

Harby Parish Council Complaints Procedure

Reviewed 31st May 2018

Next review: May 2019



1. What is a Complaint?

- a. It is not appropriate for all 'complaints' from the public to be dealt with under the Complaints Procedure. This procedure does not cover financial irregularity, criminal activity, or member conduct. These are covered through other procedures/bodies.
- b. A complaint is defined as "*an expression of dissatisfaction by one or more members of the public about a 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*" (National Association of Local Council's Legal Topic Notice 9).
- c. 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.

2. Before the Meeting

- a. All formal complaints against a local Council must be communicated in writing. The complainant should be asked to put the complaint about the Council's procedures or administration in writing to the clerk.
- b. If the complaint is about the clerk, the complainant should be advised to address it to the Chairman of the Council.
- c. The clerk will check the complaint falls under the complaints procedure.
- d. The clerk shall:
 - i. Acknowledge receipt of the complaint within seven days;
 - ii. Notify the complainant who will be deal with the complaint (usually this will be the clerk).
 - iii. Advise the complainant when the matter will be considered by the Council;
 - iv. The complainant shall be invited to attend a meeting to make verbal representations and to bring with them a representative if they wish.
 - v. Confirm the complaint will to be treated as confidential, unless instructed otherwise in writing by the complainant (*it is unlikely that the complainant will waive confidentiality. Even if he does so, the Council must comply with its obligations under the Data Protection Act 1998 to safeguard against the unlawful disclosure of personal data*).
 - vi. The identity of a complainant should only be made known to those who need to consider a complaint.
- e. Seven 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.

3. At the Meeting

- a. The Council shall consider whether the circumstances of the meeting warrant the exclusion of the public and the press (e.g. to maintain confidentiality of complainants identity). Any decision on a complaint shall be announced at the Council meeting in public.
- b. The chairman should introduce everyone and explain the procedure.
- c. The complainant (or representative) should outline the grounds for complaint and, thereafter, questions may be asked by (i) the clerk and then (ii) councillors.
- d. The clerk (or if the complaint concerns them, a nominated councillor) will have an opportunity to explain the Council's position and questions may be asked by the complainant.
- e. The clerk (or nominated councillor) and the complainant should be offered the opportunity to summarise their position.
- f. The clerk and the complainant may be asked to leave the room while councillors 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.
- g. The complainant should be advised when the decision about the complaint is likely to be made and when it is likely to be communicated to them.

4. After the Meeting

- a. The clerk should write to the complainant within ten working days to confirm whether or not the complaint has been upheld.
- b. The Council should give reasons for its decision together with details of any action to be taken by the Council if this is appropriate.

Address for complaints:

Harby Parish Clerk
71 High Street
Collingham
Newark
Nottinghamshire
NG23 7LB

Address for complaints, if they involve the clerk:

Chairman of Harby Parish Council
Shoemakers Cottage
Wigsley Road
Harby
Newark
Nottinghamshire
NG23 7EF

Procedural Background Information for Harby Parish Council

1. Background

- a. This procedure should be read in conjunction with the National Association of Local Council's Legal Topic Note 9 (NALC LTN 9E) Handling Complaints, June 2014. This procedure is based on the Complaints Procedure contained in LTN 9E.

2. Insurance

- a. Occasionally it may be necessary to notify the 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.
- b. It is important that the Council takes instruction from its insurers as to how to respond to the complaint. The insurance policy for a Council is likely to include cover for the Council's legal expenses in defending a legal claim or the threat of a legal claim against a Council (and any related formal complaint against the Council).
- c. Failure to notify the insurers as soon as a legal claim is threatened or made, may invalidate its insurance policy.
- d. Often, the legal expenses insurance cover for 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 judicial review is set out in the NALC LTN 15 Legal Proceedings.
- e. If a formal complaint about a 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.
- f. If a 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.
- g. If a 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.
- h. 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 he 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 may want to offer financial compensation. Any offer or acceptance of financial compensation should confirm the Council's payment is full and final settlement of the dispute and any claims which the complainant has against the Council and without admission of legal liability.
- i. If 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.

3. Further Guidance

- a. Residents who live in or near the Council's area and who are affected by a Council's decisions are likely to be the main users of the procedure. It is also available to other individuals, organisations (e.g. a business, charity) or unincorporated bodies (e.g. a residents' or allotment tenants' association). Anyone aggrieved with a local Council is likely to communicate this verbally or in writing. It is generally in the interests of the complainant and the Council to try resolve the matter informally through the normal channels of communication, rather than deferring to the Council's formal complaints procedure.
- b. When a complaint is made about the local Council, members of the Council or staff are likely to be mentioned or complained about. However, a complaint about the Council should be treated as a complaint against the body corporate of the Council and not as a complaint against individual members of the Council.
- c. A complaint against a 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. For more information and guidance see NALC LTN 22 - Disciplinary and Grievance Arrangements.
- d. 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.
- e. 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, he should notify the committee that has responsibility for staff management. The staffing is responsible for deciding whether the member's concerns raise disciplinary issues to be dealt with in accordance with the Council's disciplinary procedure.
- f. If an employee has a complaint about the workplace, he may raise this in accordance with the Council's internal grievance procedure. For more information and guidance see LTN 22 - Disciplinary and Grievance Arrangements.

Data protection and confidentiality

- a. To ensure compliance with its obligations in the Data Protection Act 1998, a Council cannot disclose the identity, contact details or other personal data about an individual complainant unless he consents or disclosure is otherwise fair and lawful under the 1998 Act e.g. for the purpose of discharging the Council's functions, or for the performance of contractual obligations.
- b. Councils should ensure 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. Further guidance about the 1998 Act is available in NALC LTN 38 - Data Protection.
- c. The Local Government Ombudsman 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 is expected to treat the complaint in confidence.
- d. A complaint against a local Council is personal to the complainant and should be treated as confidential unless the complainant confirms that he waives his right to confidentiality. The meeting of a relevant committee considering the complaint or inviting the complainant to make representations will need to exclude the public. This would not preclude the 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.