Local Government & Social Care OMBUDSMAN

Complaint Handling Code - Frequently Asked Questions

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Background

Introduction

We have issued a Complaint Handling Code to provide a single standard for complaint handling by local councils in areas not already covered by statutory complaint processes.

The principles, process and timescales in this Code are aligned with the Complaint Handling Code issued by the Housing Ombudsman. This means that organisations who fall under the jurisdiction of both Ombudsmen should be able to provide a co-ordinated complaint handling process across services covered by both Codes.

We have the power to issue 'advice and guidance about good administrative practice' to organisations we deal with under section 23(12A) of the Local Government Act 1974. We are issuing the Code under this statutory power following consultation with local councils, the public and other relevant bodies and organisations. We expect local councils to consider the Code when developing policies and procedures in relation to complaint handling as well as when considering individual complaints. Local councils should follow the Code unless there are good reasons not to.

The Code does not change our approach to considering complaints or our powers. We can recommend an organisation takes action to improve services or provide a personal remedy where it finds fault causing injustice to an individual or group of individuals. Unlike the Housing Ombudsman, we have no specific responsibility for monitoring compliance with the Code in addition to our role investigating complaints of maladministration and service failure.

We will develop a good practice guide to go alongside the Code for local councils in partnership with the local government sector during 2024/25. In the meantime we have produced the following brief information, in the form of frequently asked questions, to assist local councils who may be in a position to adopt the Code quickly and to help others with the early planning.

The Code has been issued for local councils but we will consider whether it should be issued to other organisations in our jurisdiction in future. In the meantime other organisations may consider the Code as good practice for effective complaint handling unless they are already subject to statutory complaints processes.

Which organisations will the Code apply to?

We have issued the Code for local councils:

- > County Councils;
- > Unitary Authorities;
- > London Boroughs;
- > Metropolitan Districts; and
- > District Councils.

Other organisations may consider the Code as good practice unless there are statutory complaints processes in place. We may issue the Code to other organisations in future and will consult on this at the time.

What types of complaints will the Code apply to?

The Code should be considered in relation to any complaint made about a local council where there isn't already a statutory process in place for dealing with complaints.

So, in reality, this means that complaints dealt with under the Children Act 1989 Representations Procedure (England) Regulations 2006 and The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 will not be affected by the Code. It will also exclude some complaints about public health matters which are covered by The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

Complaints about behaviour and conduct of elected officials are not covered by the Code as these are dealt with under section 28 of the Localism Act 2011. However, councils may deal with complaints about how these complaints were considered and/or investigated under the Code. Complaints about the behaviour and conduct of elected officials are normally dealt with by the Monitoring Officer. Given the seniority of the Monitoring Officer it may be appropriate to issue a first and final response at stage 2 under the Code unless any exclusions apply.

When should councils start using the Code?

We expect councils to start considering the Code as soon as they are able to do so. We appreciate adopting the Code represents more of a challenge to some councils than others and want to give all organisations the best opportunity to adopt it successfully.

We do not intend on considering the Code as part of our casework processes until 2026/27 at the earliest. However we will be working with local councils to support work to adopt the Code throughout 2024/25 and 2025/26 by developing an accompanying good practice guide and providing training and resources.

It is not our intention to start focussing solely on complaint handling by local councils in our casework. We will still focus on the substantive matter complained of when considering complaints.

Using the Code

Does the Council have to comply with the Code?

We expect councils to consider the Code when developing or reviewing complaints policies and procedures and when responding to individual complaints. Councils should follow the Code unless there are good reasons not to.

What is a 'good reason' for not following the Code?

If a council decides not to follow the Code through its policies and procedures this could be set out in the self-assessment or another report to the relevant Member of scrutiny committee explaining the council's reasons for this.

When a council is temporarily unable to comply with the Code through its policies or procedures it could acknowledge this in its self-assessment or report to the relevant Member or scrutiny committee.

There is no exhaustive list of good reasons for departing from the Code. However, when reaching a decision on whether this is appropriate councils may find it helpful to consider our Principles of Good Administrative Practice.

Some examples of when it may be appropriate to depart from the Code temporarily include:

Industrial action disrupts core services such as waste collection resulting in high volume of complaints. Councils may, for example, decide to only consider complaints from people who are vulnerable or may be significantly adversely affected by the action and send standard responses to other complainants signposting them to the Ombudsman. The council should have a plan for how it intends to deal with complaints during the period of industrial action and a plan of how and when it will return to a position where it complies with the Code.

- > Significant and unusual pressure on resources in a specific service area may result in a backlog of complaints or other service requests. Councils may decide to extend timescales for responding to complaints or adopt a one stage complaints process on a temporary basis. The council should have a plan of how it will respond to the underlying issues causing pressure on services and a timescale for returning to a position where it complies with the Code.
- > Cyber attack resulting in loss of access to systems. The council may decide to temporarily extend timescales for considering complaints to allow time to gather other supporting evidence. It should have a plan for dealing with the loss of access to systems and a timescale for returning to a position where it complies with the Code.

Where a council is temporarily unable to comply with the Code we consider it good practice to publicise details of how it will deal with complaints on its website and inform the Ombudsman. The purpose of informing the Ombudsman is not so we can monitor the council's actions but so we can understand the reasons for any potential increase in complaints we receive and provide advice and support to the council on best practice.

There is no exhaustive list of when it may be appropriate to depart from the Code in individual cases. However, the following are examples of where this may be appropriate:

 The complaint is complex and involves multiple services or bodies and the council needs time to gather evidence.
In such cases it may be appropriate to extend the timescale for responding to the complaint. This should be explained to the complainant as soon as possible and they should be kept informed of progress at suitable intervals.

- The complaint is from a large organisation seeking significant compensation for loss of income due to the actions of a council. Councils may decide such claims are best dealt with through the courts. Individuals will sometimes ask for compensation when making complaints however it would not usually be appropriate to expect them to go to court and most complaints from individuals and small organisations/ businesses are best dealt with through the complaints process.
- The complaint is about the actions of a senior officer such as a head of service or the Chief Executive. In these cases, it may be appropriate to issue the first and final response at stage 2 as it may prove difficult to identify someone appropriate to handle the second stage of the complaint.

In all cases we consider it good practice for councils to inform individuals they are departing from the Code or their policies and procedures and explain the reasons for this.

The complaints process

Do we have to adopt the Code's definition of a 'service request'?

The Code gives councils the flexibility to define what constitutes a 'service request'.

We have included a suggested definition. Councils may find this helpful when developing their own definition.

Should we treat all expressions of dissatisfaction as a complaint?

The Code says service requests may contain expressions of dissatisfaction but that councils should have an opportunity to respond to a service request before a complaint is made (paragraph 1.7). Councils should be able to deal with the majority of issues raised as normal service requests without the need for it to be escalated to the complaints process.

The Code also says when "an individual expresses dissatisfaction that could meet the criteria for a complaint as set out in section 1 of the Code, they should be given the opportunity to make a complaint" (paragraph 5.3). We understand that many requests for council services are now managed by automated systems (eg reporting highway repair issues). We would not expect councils to review every service request to check for complaints, however it would be good practice to include a link to the council's complaints process in any automated acknowledgements sent in response to service requests. This provides individuals with the option of raising a complaint should they wish to do so.

What are good reasons for accepting a late complaint outside 12 months of the issue occurring?

The Code already explains councils "should accept complaints referred to them within 12 months of the issue occurring, or the individual becoming aware of the issue". It goes on to say that councils "should consider whether to apply discretion to accept complaints made outside this time limit where there are good reasons to do so."

We believe 12 months is a suitable period within which a complaint should be raised. It also follows our own jurisdiction. If a council were to place a shorter time limit on complaints being raised there is a risk it may miss an opportunity to resolve a matter which is then considered by the Ombudsman.

If a council decides there are no good reasons for accepting a complaint outside of 12 months we would expect the complainant to be signposted to the Ombudsman.

The Code says our policy must set out circumstances in which a matter might not be considered or escalated and that these should be reasonable and not deny access to redress. What should this include?

We will develop some suggested exclusions through our work in 2024/25 and include further details when we produce the final guide for local councils.

In the meantime the following is an initial list of exclusions councils could consider applying to complaints received:

The person complaining or their representative has already commenced legal action about the matter. This would normally mean they have submitted papers to court rather than issuing a pre-action letter.

- > The person complaining or their representative has a statutory right of appeal to a tribunal, a government minister or court about the matter and it was reasonable for them to exercise that right of appeal. Most decisions or actions taken by a council may be subject to judicial review in court, however this is a remedy of last resort. In most cases it would not be reasonable to expect a member of the public to pursue this due to the costs. The Courts have considered the suitability of judicial review as an alternative legal remedy and decided that complaining to the Ombudsman is generally more appropriate (R v Commission for Local Administration ex parte Liverpool City Council (2001) 1 All ER 462 (CA)).
- > The person complaining or their representative can appeal the council's decision or actions though the council's internal appeal or review process. Councils often have internal appeal and review processes for matters such as housing allocation decisions and Blue Badge applications where there are no subsequent specified rights of appeal to tribunal, a government minister or court. Councils may decide to allow individuals to complain about the appeal/review decision but it would be good practice for these complaints to be considered at stage 2 of the complaints process to avoid making the overall process unduly long. If a council decides these matters are not suitable for its complaints process, we would expect individuals to be signposted to the Ombudsman when sending the appeal/review decision.
- The matter complained has already been subject to appeal or is currently subject to an appeal with a tribunal, minister or court even if the person complaining or their representative is not the appellant. Councils do not have the power to

overturn decisions made by statutory appeal bodies and it would not generally be appropriate for councils to consider complaints which may prejudice an ongoing appeal. Councils may wish to consider a complaint once any concurrent action has finished.

The person complaining or their representative has previously had a complaint about the same matter considered under the council's complaints policy or by the Ombudsman. If a complaint has already been dealt with by the council or the Ombudsman, there is no need for it to be considered again. However, where the complaint relates to ongoing matters it would be good practice for the council to council give careful consideration to whether it should accept a new complaint based on new information or a change in circumstances.

Complaints about personnel matters including recruitment, pay, grievances, removals, discipline and pensions. Complaints from staff about matters relating to their employment should be dealt with through personnel policies. Members of the public may also complain about the actions or conduct of council employees. These should be dealt with through the council's complaints procedures. Members of the public will sometimes ask for disciplinary action to be taken as part of the resolution of the complaint. It is for a council to decide whether individual action against an employee is required following investigation of a complaint, however the details of any action is the personal data of the employee and so should not be shared with the complainant.

This is not intended to provide an exhaustive list. Councils should give careful consideration to any other reasons for excluding complaints before including these in policies and procedures. If a council decides to exclude a complaint from its complaints process, we would expect it to signpost the individual to us. We already consider failure to signpost to the Ombudsman fault in certain circumstances.

Do councils have to accept complaints where the complainant disagrees with the council's decision rather than how we have delivered a service?

If an individual has a statutory right of appeal we would not usually accept a complaint unless it was unreasonable to expect the person to use that appeal right.

Some individuals may have appeal or review rights through the council's own processes that do not come with accompanying rights of appeal to court, a government minister or tribunal. In these cases we would usually expect the council to either deal with a complaint about how the decision was made or signpost to the Ombudsman. This was our approach to such complaints before the Code was introduced and we do not intend on changing it.

If the individual complaining does not raise any concerns about how the decision was taken, and merely disagrees with the outcome, the council should give careful consideration to the matter before deciding to exclude this from the complaints process. The complaints process is not an appeal process, however it does provide the council with an opportunity to consider whether the decision has been taken properly before signposting the individual to the Ombudsman. It has always been our expectation that individuals are signposted to the Ombudsman when a council declines to accept a complaint, even if the matter may be outside of our jurisdiction. We currently deal with complaints and enquiries received through MPs or councillors under a different process (eg Member Enquiries). Is the expectation that these should be dealt with under the complaints process?

MP and councillor enquiries may be dealt with as 'service requests' even when they contain an expression of dissatisfaction. Therefore councils may still respond to member enquiries in the same way as they do now.

However, it would be good practice to signpost MPs and councillors to the complaints procedure when a council responds to an enquiry which contains an expression of dissatisfaction.

MPs and councillors should also be able to raise complaints on behalf of constituents where they have consent to do so. If a council is unclear whether the contact is an enquiry or complaint it should speak to the MP or councillor to clarify their expectations.

As a general principal members of the public should receive the same standard of service and response regardless of whether they raise a service request or complaint directly with the council or through an elected official.

What does it mean when the Code says individuals must be able to raise complaints through 'different channels'. Does this include social media?

Over the past decade council services have been transformed by technology providing members of the public with more ways to make contact including outside office hours. Many councils have also moved to prioritise online and digital services as the primary way of delivering services and providing information to the public in order to make best use of their limited resources.

For the majority of people, digital services provide a convenient way of reporting issues and finding out information about local services. However, some individuals find accessing digital services challenging and it is important that councils provide and publicise different ways in which the public can make contact.

This is a particular challenge where someone's disabilities are less immediately obvious or where adjustments require changes to standardised and automated service models.

However, under the Equality Act 2010 the duty to make reasonable adjustments in the context of service provision is "anticipatory" and the law requires councils to consider the potential needs of individuals who may need to access their services, including when making complaints.

Social media is often an important means for councils to communicate with local people. Councils may wish to consider having clear policies and/or procedures regarding how they will respond to service requests and complaints made through social media. The Code says complaints processes must be accessible, but complaints officers don't have specialised training in responding to a wide range of mental and physical health needs or disabilities. What are the Ombudsman's expectations for this?

The Code captures existing duties to make reasonable adjustments under the Equality Act 2010. This is an anticipatory duty and so councils should already ensure that complaints processes are accessible for anyone who may need to access them.

Officers dealing with the public should already have suitable training to understand this important duty and be able to meet the needs of people who are likely to need to raise a complaint.

We believe it is good practice to ask individuals if they require any changes to how services are delivered as part of an initial contact. This can be done through automated services or over the telephone. This provides individuals with an opportunity to request any reasonable adjustments they may need.

What is a 'suitable representative'? Do representatives need consent from people they represent in order to make a complaint?

There is more information about consent and the lawful processing of data on the Information Commissioner's website.

Where an individual complains about the council's actions in relation to a third party (eg planning disputes, noise complaints), the council does not need the third party's consent to process their data as part of its consideration of the complaint. However, the council may be restricted in what information it can share in its complaint response.

Will the Code apply to organisations and companies acting on behalf of councils?

We consider actions of contractors or other bodies acting on behalf of councils to be the actions of the council. This is supported by section 25(6) & (7) of the Local Government Act 1974.

Councils should have clear arrangements for complaint handling in any contract or agreement under which its partners provide public services.

We will not apply the Code to complaints about care providers acting on behalf of councils (eg where care has been commissioned by a council) as these complaints come under The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and are not affected by the Code.

Does the council need a centralised complaints team for dealing with complaints? How should complaints teams be structured?

The Code says local councils should have "designated, sufficient resource" with responsibility for complaint handling. This gives councils flexibility to design complaints services to meet local needs.

In some councils this may mean a centralised complaints team that responds to all complaints while in others, it may be that complaints are dealt with by individual service areas with centralised oversight of performance and processes. We plan on working with councils to capture different models of good practice.

The Code says complaints should be "seen as a core service and resourced appropriately". This means councils should ensure they have capacity to deal with complaints received in line with the timescales and practices set out in their policies and procedures.

The Code says the person responding to the complaint must clarify the complaint with the individual. Does this mean we must speak to every person who makes a complaint?

In most cases the complaint will be clear and it will not be necessary to speak to the person complaining. However we believe there are benefits in speaking to complainants to help manage expectations about the complaints process and gain a better understanding of the context behind the complaint. We appreciate that this is not always possible given the volume of complaints councils receive but councils should remain open to speaking with individuals who complain where it would support the processing of the complaint.

Councils may wish to design complaint forms to ask appropriate questions of people raising complaints to help individuals explain their concerns. For example, a complaint form could ask the following questions:

- > What do you think has gone wrong?
- > What impact has this had on you?
- > What action would you like us to take?

Not all complaints will be clear and this can often be a sign that an individual requires support to help them make their complaint. In these cases councils should consider trying to contact the individual or their representative to clarify any aspects of the complaint that are unclear.

In a small number of cases the individual may decline to make their reasons for the complaint clear. In these cases councils could proceed with the information they have or, if this is not possible, decline to accept the complaint under the 'comply or explain' principle and signpost to the Ombudsman.

The Code says we have to give the individual 'a fair chance to set out their position'. What does this mean?

In most cases individuals will have a fair chance to set out their position when making a complaint by email or webform. However, in some cases the council may wish to consider speaking to the individual if the reason for their complaint is unclear.

Complaint stages

Can the council have a one or three stage complaints process? Are we required to only have a two-stage process?

We expect councils to consider the Code when developing policies and procedures and when responding to individual complaints. Local councils should follow the Code unless there are good reasons not to.

We believe a two-stage complaint process provides a prompt process for responding to complaints. It allows councils to carry out a final check on how complaints have been considered and responded to before they come to the Ombudsman.

If a council decides to operate a one or three stage complaints process we would expect it to have good reasons for doing so supported by evidence and for those reasons to be clearly recorded in a timely manner.

What is the 'date the complaint is received'? What happens if the complaint is received after working hours, at a weekend or bank holiday?

The Code says the time to acknowledge complaints starts from the date received rather than the date it is logged on the system. Councils would not be expected to deal with complaints outside normal working hours and so complaints received outside of these times may be recorded as received on the next working day. However, this may not always be possible, such as where systems for logging complaints are automated. Councils should take a sensible and pragmatic approach to monitoring timescales and it is unlikely that differences in how date received is recorded will result in significant variations in performance data.

Do we have to provide a formal written response to complaints at stage 1?

Councils can take a flexible approach to responding to complaints at stage 1. The Code says a response should be provided to the individual when the answer to the complaint is known. In some cases an acknowledgement and response may be provided immediately over the telephone and the complainant may be satisfied with this. However, we consider it good practice to follow this up with an e-mail or letter providing brief details of the complaint, response, any remedy and the right to escalate the complaint to stage 2.

Councils may also decide to send standard responses to stage 1 complaints where there are known issues affecting service delivery or where repeated complaints are made about the same issue by different individuals. This allows the council to respond to complaints quickly whilst also providing individuals with an explanation about the issue they are raising. Any standard response should include information about how to escalate the complaint to stage 2.

Although there are separate timescales for acknowledging and responding to complaints both may happen at the same time but this should happen within five working days of the complaint being received.

Councils should log the details of complaints received at stage 1, the outcome of the complaint and a record that the individual complaining was provided with details of how to escalate the complaint if they remained unhappy. This is supported by our principles of good administrative practice which says councils should keep "proper and appropriate records". The Code says complainants do not have to say why they disagree with a stage 1 response to have their complaint considered at stage 2. Understanding why a complainant is unhappy with a stage 1 response helps us to process complaints at stage 2 so why are we not allowed to do this?

The Code says that organisations may make reasonable efforts to understand why a complainant remains unhappy after a stage 1 response so councils are able to seek clarification.

However, we know that in some cases complainants will not make this clear or may refuse to provide a further explanation.

In cases where the complainant does not make their reasons for escalating the complaint clear the council may simply consider whether the stage 1 response is appropriate and then signpost to the Ombudsman.

The Code says we need to provide individuals with details of the Ombudsman where we fail to respond within the timescales set out in the Code. Do we need to provide your contact details?

The purpose of this is to raise awareness of the Ombudsman. Councils should provide a link to our website to allow individuals to explore information about our services should they wish to do so.

Where there are delays in a council responding to a complaint individuals will often contact us for advice. Signposting to information on our website is a good way of helping individuals understand the complaints process and that there is somewhere they can go if they are unhappy with the council's response. If we receive a complaint which falls under a statutory process (eg children's services) but also contains elements regarding other services such as homeless etc, should this be dealt with as separate complaints?

Where a statutory complaint contains other related complaints that do not fall under the statutory process but are covered by the Code, the local council may wish to consider whether there are advantages in accepting these into a single investigation.

The complainant should be told which procedure their complaint is being dealt with under and provided with an explanation as to why this is under the "comply or explain" principles set out in the Code.

Section 7.8 of "Getting the best from complaints (2006)" sets out statutory guidance for dealing with representations made under Children Act 1989 Representations Procedure (England) Regulations 2006, and provides guidance on this in relation to complaints about children's services.

Scrutiny & oversight

Does the council have to complete a self-assessment?

When developing their complaints policies and processes, councils should consider whether to implement a self-assessment process.

We believe the self-assessment is an important tool to support councils to check they are complying with the Code and to help elected officials understand what is expected and the outcome of any quality assurance checks undertaken to check compliance.

The self-assessment also provides councils with a mechanism for clearly recording areas where they are not complying with the Code, the reasons for this, and any plans for returning to a position where they are able to comply.

Who would be considered a 'suitably senior person' for overseeing complaint handling performance?

We want to give councils the flexibility to decide who should fulfil this role.

Council Monitoring Officers have a duty to report to the council when we make a finding of maladministration or service failure (which we refer to as fault) about its actions. The law also says Monitoring Officers should prepare a report for the council where there has been:

- * "a contravention by the authority, by any committee, [or sub-committee of the authority, by any person holding any office or employment under the authority] or by any such joint committee of any enactment or rule of law"; or
- * "a contravention by the relevant authority's executive or any person on behalf of the executive, of any enactment or rule of law(Section 5/5A Local Government and Housing Act 1989).

Monitoring complaint outcomes supports this important function. Therefore, it may be appropriate for the Monitoring Officer to carry out this role.

However, there may be good reasons for the role to sit with the person who manages the council's complaints team or a relevant head of service or director.

Whoever carries out the role should be able to analyse and report complaints performance for the whole organisation and have a clear channel to be able to report to the Chief Executive and Monitoring Officer.

Who should carry out the role of Member Responsible for Complaints? Does this have to be a named Councillor?

Local councils have the freedom to choose who is best suited to fill the roles set out in the Code depending on the structure of the council and its constitution.

The Local Government Act 2000 sets out the governance models that must be operated by local authorities. These are:

- > a mayor and cabinet executive
- > a leader and cabinet executive
- > the committee system
- or other arrangements approved by the Secretary of State

Oversight of complaint performance does not have to be the sole responsibility of a Member or committee and it may sit within a basket of other responsibilities.

If complaint handling is already part of the scrutiny of specific services, then there is no reason why this cannot continue, and indeed this is something we would encourage. However, such scrutiny should happen alongside a centralised mechanism for scrutinising performance across the whole council. The Code says the council should produce a complaints performance and service improvement report every year about its complaint handling performance. Why are you asking us to do this?

Council Monitoring Officers have a duty to report to the council when we make a finding of maladministration or service failure (which we refer to as fault) about its actions as well as where the council acts in 'contravention' of the law (Section 5/5A Local Government and Housing Act 1989).

We believe that the reporting requirements in the Code support this important duty.

We also believe that good complaint handling and the ability to learn from complaints is a measure of corporate health within an organisation. Proper scrutiny of complaint handling performance supports good corporate governance and demonstrates transparency to the public.

We intend to publish an accompanying guide on best practice for producing an annual complaints performance and service improvement report, including what data could be recorded and reported.

What key performance indicators should be included in our complaints performance and service improvement report?

We plan to work with the sector to develop a set of key performance indicators (KPIs) which will provide useful data for scrutiny and allow councils to compare performance against one another. Councils may also wish to develop their own KPIs depending on local circumstances.

Initially we suggest that councils record and report the following:

- > Number of complaints received at stage 1
- Outcome of complaints at stage 1 (eg upheld, partially upheld etc.)
- Average number of working days to respond to complaints at stage 1 following acknowledgement
- > Number of complaints escalated to stage 2
- Outcome of complaints at stage 2 (eg upheld, partially upheld etc)
- Average number of working days to respond to complaints at stage 2 following acknowledgement
- > Number of service improvements by service area or department

Ombudsman, training & further information

Will you provide training on how to use the Code?

Yes. We are developing training on applying the Code. Our current effective complaint handling course for local authorities is also already aligned with the principles of the Code.

Will you provide further guidance on how the Code should be used?

We intend to produce a guide for local authorities on using the Code. We intend on developing this with the sector through 2024/25.

We also intend on reviewing our existing good practice guides during this time to ensure they are aligned with the Code.

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