

# The Local Government Ombudsman

**Adviceline 0845 602 1983**

**www.lgo.org.uk**



The Commission for  
Local Administration in England

**The following information is intended as general guidance for advisers. If you are in any doubt about whether the Local Government Ombudsman may consider a complaint please telephone us. A complaint referral form follows this information.**

The Local Government Ombudsman investigates complaints about services provided by councils as well as **some other organisations**. This includes problems with:

- Housing benefit or council tax benefit claims or payments
- Council housing repairs
- Homelessness applications
- Rent arrears / possession action
- Council tax bills, arrears and recovery action
- Housing allocations and transfers
- Neighbour nuisance
- Social services
- School admissions and exclusions
- Special educational needs
- Planning

*This list is by no means exhaustive.*

The Ombudsman can investigate complaints made by or on behalf of members of the public. This includes not just complaints from individuals but also groups of people and a wide range of organisations. There could, for example, be circumstances where your own organisation might have a complaint about the administrative actions of a council that the Ombudsman could consider. But as an adviser you will more usually be involved in making complaints on behalf of individual members of the public or in helping your clients to make complaints on their own behalf. These notes, therefore, focus primarily on assisting you in that role, although the same considerations described in this guidance would apply to complaints made by organisations. If you would like more advice on whether the Ombudsman would consider a complaint made by or on behalf of an organisation please phone our Adviceline on **0845 602 1983**. Explain that you are an adviser calling on behalf of a client and ask to be put through to an investigator to discuss the case in more detail.

If the complaint concerns an alleged breach of an adopted code of conduct by a local councillor you may wish to refer it to the Standards Board for England. For information about the Standards Board see 7.1.27.20.(B) How to make a complaint.

## **Has the Council done something wrong? (Maladministration)**

The law says the Ombudsman must look for 'maladministration'. The definition of maladministration is very wide and can include:

- delay
- incorrect action or failure to take any action
- failure to follow procedures or the law
- failure to provide information
- inadequate record-keeping
- failure to investigate
- failure to reply
- misleading or inaccurate statements
- inadequate liaison
- inadequate consultation
- broken promises

The Ombudsman has no power to criticise the merits of a decision which has been properly taken simply because someone may disagree with it. He or she will however look at the way the decision was made.

### **Has the fault affected your client in some way? (Injustice)**

There is no fixed definition of injustice but it can include:

- hurt feelings, distress, worry, or inconvenience
- loss of right or amenity
- financial loss or unnecessary expense
- time and trouble in pursuing a justified complaint
- not receiving a service

The injustice must arise from the fault by the Council, for example:

- delay in processing a housing benefit claim or appeal leading to possession action for rent arrears
- delay in carrying out repairs leading to a period of unsatisfactory housing conditions
- failure to investigate or respond to complaints of noise nuisance causing excessive disturbance
- recovering an overpayment of council tax benefit while an appeal is outstanding, leading to recovery action by bailiffs

### **Can the Ombudsman investigate this complaint?**

By law there are certain things that the Ombudsman cannot investigate at all. He or she has no discretion in these areas, regardless of any fault by the Council. These include:

- the conduct of court proceedings
- some contractual and commercial transactions (*please seek advice if in any doubt*)
- personnel matters (*about an individual's employment – including pay or dismissal*)
- the internal management of a school or college

There are **two** particularly complex areas of the law where sometimes the Ombudsman may investigate and sometimes he or she may not. These are set out in a. and b. below

#### **a. Where your client has or had an alternative remedy by taking court action against a council, or by appealing to a statutory tribunal, or by making an appeal to a Government Minister.**

#### **Where an alternative right or remedy has already been used.**

Where someone has already:

- started court proceedings against a council (eg by taking an action for disrepair in the courts or submitting an application seeking leave for Judicial Review of a decision); or
  - appealed, or started an appeal to a Government Minister (eg appealed to the Secretary of State against a refusal of planning permission); or
  - appealed, or started an appeal to a statutory tribunal (eg appealed to a Parking Adjudicator [statutory tribunal] about a Penalty Charge Notice);
- the Ombudsman cannot consider the decision that has or will be the subject of court action or appeal.

Please note that although the Ombudsman cannot consider the matter which is, or has been put before the court, Government Minister, or statutory tribunal, there may be other aspects of the complaint which can be separated and so may be investigated by the Ombudsman. These include:

- Complaints about delays in making decisions about housing benefit entitlement or in forwarding appeals to the Appeals Service and the injustice that may cause.
- A failure to respond to a request for a statement of educational need (SEN) or a delay in completing it.
- Where a Liability Order has been issued for non-payment of council tax the Ombudsman may consider complaints about the way in which the debt is collected.

**Where an alternative right or remedy is/was available but has not been used.**

Where someone has or had an alternative right or remedy available to them (irrespective of whether the action may or may not have succeeded) but **has not** started court proceedings or an appeal then the Ombudsman will consider whether or not to investigate their complaint. If the Ombudsman thinks that your client could not reasonably be expected to use or have used the available alternative remedy then he or she may decide to investigate. Each case is considered on its own merits but as a general guide the Ombudsman may consider investigating in the following circumstances:

- Where someone was not aware of their alternative right or remedy and the Council had unreasonably failed to inform them of it;
- Where someone has been prevented from appealing due to ill health or through absence;
- Where there is no possibility of making a late appeal and there are good reasons why your client did not appeal earlier;
- Where it would be unreasonable to expect someone to take court proceedings because the likely cost would be disproportionate to the possible benefit.

**b. Where your client has known about the events complained about for more than twelve months before making a complaint to the Ombudsman or councillor (the twelve month rule).**

As a general rule, the Ombudsman can consider complaints made to him/her (or to an elected Councillor) within twelve months of the date on which the person who is complaining first became aware of the matter they are concerned about. The 'twelve month rule' is not hard and fast. One of the reasons it exists is because the more time which elapses before an investigation takes place, the harder it is to gather evidence.

There are plenty of good reasons why the Ombudsman may exercise his or her discretion to investigate complaints about events which occurred more than twelve months ago.

Someone may have been prevented from complaining due to a period of ill health, an inability to read or write English, or the mistaken belief that action would be taken to resolve their complaint. Or they may have been trying to resolve the matter with the council for more than twelve months. The Ombudsman will also take into account the seriousness of the injustice claimed in deciding whether to investigate a complaint 'out of time'.

If you have been advising a client about their complaint against a council for some time you should try and send it to us within the twelve month limit if possible. If it is apparent that you are referring a complaint to the Ombudsman which may be outside of the twelve month limit, please explain why it was not made sooner. Remember that the complainant must have been aware of the matter for the restriction to apply. Please call our Adviceline if you are at all unsure whether a complaint which appears to be out of time will be considered.

**Have you given the Council a chance to investigate the complaint and respond to you?**

By law, the Ombudsman may not investigate a complaint before a council has had a reasonable opportunity to investigate and respond to it. Generally, the Ombudsman considers that a 'reasonable opportunity' is twelve weeks from the date when someone first made a written complaint to a council. The Ombudsman encourages people to use councils'

complaints procedures. You do not necessarily have to exhaust all stages of those procedures before coming to the Ombudsman provided you have allowed a council a 'reasonable opportunity' to deal with the matter as described above.

There are some areas of complaint where, exceptionally, the Ombudsman will consider becoming involved sooner. These include circumstances where:

- time is of the essence – eg education admission appeals / where possession proceedings have started and your client is at risk of eviction.
- someone is particularly vulnerable
- it appears that an entire administrative system has broken down

Each case is considered individually, so if you think there may be exceptional factors why the case you are dealing with should be considered by the Ombudsman even though a council may not have had a reasonable opportunity of dealing with it first, please let us know why. It is very helpful for us if you can explain what steps you have taken to resolve the matter for your client and enclose any copies of correspondence you may have had with the Council and any other relevant documents.

Even when we decide that a complaint we receive needs to be sent to the Council to consider under its own complaints procedure first, we will follow it up by writing to the complainant again to check whether they are satisfied with the outcome. If not, or if there has been unreasonable delay by the council in dealing with the complaint, the complainant can ask the Ombudsman to get involved at that stage.

### **Common complaints**

Part of the Ombudsman's role is to promote good administrative practice. The Ombudsman has no power to carry out a general investigation into a council's practices. But if through an investigation of a complaint we find that there has been fault on the part of the Council, one of the things we can do, where appropriate, is recommend changes to its administrative procedures (see Outcomes section below).

You may be seeing a number of clients who have similar problems with a particular council, and think that this indicates an underlying failure in the Council's administrative system which needs to be put right.

You may wish to make a complaint on behalf of a client which illustrates the wider problem. Or you may wish to submit a number of separate complaints. In such cases it would be helpful if you could explain what evidence you have of the underlying problem which you believe exists. This will help us to make appropriate enquiries and decide how best to deal with the issue.

When you send us a complaint it is helpful if you tell us about any complaints you have submitted before about the same matter. Please note that if you are making a complaint on behalf of several people, although we can look into any common problems, we will still need to consider the question of fault and injustice in relation to each individual. So you will need to provide complaint details and authorisations for each complainant.

### **The Investigation**

Complaints are allocated to individual investigators who will contact you to explain how the complaint will be dealt with and to request any further information which might be necessary. Initial contact will usually be by telephone, but where this is not possible we will get in touch by letter or e-mail. It is helpful if you could say whether you wish us to contact you or your client and how best to do so.

If the investigator decides that the Ombudsman may investigate the complaint then he or she may do any or all of the following:

- Visit you and / or your client
- Make written or telephone enquiries of the Council
- Send you and / or your client the Council's response to the enquiries and invite your comments
- Undertake a site visit
- Examine council files
- Interview council officers or councillors
- Take photographs
- Collect information from third parties

### **Outcomes**

There are several ways that a decision could be made on a complaint to the Ombudsman.

If we do not find sufficient evidence of maladministration causing injustice, or if we feel that the complaint is outside of jurisdiction we will write to you explaining why. We will of course consider any comments you may wish to make.

If we do find fault in the Council's actions that has affected your client, we can ask the Council to take action to put things right. There are many possible ways of doing this. Examples include asking the Council to:

- Make an apology
- Pay compensation
- Carry out repairs
- Take action to make a decision which should have happened before
- Reconsider a decision which was not taken properly
- Improve procedures
- Consider enforcement action against an unauthorised building
- Hold a fresh school admissions appeal
- Review a housing benefit claim and pay benefit due

The Ombudsman will take into account your client's views when deciding upon the most appropriate remedy or settlement. Most of our decisions are made by letter. Sometimes we have to issue a formal report.

Examples of published reports can be found in our annual Digest of Cases and on our website.

### **Further information**

Guide for Advisers on [www.lgo.org.uk/advisers-guide/advisers-guide.htm](http://www.lgo.org.uk/advisers-guide/advisers-guide.htm)

'Complaints by children and young people. How we can help' – leaflet for advisers: <http://www.lgo.org.uk/pdf/CYP-Leaflet.pdf>

'Children and young people' – Casebook: <http://www.lgo.org.uk/pdf/Casebook-CYP.pdf>

Guidance on remedies – see <http://www.lgo.org.uk/guidance.htm>

Report summaries - <http://www.lgo.org.uk/report.htm>