DN18 5JR**

**Tel: 01652 661617**

**E-mail: [enquiries@ernllca.info](mailto:enquiries@ernllca.info)**

**Website: [www.ernllca.info](http://www.ernllca.info)**