



COMPLAINTS PROCEDURE

The Local Government Ombudsman (LGO) is responsible for handling complaints against principal authorities and some other public sector organisations.

The LGO has no jurisdiction in respect of The Danby Group Parish Council (DGPC) except where it is:

(i) Working jointly with a principal authority through a joint committee which includes representatives of the principal authority

or

(ii) Exercising the functions of a principal authority.

An explanation of the process of complaints to the LGO is set out below.

The LGO has produced guidance on the subject of complaints procedures for principal authorities. A copy of the full guidance may be obtained from the LGO's website via the following link <http://www.lgo.org.uk/publications/guidance-notes>

In the context of a complaint against a principal authority, the LGO offers the following definition:

'A complaint is an expression of dissatisfactionabout 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.'

A complaint against the DGPC may arise for the reasons given above. It may also be triggered by an allegation of administrative fault such as not following procedures or standing orders, inadequate service, no service,

The general power of competence (ss.1-8 Localism Act 2011) provides statutory authority for a council which is eligible to exercise the power of competence (Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012/965) to offer a range of remedies.

If the remedy offered by the council facilitates, or is conducive or incidental to the exercise of the council's statutory functions or powers, any local council may rely on s.111(1) of the Local Government Act 1972.

OUTLINE COMPLAINTS PROCEDURE **FOR USE IN COMPLAINTS AGAINST THE DGPC**

All formal complaints against the DGPC must be communicated in writing, (there is no standard Complaints Form for this process) and the complainant should state in as much detail as possible who or what she / he is complaining about and their desired outcome.

To facilitate effective handling of a complaint the complainant **must** provide their full name and address and contact details. Where proper contact details are not provided complaints will be disregarded.

If not initially stated, upon receipt the complainant will be asked and must state at the outset whether she/he wants the complaint to be treated confidentially.

(It is unlikely that the complainant will waive confidentiality. Even if she / 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.)

The DGPC's complaints procedure is published on the Parish Council's website and confirms the following information.

- The requirement to submit a complaint in writing.
- The postal address and / or email that the complaint must be sent to. In most cases, it will be appropriate for the complaint to be addressed to the Clerk. If

the complaint concerns the Clerk, it should be sent to the Chairman of the Council. (Thereafter a committee or sub-committee may be established for the purposes of investigating / determining the complaint).

- That receipt of the complaint will be acknowledged in writing (including e-mail) within 14 days.
- Who will be dealing with the complaint (e.g. the Clerk or complaints sub-committee).
- The timeframe for investigating the complaint. (This may vary depending upon the nature of the complaint).
- Whether there is an opportunity for the complainant to make verbal representations (and bring a friend when doing so) and when this will occur. (Not applicable in all circumstances).
- The timeframe for determining the complaint, (this may vary depending upon the nature of the complaint, but in all but exceptional cases should be within 56 days.
- If it is necessary to extend the timeframe for dealing with the complaint the complainant will be informed of the reasons in writing before the expiration of 56 days.
- There is no appeal process.

Receipt of the complaint

The clerk (or if the complaint concerns them, the Chairman of the Council or complaints sub-committee) shall:

- Acknowledge receipt of the complaint in writing within 14 days;
- Confirm to the complainant if the complaint will be treated as confidential (which is the most likely to be the case) and
- Confirm the next steps in the complaints procedure.

Investigating the complaint

The Council will need to investigate the facts of the complaint and collate relevant evidence.

If the nature of the complaint is such that it would be beneficial to hear verbal representations, the complainant should be invited to a meeting with the clerk, or as the case may be, a meeting of the complaints sub-committee.

If the Clerk / complaints sub-committee believe a meeting with the complainant would be beneficial then before the meeting and within 14 days.

- (i) the complainant shall provide the Clerk or, or as the case may be, the complaints sub-committee with any new information or other evidence relevant to the complaint and
- (ii) (ii) the Clerk or as the case may be, complaints sub-committee shall provide the complainant with new information or evidence relevant to the complaint.

Meetings with the complainant (if applicable)

At a meeting with the Clerk, or as the case may be, a meeting of the complaints sub-committee, the Clerk or, as the case may be, chairman of the meeting should explain how the meeting will proceed. ie

- The complainant should outline the grounds for complaint. Questions may be asked of the complainant.
- The Clerk or if the complaint is about the Clerk, a member will have an opportunity to explain the Council's position and questions may be asked by the complainant.
- The Clerk, or as the case may be, the complaints sub-committee and then the complainant should be offered the opportunity to summarise their respective positions.
- The complainant should be advised when a decision about the complaint is likely to be made and when it is likely to be communicated to them.

After the complaint has been decided

Within 56 days, the Council will write to the complainant to confirm whether or not it has upheld the complaint.

Reasons in support of the decision together with details of any action to be taken by the Council if this appropriate will be stated.

The communication will also remind the complainant that there is no right of appeal.

COMPLAINING TO THE LOCAL GOVERNMENT OMBUDSMAN (LGO)

The relevant legislation is the Local Government Act 1974 ('the 1974 Act').

The LGO has no jurisdiction in respect of a local council unless it is working jointly with a principal authority through a joint committee which includes representatives of the principal authority (section 25(4)(b)) of the 1974 Act) or it is exercising the functions of a principal authority(section 25(7) of the 1974 Act).

The key points to remember are of this legislation are as follows:

Parish councils are unable to lodge complaints as a public body (section 27(1) of the 1974 Act) about another local authority or public body defined at section 25 of the 1974 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.

NB

- 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.

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 1974 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.'

Adopted by the Danby Group Parish Council 31st August 2016