

Lydford Parish Council Complaints Policy & Procedure

1 Introduction

This procedure covers routine complaints of substance and those that could be described as malicious, habitual or vexatious. The majority of complaints generally fall under the first category, and only occasionally move to the second option covered under Section 5.

A complaint may relate to activities or actions where:

- The Council has not done something it has a duty to do or normally does;
- The Council has done something it has no right to do or does not normally do as a matter of course;
- The conduct or behaviour of a Councillor or an employee is unsatisfactory;
- The levels of service delivery fall below what are expected;
- A person does not understand or is not informed of why or how a situation arose or exists;
- An adopted procedure is not followed;
- Maladministration is alleged.

Some types of complaint are handled outside this procedure: Financial irregularity is handled by the Council's own auditor / Audit Commission; Criminal activity by the Police; Member conduct by the Monitoring Officer at West Devon Borough Council; Employee conduct by internal disciplinary procedure.

2. General Principles

The Council will endeavour to deal with all complaints in an efficient, equitable and effective manner.

The Council may have to respond in a different manner or initiate further action if the complainant behaves in ways which can: impede the investigation of the complaint; have significant resource implications; hinder the complaints service for others; be offensive, abusive or threatening.

The aim of the Council is to manage each case properly, consistently, fairly and respectfully and ensure that the complaint, not the complainant, is the issue during any procedure and decision making.

The Council must try to keep open the lines of communication with appropriate support e.g. clarifying the reason for the outcome; offering relevant support for a complainant with special needs; suggesting an independent representative to help present their case.

3 Handling Complaints

Complaints should always be directed in the first instance to the Clerk of the Council. The Clerk will acknowledge the complaint and will, in consultation with the Chair / Vice Chair as appropriate, direct the complainant according to this policy.

Where the complaint refers to conduct of the Clerk, the complainant is to be directed to the Chair of the Council.

It is expected that most complaints can be resolved quickly and amicably through this route. However, the Council appreciates that on occasions if an informal approach has not resolved the complaint, or that the initial complaint is regarded as particularly serious, then the formal complaints process should be followed.

The Council will normally handle complaints in a private (Part 2) meeting however, when deemed appropriate, such complaints can be heard in Full Council, or the Council can nominate Councillors to deal with complaints who are not involved with the particular case.

If the complaint is handled by the Full Council then two nominated Councillors should not take part in the proceedings. They will then be available to handle any appeal, if required.

The Clerk should normally represent the Council through the proceedings but a nominated Councillor may act instead.

4 Hearing the Complaint

4.1 Before the Meeting

The complainant should complain in writing to the Clerk or to the Chairman of the Council. Assistance should be given to the claimant if necessary.

The complainant should be advised when the matter will be considered and whether it will be treated confidentially, heard by the full Council or heard by a committee. A copy of this procedure should also be given to the complainant.

The complainant should be invited to attend such a meeting with a representative if they desire.

Not later than seven clear working days prior to the meeting, the complainant and the Council will exchange copies of any documentation or other evidence to be relied on.

4.2 At the Council Meeting (Hearing)

The Chairman of the meeting should introduce everyone and explain the procedure.

The complainant (or representative) should outline the grounds for complaint before any questions from the Clerk and then from members if present.

The Clerk should explain the Council's position before any questions from the complainant, and from members if present.

The complainant and the Clerk should then summarise their positions; they then leave the room while members decide whether or not the grounds for the complaint have been made.

If the decision is unlikely to be finalised on that day an estimated date will be given.

4.3 After the Meeting

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

The result of the proceedings should be reported at the next council meeting after the appeal period has passed, ensuring that agreed confidential issues are appropriately respected.

4.4 Appeals

Should the complainant not agree with the decision they are entitled to appeal the decision within fourteen days of receipt of the result of the proceedings. Notification of such appeal should be in writing to the Clerk.

The Councillors nominated to handle the appeal should, within twenty-one days of receiving written notice of the appeal, examine the way in which the Council dealt with the complaint.

If procedures were correctly handled by the Council then the appellant should be notified that the appeal has not been successful. If the complaint was not handled correctly it must be referred back for consideration as at 4.2. It is not for the Councillors handling the appeal to amend the original decision other than on the grounds of a breach of procedure.

The appellant should be notified of the result of the appeals process within fourteen days of the decision.

5. Habitual, Malicious or Vexatious Complaints

5.1 General Principles

The presumption should be that a complaint is made in good faith. Every complaint must be considered on its merits and, even if someone has made a vexatious or malicious complaint in the past, it must not be assumed that any other complaint they make will also be vexatious or malicious.

It is important to use guidelines for identifying habitual or vexatious complainants and that any decisions made follow agreed guidelines and procedures. It is not sufficient to view a complaint as vexatious, malicious or habitual simply because it raises uncomfortable issues.

5.2 Guidelines

Habitual complaints are defined as unreasonable complaints, enquiries or outcomes that are repeatedly or obsessively pursued.

A vexatious complaint is one that is pursued, regardless of its merits, solely to harass, annoy or subdue somebody; something that is unreasonable, without foundation, frivolous, repetitive, burdensome or unwarranted.

A complaint may be regarded as vexatious where the complainant:

- a. Persists in pursuing a complaint which has already been investigated by another or the same manager and provides no new or material information;
- b. Seeks to prolong contact by continually changing the substance of a complaint or by continually raising further concerns or questions whilst the complaint is being addressed;
- c. Fails to clearly identify the substance of a complaint, or the precise issues which may need to be investigated despite reasonable efforts being made to assist them;
- d. Complains solely about trivial matters to an extent which is out of proportion to their significance;
- e. Makes excessive contact with the Council or Councillors, or seeks to impose unreasonable demands or expectations on resources, such as responses being provided more urgently than is reasonable or necessary.

A malicious complaint is one that is made without valid foundation, with the intention of causing harm, for example:

- a. Deliberately seeking to defame another and raising a complaint with this intent;
- b. Through lying about an issue or incident in the knowledge that this will cause harm;
- c. Through knowingly basing a complaint on rumour and gossip with the intention of causing harm.

Where there is sufficient evidence to demonstrate this

Any action taken as a result of a proven habitual, malicious or vexatious complaint should be proportionate to the degree of annoyance / aggravation / distress caused.

5.3 Procedure

The possibility of there being an unreasonably persistent, malicious or vexatious complaint should be brought to the attention of the Chairman or Vice Chairman to ensure that the complaint is being dealt with according to the Council's complaints procedure.

The Chairman or Vice Chairman should contact the complainant in an effort to resolve the situation.

In the case of a meeting, if there is a personality issue, the complainant may nominate another Councillor who will be made aware of all the facts. A complainant may wish to bring a representative. The Council should give appropriate support (e.g. special needs) to the complainant in choosing a representative etc.

The Chair/Vice Chair must:

- a. Assure the complainant of confidentiality with personal details
- b. Carefully explain what action the Council has taken within its remit to resolve the complaint
- c. Offer any relevant support about the complaints procedure to the complainant
- d. Suggest complaint routes available if complaint is outside the Council's remit (See introduction)
- e. Explain how the complainant's actions are of concern but are hampering the complaints procedure
- f. Explain what actions the Council may take
- g. Seek an assurance that the persistent/unreasonable nature of the complaint will be addressed

The outcome and relevant details of the meeting should be noted.

5.4 Decision

If the complaint is found to fall within the definitions in 5.2 above, the complainant continues to behave in unreasonable and/or vexatious way, the Chairman or Vice Chairman should seek the approval of the Council to follow the policy and agree what action(s) to take, e.g. restrict or refuse any further contact.

The complainant must be advised by letter from the Clerk of this action, including any further actions the complainant may take with other bodies including their right to obtain independent advice.

The Council must record the decision and hold all relevant correspondence except all personal details about the complaint and the complainant, which will be stored appropriately in line with the Data Protection Act and the Council's own Retention Policy.

The Clerk must notify all Councillors as appropriate.

Any new complaint from any person who has come under this section of the policy must be treated on its merit.

5.5 Review

The decision taken at Section 5.4 should be reviewed after 6 months. The complainant must be notified of the result if the decision to apply the policy has been reversed.

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