NALC

Legal Topic Note

LTN 9W

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HANDLING COMPLAINTS WALES

Introduction

1 This Legal Topic Note sets out the statutory and recommended procedures to be used when there is a complaint made to a local council. This document is intended to assist local councils in Wales to deal with complaints they receive and includes a draft complaints procedure.

Statutory procedures for complaints against the council

2 Community councils in Wales have been subject to the jurisdiction of the Public Services Ombudsman for Wales since 1 April 2006 (Public Services Ombudsman (Wales) Act 2005).

Whether a complaints procedure is appropriate

3 It will not be appropriate for a local council 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:

Type of conduct	Refer to
Financial irregularity	Local elector's statutory right to object Council's audit of accounts (s. 16 Audit Commission Act 1998). On other matters, councils may need to consult their auditor / Audit Commission.
Criminal activity	The police

Member conduct

4 Any complaint about member conduct should be made to the Public Services Ombudsman (see paragraph 2 above).

Employee conduct

5 In Wales any complaint about employee conduct should be made to the Public Services Ombudsman (see paragraph 2 above).

Complaints Procedures for Local Councils

6 The Local Government Ombudsman (LGO) has produced excellent guidance on the subject of complaints procedures. A copy of the full guidance may be obtained via the following internet link:

http://www.lgo.org.uk/publications/guidance-notes/

7 Much of the guidance is aimed at higher level authorities and is not directly applicable to local councils but, nevertheless, much of it is extremely useful and this Note draws heavily on the advice given. The guidance is relevant to community councils in Wales.

8 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 LGO 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.'

9 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

10 The LGO 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).

Stages

11 Many organisations have a 3-stage complaints procedure whereby issues are resolved by:

- front line staff; then
- management; and then
- senior management/members.

The LGO recommends that any complaints procedure should consist of at least 2 stages.

Time Targets

12 It is good practice to set deadlines for complaint handling and councils should not leave this 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.

Compensation

13 Local councils in Wales have the power to make a payment 'in cases of maladministration.' (Section 92 Local Government Act 2000) The use of the word 'maladministration' is not linked to the use of the word by the ombudsman in this context. It is to be noted that local 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 'and so on' is important. Lord Denning said 'It would be a long and interesting list, clearly open-ended, covering the manner in which a decision is reached or discretion is exercised...' (*R v Commissioner for Local Administration ex parte Bradford City Council* [1979] 1 QB 287).

The Draft Procedure

16 Councils may wish to establish a committee to deal with complaints. This avoids the need for the full council having to assemble and also makes the process less daunting for a complainant if they choose to attend a meeting in person.

17 The draft procedure set out in the attached appendix 1 is not appropriate for use where a complaint is made against an individual. Serious complaints relating to the conduct of an individual can be dealt with in the ways suggested at paragraphs 4 to 7 above. The attached procedure is designed for those complaints against the council which cannot be satisfied by less formal measures or explanations provided to the complainant by the clerk (or other nominated officer) or chairman. The procedure can be adapted to suit local circumstances and this Legal Topic Note represents a suggested practice.

18 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.

19 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.

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

LTN	Title	Relevance
15	Legal Proceedings	Explains when the remedy of Judicial Review may be sought (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.
30	Defamation	More detail regarding legal action and defences available in respect of defamation.

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APPENDIX 1 - COMPLAINTS PROCEDURE FOR USE IN COMPLAINTS AGAINST THE COUNCIL (NOT FOR COMPLAINTS ABOUT INDIVIDUALS)

Before the Meeting

1. 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.

2. 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.

3. 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).

4. The complainant shall be invited to attend a meeting and to bring with them a representative if they wish.

5. 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

6. 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.

7. The chairman should introduce everyone and explain the procedure.

8. 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.

9. 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.

10. The clerk or other nominated officer and then the complainant should be offered the opportunity to summarise their position.

11. 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.

12. 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.

After the Meeting

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

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

1. Although the LGO has no jurisdiction in respect of community councils, it might be useful for community 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:

   - community 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 community 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 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.'