

1 Introduction and Scope

1.1 Complaints: A Definition

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.

1.2 Information for the Public

Advice for members of the public who need to make a complaint to the council shall be published on the website. A copy of the text published on the council's website is included in Appendix 1.

1.3 Initial Response

Most complaints will be resolved by a simple response. The procedure set out below is for more serious or complicated complaints which could not be satisfied by less formal measures or explanations provided to the complainant by the clerk (or other nominated officer) or chairman.

1.4 Complaints Dealt with By Other Means

- **Member Conduct**

The conduct of members is covered by the Members' Code of Conduct. Complaints about elected members are handled by Test Valley Borough Council.

- **Employee Conduct**

- Complaints about employees are dealt with via the Disciplinary Procedure. Complaints from employees are dealt with via the Grievance Procedure.

- **Financial Irregularity**

- Local Electors have a right to statutory right to object to the Council's audit of accounts (s.16 Audit Commission Act 1998). For other complaints about financial matters it may be necessary to consult with the council's internal auditor or the Audit Commission.

1.5 Criminal Activity

Complaints concerning criminal activity are a matter for the Police.

1.6 Confidentiality

The identity of a complainant should only be made known to those who need to consider a complaint. Take care to maintain confidentiality where circumstances demand (e.g. where matters concern financial or sensitive information or where third parties are concerned).

1.7 Timescale

We anticipate resolving any complaint within 12 weeks from the date of receipt of

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the complaint. Most complaints should be dealt with more quickly than this, but in exceptional circumstances the process may take longer. In any case, the complainant should be given an indication as to when the matter may be resolved.

- 1.8 It may be that the clerk (or other nominated officer) at the meeting represents the position of the council. If the clerk (or other nominated officer) puts forward justification for the action or procedure complained of, he or she should not advise the council or committee, as they need to determine the matter themselves.
- 1.9 At all times, the rules of natural justice will apply. In other words, all parties should be treated fairly and the process should be reasonable, accessible and transparent.
- 1.10 This Complaints Procedure was drafted with reference to information published by the National Association of Local Councils (Legal Topic Note 9E February 2013 “Handling Complaints England”) and guidance from the Local Government Ombudsman.

2 COMPLAINTS PROCEDURE FOR USE IN COMPLAINTS AGAINST THE COUNCIL (NOT FOR COMPLAINTS ABOUT INDIVIDUALS)

2.1 Before the Meeting

- 211 The complainant should be asked to put the complaint about the council's procedures or administration in writing to the clerk or other nominated officer.
- 212 If the complainant does not wish to put the complaint to the clerk or other nominated officer, he or she should be advised to address it to the chairman of the council.
- 213 The clerk or other nominated officer 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).
- 214 The complainant shall be invited to attend a meeting and to bring with them a representative if they wish.
- 215 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.

2.2 At the Meeting

- 221 The council shall consider whether the circumstances of the meeting warrant the exclusion of the public and the press. Any decision on a complaint shall be announced at the council meeting in public.
- 222 The chairman should introduce everyone and explain the procedure.
- 223 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.
- 224 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.
- 225 The clerk or other nominated officer and then the complainant should be offered the opportunity to summarise their position.

- 226 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.
- 227 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.

2.3 After the Meeting

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

3 COMPLAINTING TO THE LOCAL GOVERNMENT OMBUDSMAN (LGO)

3.1 Although the LGO has no jurisdiction in respect of parish councils, 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 legislation is contained within sections 26 and 27 of the Local Government Act 1974 ('the Act'). The key points to remember are:

- parish councils are unable to lodge complaints as a public body (section 27(1) of the Act) about another local authority or public body defined at section 25 of the 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.

3.2 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 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.'

4 POLICY ON MANAGING UNREASONABLE COMPLAINANT BEHAVIOUR

4.1 Introduction

- 4.1.1 This policy is derived from guidance from the Local Government Ombudsman.
- 4.1.2 In a minority of cases people pursue their complaints in a way that is unreasonable. They may behave unacceptably, or be unreasonably persistent in their contacts and submission of information. This can impede investigating their complaint (or complaints by others) and can have significant resource issues. These actions can occur either while their complaint is being investigated, or once an organisation has finished the complaint investigation.

4.2 Definition and Examples

- 4.2.1 'Unreasonable complainant behaviour' may include one or two isolated incidents, as well as 'unreasonably persistent behaviour', which is usually a build-up of incidents or behaviour over a longer period. The definition is:
- Unreasonable and unreasonably persistent complainants are those complainants who, because of the nature or frequency of their contacts with the Council, hinder the Council's consideration of their, or other people's, complaints.
- 4.2.2 Some complainants may have justified complaints but may pursue them in inappropriate ways. Others may pursue complaints which appear to have no substance or which have already been investigated and determined. Their contacts with organisations may be amicable but still place heavy demands on staff time, or they may be emotionally charged and distressing for all involved.
- 4.2.3 Situations can escalate, and sometimes complainants become abusive, offensive, threatening or otherwise behave unacceptably. In response it may become necessary to restrict access to premises or staff, or accordance with procedures protecting staff from harassment and harm.
- 4.2.4 This guidance covers behaviour which is unreasonable, which may include one or two isolated incidents, as well as unreasonably persistent behaviour, which is usually a build-up of incidents or behaviour over a longer period. Examples may include:
- Refusing to specify the grounds of a complaint, despite offers of help.
 - Refusing to cooperate with the complaints investigation process.

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- Refusing to accept that certain issues are not within the scope of a complaints procedure.
- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- Making unjustified complaints about staff who are trying to deal with the issues, and seeking to have them replaced.
- Changing the basis of the complaint as the investigation proceeds.
- Denying or changing statements he or she made at an earlier stage.
- Introducing trivial or irrelevant new information at a later stage.
- Raising many detailed but unimportant questions, and insisting they are all answered.
- Submitting falsified documents from themselves or others.
- Adopting a 'scatter gun' approach: pursuing parallel complaints on the same issue with various organisations.
- Making excessive demands on the time and resources of staff with lengthy phone calls, emails to numerous council staff, or detailed letters every few days, and expecting immediate responses.
- Submitting repeat complaints with minor additions/variations the complainant insists make these 'new' complaints.
- Refusing to accept the decision; repeatedly arguing points with no new evidence.

4.3 Considerations prior to taking action under the policy

- 4.3.1 If your consideration of the complaint is ended you have the option of ending all communication with the complainant on the issue and, where appropriate, referring the complainant to the Borough Council.
- 4.3.2 If the complaint is still under consideration steps may be necessary to manage the complainant's behaviour.
- 4.3.3 The decision to designate someone's behaviour as unreasonable, and restrict their access to the Council, could have serious consequences for the individual. The Council should be satisfied that:
 - 4.3.4 the complaint is being or has been investigated properly

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- 4.3.5 any decision reached on it is the right one
- 4.3.6 communications with the complainant have been adequate, and
- 4.3.7 the complainant is not now providing any significant new information that might affect the Council's view on the complaint.
- 4.3.8 When it is necessary to designate the complainant as behaving unreasonably, some of following steps may assist.
- 4.3.9 Offering the complainant a meeting with the Clerk or a member to explore scope for a resolution of the complaint and explain why their current behaviour is seen as unreasonable.
- 4.3.10 Sharing your policy with the complainant and warning them that restrictive actions may need to be applied if their behaviour continues.
- 4.3.11 Setting up a strategy meeting to agree a cross-departmental approach.
- 4.3.12 Appointing a key officer to coordinate the organisation's response(s).
- 4.3.13 Helping the complainant to find a suitable independent advocate especially if the complainant has different needs.

4.4 Options for action

- 4.4.1 Any actions taken should be proportionate to the nature and frequency of the complainant's current contacts. The following options may be suitable, taking the complainant's behaviour and circumstances into account. The objective is to manage the complainant's unreasonable behaviour in such a way that their complaint can be concluded quickly, without further distractions. Options include:
 - Placing limits on the number and duration of contacts with staff per week or month.
 - Offering a restricted time slot for necessary calls.
 - Limiting the complainant to one medium of contact (telephone, letter, email etc).
 - Requiring the complainant to communicate only with one named member of staff.
 - Requiring any personal contacts to take place in the presence of a witness and in a suitable location.

- Refusing to register and process further complaints about the same matter.
- Where a decision on the complaint has been made, you can tell the complainant that future correspondence will be read and placed on the file but not acknowledged, unless it contains material new information. A designated officer or member should be identified who will read future correspondence.

4.5 Operating the policy

4.5.1 If a decision is taken to apply restricted access, the complainant will be written to with a copy of the policy to explain:

- why the decision has been taken
- what it means for his or her contacts with the organisation
- how long any limits will last, and
- what the complainant can do to have the decision reviewed.

4.5.2 Keep adequate records to show:

- when a decision is taken not to apply the policy when a member of staff asks for this to be done, or
- when a decision is taken to make an exception to the policy once it has been applied, or
- when a decision is taken not to put a further complaint from this complainant through the complaints procedure for any reason, and
- when a decision is taken not to respond to further correspondence, make sure any further letters, faxes or emails from the complainant are checked to pick up any significant new information.

4.5.3 When complaints about new issues are made, these should be treated on their merits. Consider whether any restrictions previously applied are still appropriate and necessary.

4.6 Reviewing decisions to restrict access

4.6.1 When imposing a restriction on access, have a specified review date. Limits should be lifted and relationships returned to normal unless there are good grounds to extend them.

4.6.2 Tell the complainant of the outcome of the review. If limits are to continue, explain the reasons and state when the limits will next be reviewed.

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Appendix 1 Complaints: text published on the Council's website.

IF YOU HAVE A COMPLAINT...

If you are not satisfied with the actions of the Council or a Member of it, please let us know.

Before making a complaint, you should be aware that there are some things we cannot change, and they are:

- **If our actions are required by law or national policy**
- **If our actions were determined properly in accordance with the Council's policies and procedures**

First Step

The first step would be to contact us, by one of the following methods:

- **By telephone on: 07902297004**
- **Email:**
clerk@braishfield.org.uk

In order to help us to deal with your complaint, please be exact and include as much information as possible about the nature of your concerns.

You may need to discuss the matter with a Member or the Clerk. If so, an appointment will be made.

Second Step

If your concern cannot be addressed by the Clerk or a Member, it will be referred to the Council and dealt with through its Complaints Procedure.

The Council will decide the most appropriate way to deal with your complaint, and will be able to resolve most problems within 12 weeks, and the majority much sooner. If this is not possible, we will give an estimate of the likely timescale.

Third Step

If your complaint cannot be resolved to your satisfaction by the Council through its Complaints Procedure, Test Valley Borough Council may be able to help you.