

COMPLAINTS PROCEDURE FOR WOULDHAM PARISH COUNCIL

Whether a complaints procedure is appropriate?

It will not be appropriate for a Parish 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:-

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

Complaints about an employee of the Council

Any complaints about an employee of the Council will be dealt with as an employment matter. The complainant should be assured that the matter will be dealt with internally and appropriate action taken as required. In the first instance all complaints should be addressed to the Clerk or the Chairperson as appropriate.

Complaints about a Councillor

Complainants should in the first instance address all complaints to the Clerk or Chairperson as appropriate. A complaint relating to a Councillor’s failure to comply with the Parish Council’s Code of Conduct must be submitted to the Monitoring Officer at Tonbridge & Malling Borough Council.

Complaints about administration/procedures

The attached Code of Practice is designed for those complaints that cannot be satisfied by less formal measures or explanations provided to the complainant by the Clerk or Chairperson.

The key points to bear in mind at all times when dealing with complaints are:

- All parties should be treated fairly
- The process should be reasonable, accessible and transparent
- Determine exactly what the complaint is (‘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’ - Local Government Ombudsman). The LGO provide a guide at www.lgo.uk/publications.guidance-notes/ .

CODE OF PRACTICE

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 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 Chairperson.
3. The Clerk shall acknowledge the receipt of the complaint within seven days and advise the complainant when the Council will consider the matter. The complainant should also be advised whether the complaint will be treated as confidential or whether 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 the relevant meeting and bring with them such representation as 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 which they wish to refer to at the meeting. The Council shall similarly provide the complainant with copies of any documentation upon which they wish to rely at 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. Chairperson to introduce everyone
8. Chairperson to explain procedure
9. Complainant (or representative) to outline grounds for complaint
10. Members to ask any question of the complainant.
11. If appropriate, the Clerk or relevant officer or councillor to explain the Council's position.

12. Members to ask any question of the Clerk or relevant officer or councillor.
13. Clerk or relevant officer or councillor and complainant to be offered opportunity of last word (in this order).
14. Clerk or relevant officer or councillor and the complainant should be asked to leave room while Members decide whether or not the grounds for the complaint have been made. If a point of clarification is necessary, both parties to be invited back.
15. Clerk or relevant officer or councillor and complainant return to hear decision, or to be advised when decision will be made.

After the meeting

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

COMPLAINING TO THE LOCAL GOVERNMENT OMBUDSMAN (LGO)

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.

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.'

SIGNED.....CHAIRMAN

DATE.....