

# Corporate Complaints Procedure

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## Document Control

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## Change History

Version	Date	Description	Change ID
2	February 2005	Dealing with Customer Comments and Complaints: Guidance for Staff	
3	May 2008	Corporate Complaints Procedure	
4	December 2013	Incorporation of guidance on unsubstantiated complaints and abusive complainants	
5	September 2016	Incorporation of Code of Practice on the English language required for public sector workers	
6	January 2017	Amendments to job title of lead officer and circumstances when response time at Stage 2 will be extended	
7	September 2018	Amendments to Officer contacts and incorporation of the 30 day window for Stage 2 reviews	
8	March 2019	Change to response times for Stage 1 and Stage 2 complaints	

## Related Documents

Reference	Title	Tier
	Corporate Complaints Policy	
	Persistent and Prolific Complainants Procedure	



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## **1. Purpose**

- 1.1. This document sets out detailed guidance notes for staff and members on the processes for dealing with complaints and comments from the public, and explains our regulatory obligations. Information can also be obtained from the 'complaints leaflet' made available to the public, and from the website [www.westberks.gov.uk/complaints](http://www.westberks.gov.uk/complaints)

## **2. Applicability**

- 2.1. This procedure shall apply to all employees of West Berkshire District Council, including elected members, contract, agency and other temporary staff, volunteers and employees of partner organisations working with West Berkshire Council, with the exception of schools staff, and it is the responsibility of managers to ensure that these groups are made aware of this procedure.

## **3. Roles and Responsibilities**

- 3.1. The Head of Strategic Support has overall responsibility for ensuring that corporate complaints are managed appropriately in accordance with these agreed procedures.
- 3.2. The Complaints Manager is responsible for:
  - Directing and reviewing this procedure.
  - Ensuring that there is effective consultation and communication on complaints related matters in terms of guidance, training and processes.
  - Publishing & promoting the adoption of this corporate complaints procedure.
  - Ensuring compliance with published timescales, procedures and working practices.
- 3.3. Heads of Service and complaints officers are responsible for the day-to-day management of corporate complaints, including ensuring implementation of these procedures. Managers should check all responses prior to their transmission to complainants.
- 3.4. Copies of Stage 1 complaints and responses should be supplied to the Complaints team in Strategic Support to ensure an audit trail in the event of escalation of complaints.
- 3.5. All Council staff are responsible for familiarising themselves with and ensuring that they comply with this procedure.

## **4. Regulatory Requirements**

- 4.1. An effective comments and complaints procedure is required to investigate any expressions of dissatisfaction which may have been voiced by residents or customers of the Council and resolve these at an early stage.

4.2. In addition, the Council is committed to equal opportunities for everyone and must carefully and thoroughly investigate any complaint of discrimination or harassment due to any of the 'protected characteristics', as defined by the Equality Act 2010. The protected characteristics are

- Age
- Disability
- Gender re-assignment
- Marriage and civil partnerships
- Pregnancy and maternity
- Race
- Religion
- Sex
- Sexual orientation.

4.3. Complaints also offer an opportunity to receive valuable feedback on our services and policies so that we can build on our success and put things right where they might have gone wrong.

4.4. However, the process is not a 'blame exercise'. The aim is to identify where problems have occurred and to put things right.

## **5. The scope of complaints**

5.1. The Council defines a complaint as 'an expression of dissatisfaction about the Council or its services.' This means that if a member of the public contacts you in person, writing or by phone and is unhappy with the Council for whatever reason then this must be defined as a complaint. Whilst for most matters it will be clear that a complaint is about a Council service, extra care and consideration should be given to complaints that may be covered by the sub-sections below.

### Contracted services

5.2. A number of the Council's services are provided by external contractors. The general procedure is to refer any comments regarding these contracted services directly to the appointed contractor although it should be noted that in a number of circumstances, customers have a right of appeal back to the Council. In some circumstances the complaints are dealt with directly by the Council and not the contractor. The exact position will depend on the terms of the contract. If you receive a comment which relates to a service which has been contracted out and you are unsure how to deal with it then please refer to your designated complaints officer or Head of Service.

### Complaints made via Elected Members

5.3. These are complaints from a resident which are received via a Member of the Council. The complaint is handled in the usual way but the response is supplied to the complainant and to the Member for information.

### Letters from MPs

5.4. Letters from MPs are usually answered by the Chief Executive so a response drafted by the service should be passed to his PA for him to review and send.

## **6. Exclusions**

6.1. Complaints about matters that have alternative courses of redress are usually excluded from the corporate process. These are:

- Decisions taken by full Council or the Executive
- Planning applications
- Licensing applications
- Insurance claims
- Homelessness cases
- Housing Register applications
- Housing benefit applications
- School admissions
- School exclusions
- Job applications
- Social Care complaints

6.2. The only exceptions are when the complaint relates to the way in which the process has been handled, to the behaviour of a member of staff, or where there is an issue about discrimination, and in the case of Social Care complaints, because a separate process exists to handle these.

6.3. This does not mean the complaint can be ignored, merely that an appropriate process for managing this aspect of the Council's work already exists. It should still be acknowledged, but such acknowledgement should make it clear that the correspondence will not be treated as a complaint – and why this is. If you are unclear what to do you should refer the matter to the appropriate Head of Service or designated complaints officer.

## **7. Special circumstances within complaints handling**

### *Discrimination and harassment*

7.1. Complaints regarding discrimination or harassment due to someone having any of the protected characteristics shown in para 4.2 are taken very seriously by the Council and must be investigated carefully and thoroughly, following the procedure for second stage complaints (see below). Discrimination or harassment may be a hidden reason for a complaint, or it may be one of many issues in a complaint. It is important to remember that the complainant could either be a victim of discrimination or harassment or the person carrying out the discrimination or harassment.

7.2. Where it is felt that a crime is being committed that has not been reported to the police (eg a racially aggravated or sexual offence), it may be appropriate to encourage the victim of discrimination or harassment to go to the police. If in doubt about whether the offence in question constitutes a crime, the investigating officer should refer the matter to Legal Services.

7.3. If the alleged discrimination relates to a personnel matter then the Head of Human Resources will need to be informed as part of the investigation process. Generally these issues will be dealt with differently, and senior staff will need to be involved.

### Language Fluency Duty

- 7.5 Where a legitimate complaint is made about insufficient proficiency in spoken English against an officer in a customer-facing role, the Corporate Complaints Procedure should be followed as set out in Section 11 below. This will include an assessment of the merits of the complaint against the necessary standard of spoken English required for the role in question. If the complaint is upheld, the Council must consider what steps can be taken to meet the fluency duty. This may include specific training, retraining or assessment, re-deployment or dismissal. The investigation must also take account of the nature of the complaint, the information received from the complainant and the complainant's expectation of an outcome.

### Compensation payments

- 7.6 Where the likelihood of compensation could arise, then the Council's Assurance Service should be notified of any potential insurance claims as soon as they are anticipated. The complainant should be informed that their insurance claim must be in writing to the appropriate Service Unit or the Council's Insurance Officer. Complaints which are being treated as insurance claims do not form part of the Complaints Procedure;

### Legal matters

- 7.7 Where there are legal matters involved, they should be referred to the Legal Services Team. This will include, for example, cases where it is alleged that the Council or an officer has been negligent, or that the Council has broken the law, or is in breach of contract, and complaints made through solicitors.

### Personal conduct

- 7.4. Where it is alleged that an officer has acted in an improper or illegal fashion, or professional competence is called into question, the matter should be dealt with by a senior officer, preferably at Head of Service level. The officer concerned can provide information in respect of the complaint but should not be involved in drafting a response. If the allegations are found to be baseless then the officer against whom they have been brought should be informed at the earliest opportunity and an apology should be sought by the Chief Executive from the complainant.

## **8. Confidentiality**

- 8.1. All complaints must be treated with confidentiality and due regard given to people's privacy. We are not at liberty to discuss a complaint with neighbours or to indicate the source of a complaint in response to an enquiry from another resident. Where complaints are discussed with interested parties (for example, parish councillors or Members of Council) this aspect of confidentiality must be stressed. Contact the Complaints Manager for more information

## **9. Persistent or Prolific Complainants**

- 9.1. Some complainants refuse to accept the Council's response but are not prepared to take their complaint to the Ombudsman. These complainants may become persistent – they will continue to write, often to a number of officers, in respect of a complaint the Council considers resolved.
- 9.2. Some complainants send in a large number of unrelated complaints, often about minor issues or issues which are not within the Council's remit. These complainants

are prolific – the issues they raise require disproportionate amounts of staff time to respond, even where the issue is not one the Council can resolve.

- 9.3. A corporate procedure exists for managing correspondence from persistent and/or prolific complainants. This procedure recognises that genuine issues must be resolved, but provides processes to manage continuing repetitive correspondence. Such complaints should be discussed with the Complaints Manager in the first instance.

## **10. Unsubstantiated complaints and abusive complainants**

- 10.1. An unsubstantiated complaint is one where the complainant or their representative has offered no evidence to permit the authority to investigate a complaint (for example, they may claim discrimination, but supply nothing which demonstrates how the discrimination has occurred). The authority will not investigate a complaint where the complainant offers no evidence to support their case. The complainant and the officer involved should be notified of any decision not to proceed with an investigation.
- 10.2. The authority reserves the right to refuse to accept phone calls or emails from complainants or representatives who are, or have become, abusive to officers, or who exhibit challenging behaviour which makes it difficult or impossible for officers to engage with them. Such complainants will be asked to communicate only by letter, and representatives may be asked to cease representation. These steps will be taken by the Council under their right to protect officers in their employment from harassment and abuse.

## **11. The Corporate Complaints Procedure**

- 11.1. There are three stages to the complaints procedure, the initial stage (Stage 1), the review stage (Stage 2) and the independent review stage, or Local Government and Social Care Ombudsman (Stage 3). The complaint may come from the complainant or from a representative acting on their behalf.

### Initial Stage (Stage 1)

- 11.2. This stage is usually managed by the relevant service unit and includes:
- recording the comment/complaint;
  - acknowledging receipt of the comment/complaint (where appropriate);
  - providing a response and informing the customer of their right to a review
- 11.3. Complaints can be submitted on a form, by letter, email or phone. The form is a useful template for the information we generally require:
- contact details;
  - nature of the complaint – how has the council let them down;
  - any harm or loss which has been caused;
  - what they want to be done to resolve the complaint;
  - who else they have discussed this with at the council;
  - If the complaint is about discrimination, substantiating information to support the complaint. See Sections 7.1 to 7.3 for the handling of such complaints.

- 11.4. Complaints may be submitted on behalf of constituents by Members of Council or MPs. If submitted by Members, the member of staff dealing with the complaint can discuss the complaint informally to see what resolution can be reached – a formal response may not be required. Members should refrain from promising a resolution the Council may not be able to provide.
- 11.5. Services should acknowledge complaints which come to them within 3 working days of receipt, and add the details to any log. Standard wording is provided by the Complaints team.
- 11.6. In general Stage 1 complaints are answered by the service. The response should address all issues, and offer an apology if an error has occurred. Common sense needs to be applied when dealing with telephone complaints eg. about missed bins. A written acknowledgement or reply may not be necessary, but action must be taken to address the concern.
- 11.7. You should provide a written reply to the customer within 15 working days of receipt. If it is not possible to provide a full reply within this period provide a holding response within 15 working days explaining when a full reply will be given.
- 11.8. When you send your final reply you must include a standard wording advising them of their rights for a Stage 2 review, and a copy of, or a link to, the Council's 'Your Right to a Review- Stage 2 Complaints' leaflet. This explains how the customer can have their complaint reviewed by a senior officer within another service, usually the Complaints Manager. Standard wording is provided by the Complaints team.
- 11.9. When complaints involve more than one service unit the Complaints team will co-ordinate responses from the appropriate service units. The same time limits apply as shown above.

#### Review Stage (Stage 2)

- 11.10. If the customer remains dissatisfied with the Stage 1 response, their complaint can be reviewed at Stage 2. This involves review of the issue by a senior officer within another service, usually the Complaints Manager. In order for the complaint to be reviewed, the complainant must write within 30 working days
- 11.11. The leaflet 'Your right to a review- Stage 2 Complaints' asks the complainant to send their request directly to the Complaints Manager, but staff in the service which dealt with the original complaint may also receive a letter expressing dissatisfaction with the Stage 1 response. All such letters should be treated as a request for a Stage 2 review.
- 11.12. Stage 2 reviews should always be monitored by the Complaints Team. They should be acknowledged within 3 working days of receipt. Standard wording is provided by the Complaints team.
- 11.13. The senior officer or Complaints Manager should respond to the complainant setting out the result of the review within 25 working days of receipt. In the event that the review cannot be completed within this period, for example due to periods of sickness or annual leave, then an interim response must be provided.



11.14. When the senior officer provides a final response it must be made clear that if the complainant remains dissatisfied then they have the right to refer their complaint directly to the Local Government and Social Care Ombudsman (LGO) for an independent review. A leaflet on the Ombudsman's role or a link to the LGO website should be supplied. <http://www.lgo.org.uk/> .

Local Government and Social Care Ombudsman (Stage 3)

11.15. Once the complainant has received a response at Stage 2 they may then refer the complaint on to the Local Government and Social Care Ombudsman (LGO) for an independent decision if they are still unhappy with the resolution offered.

11.16. The Ombudsman looks for maladministration that causes personal injustice – a fault in the way the Council has or has not done something which has created a difficulty personally for the individual. The Ombudsman cannot question whether a council's decision or action is right or wrong simply because the complainant disagrees with it.

11.17. Maladministration can be identified if the council:

- made a mistake;
- took too long to do something;
- did not follow its own rules or the law;
- broke its promises;
- treated the complainant unfairly;
- gave the complainant the wrong information; or
- did not make a decision in the right way (for example, failed to follow the right procedures, did not consider relevant information or wrongly considered irrelevant information);

11.18. Injustice can be identified if the council's maladministration meant that:

- the complainant suffered financial loss;
- the complainant was put to a lot of avoidable expense, trouble or inconvenience or suffered avoidable uncertainty or stress;

11.19. The Ombudsman might not investigate a complaint if they consider that the injustice is only slight, or if the council has taken or has indicated it is willing to take, satisfactory action to resolve the complaint. In addition the Ombudsman is unlikely to investigate a complaint where:

- it occurred over 12 months ago and the complainant had not previously written to the Ombudsman or a councillor;
- it is covered by another appeal process such as a tribunal, government minister, or a court claim;
- an appeal has already been made to a tribunal, government minister, or the courts;
- the complaint affects all or most of the people living in the council's area, for example, a complaint that the Council has wasted public money;
- the complaint is about court proceedings including evidence given in court, or the actions and decisions by the council and court staff in these proceedings;

- personnel matter where the complainant is a member of staff employed by the council;
- the internal management of schools and colleges (some aspects of the provision required for SEN statemented children can be considered);
- some commercial or contractual matters with the council

11.20. Any queries regarding the role of the Local Government and Social Care Ombudsman should be referred to the Complaints Manager, who is the link officer responsible for direct liaison.

## **12. Further information**

12.1. Copies of the 'Complaint leaflet', 'Your Right to a review- Stage 2 Complaints' and the staff guide 'Corporate Complaints: Guidance for Staff' are available on the complaints page on the website <https://info.westberks.gov.uk/complaints> and the intranet <http://intranet/index.aspx?articleid=32582>

12.2. The Protection of Staff Policy and the Guidance on Managing Violence and Aggression against Staff can be found here:  
<http://intranet/index.aspx?articleid=32953>