

# **Rushmere St Andrew Parish Council – Internal Note**

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## **CODE OF PRACTICE FOR LOCAL COUNCILS IN HANDLING COMPLAINTS (NALC LEGAL TOPIC NOTE 9)**

Pursuant to Local Government Act 1974, the Local Government Ombudsman (LGO) has no jurisdiction over parish and town councils in England. The question therefore arises as to what should happen if complaints are received about administration or procedures.

It will not be appropriate to deal with all complaints from members of the public under a complaints procedure. Councils should consider engaging other procedures/bodies in respect of the following types of complaint:

<b>Type of conduct</b>	<b>Refer to</b>
Financial irregularity	Local elector's statutory right to object Council's audit of accounts pursuant to s.16 Audit Commission Act 1998. On other matters, councils may need to consult their auditor / Audit Commission
Criminal activity	The Police
Member conduct	In England a complaint relating to a member's failure to comply with the Code of Conduct must be submitted to the standards committee of the relevant principal authority.
Employee conduct	Internal disciplinary procedure

s.82 of the Local Government Act 2000 gave the Secretary of State power to issue a code regarding the conduct of employees of local councils. In October 2008, the Government published a consultation paper in respect of the introduction of a model code of conduct for employees of local authorities in England.

### **Complaints Procedures for Local Councils**

The first task is to determine exactly what a complaint is. Sometimes the word 'complaint' is used by members of the public but sometimes it is not. A complaint is an expression of dissatisfaction by one or more members of the public about 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 good complaints system is:

- well publicised and easy to use;
- helpful and receptive;
- not adversarial;
- fair and objective;
- based on clear procedures and defined responsibilities;
- quick, thorough, rigorous and consistent;

- decisive and capable of putting things right where necessary;
- sensitive to the special needs and circumstances of the complainant;
- adequately resourced;
- fully supported by councillors and officers; and
- regularly analysed to spot patterns of complaint and lessons for service improvement.

The identity of a complainant should only be made known to those who need to consider a complaint. In local councils it may not be feasible to deal with complaints outside some sort of committee structure but, nevertheless, councils should take care to maintain confidentiality where circumstances demand (e.g. where matters concern financial or sensitive information or where third parties are concerned).

It is good practice to set deadlines for complaint handling and councils should not leave this open-ended. Clearly, some flexibility is required to deal with lengthier and more complex complaints and this could be reflected clearly in a complaints procedure.

The purpose of a complaints procedure is to put things right if things go wrong. Section 92 of the Local Government Act 2000 gives councils the power to make payment 'in cases of maladministration.' (Section 92 applies to local councils and the use of the word 'maladministration' is not linked to the use of the word by the ombudsman in this context). The full text of section 92 is as follows:

- '92.—** (1) Where a relevant authority consider—
- a. that action taken by or on behalf of the authority in the exercise of their functions amounts to, or may amount to, maladministration, and
  - b. that a person has been, or may have been, adversely affected by that action,

the authority may, if they think appropriate, make a payment to, or provide some other benefit for, that person.'

It is to be noted that parish councils have the power (i) to make a payment or (ii) to provide some other benefit where action amounts to or may amount to maladministration. 'Maladministration' is a broad concept. It has been described as including 'bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and so on'. The 'and so on' is important. Lord Denning said 'It would be a long and interesting list, clearly open-ended, covering the manner in which a decision is reached or discretion is exercised...' (*R v Commissioner for Local Administration ex parte Bradford City Council* [1979] 1 QB 287).

Councils may wish to establish a committee to deal with complaints. This avoids the need for the full council having to assemble and also makes the process less daunting for a complainant if they choose to attend a meeting in person.

[See Parish Council Document "1.29.10 Policy on Committees and Advisory Panels.doc" for guidance on establishing a 'Complaints Committee' to deal with complaints.]

The procedure as set out below is not appropriate for use where a complaint is made against an individual. Serious complaints relating to the conduct of an individual are dealt under the Code of Conduct. This procedure is designed for those complaints which cannot be satisfied by less formal measures or explanations provided to the complainant by the clerk (or other nominated officer) or chairman.

It may be that the clerk (or other nominated officer) at the meeting represents the position of the council. If the clerk (or other nominated officer) puts forward justification for the action or procedure complained of, he or she should not advise the council or committee, as they need to determine the matter themselves.

At all times, the rules of natural justice will apply. In other words, all parties should be treated fairly and the process should be reasonable, accessible and transparent.

## **PROCEDURE FOR DEALING WITH COMPLAINT**

### **Before the Meeting**

1. The complainant should be asked to put the complaint about the council's procedures or administration in writing to the clerk or other nominated officer.
2. If the complainant does not wish to put the complaint to the clerk or other nominated officer, he or she should be advised to address it to the chairman of the council.
3. The clerk or other nominated officer shall acknowledge receipt of the complaint and advise the complainant when the matter will be considered by the council or by the committee established for the purposes of hearing complaints. The complainant should also be advised whether the complaint will be treated as confidential or whether, for example, notice of it will be given in the usual way (if, for example, the complaint is to be heard by a committee).
4. The complainant shall be invited to attend a meeting and to bring with them a representative if they wish.
5. Seven clear working 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.

### **At the Meeting**

6. The council or Complaints Committee) shall consider whether the circumstances of the meeting warrant the exclusion of the public and the press. Any decision on a complaint shall be announced at the council meeting in public.
7. The chairman should introduce everyone and explain the procedure.
8. The complainant (or representative) should outline the grounds for complaint and, thereafter, questions may be asked by (i) the clerk or other nominated officer and then (ii), members.
9. The clerk or other nominated officer will have an opportunity to explain the council's position and questions may be asked by (i) the complainant and (ii), members.
10. The clerk or other nominated officer and then the complainant should be offered the opportunity to summarise their position.
11. The clerk or other nominated officer and the complainant should be asked to leave the room while members 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.
12. The clerk or other nominated officer and the complainant should be given the opportunity to wait for the decision but if the decision is unlikely to be finalised on that day they should be advised when the decision is likely to be made and when it is likely to be communicated to them.

## After the Meeting

16. The decision should be confirmed in writing within seven working days together with details of any action to be taken.
17. Should the complainant not accept the decision of Rushmere St Andrew Parish Council, it should be noted that the council has no local escalation procedure assumed or defined.

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(NOTE: This document has been converted from NALC Legal topic Note 09 - Handling Complaints)

<b>Doc. History:</b>	Issue 1;	11-09-03	Adopted by Parish Council
	Issue 2;	06-10-03	Converted from NALC Legal Topic Note 56, for inclusion in PC Notes Compendium doc
	Issue3;	14-04-11	Reworked to comply with NALC Legal Topic Note 09 which replaced LTN 56 and now included in Councillors Handbook with new filing reference.