



LANCASTER CITY COUNCIL
Promoting City, Coast & Countryside

Guidance on Handling Complaints

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1 Introduction

- 1.1 Complaints are a good source of management information which, if handled properly, provide an effective tool to help manage our business and improve the services we offer our customers.
- 1.2 The Council seeks to take a positive and open minded approach to complaints and the complaints system aims to provide:
 - a feedback mechanism which meets customer needs and identifies areas for improvement;
 - a simple way of communicating complaints information corporately and to share what we've learned; and;
 - a procedure which meets guidelines provided by the Local Government Ombudsman (LGO).
- 1.3 The Council is committed to providing good service but there are times when we get it wrong or we are perceived to have got it wrong. Whether we are wrong or not every customer has a right to their opinion - a trivial matter for one person may be catastrophic for another depending on the individual's circumstances (e.g. a regularly missed bin could have a different impact on an affluent single person than on a large household living in difficult circumstances with infants in nappies). The Council seeks to ensure all customers are treated fairly, by acknowledging their concerns and appeasing them, as appropriate, promptly and sensitively.
- 1.4 Every officer and Member needs to be aware of the complaints process to ensure all customer contacts are dealt with properly and effectively and to prevent issues escalating which creates additional burdens on resources and could potentially damage the Council's reputation. This guide supports the corporate Customer Comments, Compliments and Complaints Policy and hopefully provides useful information to help manage customers who express dissatisfaction.
- 1.5 The Customer Services and Visitor Information Centre Manager, Heather Armstrong (ext. 2399), has overall responsibility for the corporate Customer Comments, Compliments and Complaints Policy and can provide additional advice if needed. There are also officers in each Service (usually Section Heads) with responsibilities for dealing with complaints. Officers should be aware of those responsible in their Service and should direct any questions about the complaints process to them in the first instance.

2 What is a Complaint?

- 2.1 The Customer Comments, Compliments and Complaints Policy defines complaint as “an expression of dissatisfaction about a council service (whether that service is provided directly by the council or a contractor or partner) that requires a response”. It goes on to list the categories of complaints as follows:
- failure to follow agreed council procedure, policy, rules or standards of service;
 - failure to take account of relevant matters in coming to a decision;
 - neglect or unjustified delay;
 - inappropriate behaviour of a council employee or someone acting on the council's behalf; or
 - malice, bias or discrimination.
- 2.2 The Policy goes on to list the following exclusions:
- day to day service requests or reporting faults (e.g. a missed bin);
 - criticisms or disagreement with council policies;
 - complaints against individual employees which arise from dissatisfaction with a council policy or decision, and where no other basis of the complaint exists;
 - where an alternative appeals procedure exists, such as an appeal within the council or to an independent tribunal (e.g. Refusals of planning permission, the making of new Tree Preservation Orders, the awarding of Housing or Council Tax Benefits or Homelessness matters);
 - a matter which is, or could reasonably be expected to be, the subject of Court or tribunal proceedings, or which is in the hands of the Council's insurers;
 - complaints which constitute a refusal to accept a rule of law which the council is applying; or
 - complaints about the conduct of councillors (these should be submitted in writing to the Monitoring Officer).
- 2.3 It is important to understand that when a customer expresses dissatisfaction they are not necessarily making a complaint and whilst they might refer to their dissatisfaction as a complaint it is important to distinguish between a complaint and a request for service or an objection to a decision or a policy. For example, a customer may say they have a complaint when in fact they are objecting to a planning application that has not yet been determined or they may be commenting in response to a consultation exercise.
- 2.4 It is important that the Council takes a clear and consistent approach to distinguishing between requests for service and complaints. For example, the notification of a missed bin is a request for service but a repeated failure to collect the same bin may lead to a complaint.
- 2.5 Whatever the issue, as far as the customer is concerned they have a complaint and the customer will expect and should get a response. In some cases that response will need to include an explanation as to why the Council is not treating the issue as a complaint – e.g. *“Planning matters are often controversial as they often place the interests of one party over another. The City Council is an impartial arbitrator and makes its decisions in accordance with national law*

and policy. The complaints process cannot be used to try to influence planning decisions.”

- 2.6 Many issues, including complaints, can be dealt with quickly without the need to invoke the formal complaints process. For example, acknowledging the issue and saying ‘sorry’ may be enough to appease some customers.
- 2.7 All customer contacts should be dealt with as quickly as possible and the formal complaints process should only be instigated where further investigation is required. However, every contact, which has the potential to escalate to a complaint (e.g. a missed appointment), should be recorded to provide a full history should the formal process be invoked at a later date. The record should include the issue raised and the action taken.
- 2.8 A customer should feel that they personally have been or are due to be affected in some way for a complaint to be valid. (See section 3 for those making complaints on behalf of someone else).
- 2.9 As time passes it becomes more difficult to investigate complaints fairly and fully and to put things rights if they’ve gone wrong. Therefore, the Council will normally only accept complaints made within 12 months of the incident or circumstances that led to the complaint. Where a customer makes a complaint outside 12 months an appropriate officer in the Service concerned should make the decision as to whether or not to accept the complaint based on the individual circumstances including the nature and severity of the issue, the potential outcome and whether it warrants the use of public funds for investigating the matter.

3 Who can make a Complaint and the Use of Advocates

- 3.1 Any individual or organisation that uses or receives a council service and feels disadvantaged, or that they are about to be disadvantaged, through the actions of the Council may make a complaint.
- 3.2 Customers don’t have to make the complaint personally and they may ask someone to act on their behalf (an advocate) – e.g. a relative, elected member, advice worker, solicitor or other third party. Whenever an advocate is involved, irrespective of their relationship to the complainant, it is important to have written evidence that the complainant knows of and consents to the complaint being made and is happy for related information to be shared with the third party. A failure to do so may result in non-compliance with the Data Protection Act 1998. A consent form for this purpose is available on the Intranet.
- 3.3 To meet Data Protection requirements it is important to check that the consent has come from the customer concerned. This may be done in a number of ways – for example, checking the signature to a signature on file if this is available or telephoning the customer to acknowledge receipt of the form and checking that they have signed it.
- 3.4 If the third party is a solicitor, or other legal representative advice should be sought from Legal Services.

Elected Members acting as advocates

- 3.5 Elected members have an important role to play in ensuring their constituents are aware of what procedures exist to assist them in raising concerns. Members are encouraged to use the complaints procedure on behalf of their constituents, as the feedback provided to services is useful. However, when acting on behalf of a constituent it is important that Members do not give the impression that they are seeking special treatment for that constituent. In the interests of fairness, complaints made through Members should not be given priority over those made directly, and the Protocol on Member/Officer Relations applies.

4 Anonymous Complaints

- 4.1 Anonymous complaints should be recorded but an appropriate officer in the Service concerned should make the decision as to whether or not public funds should be used to investigate the complaint based on the nature and severity of the issue and potential outcome.
- 4.2 Where the customer visits the Council or contacts us by telephone they should be told that the matter will be passed to the Service concerned for consideration but a detailed investigation will not normally be carried out unless the customer personally wants a response. In all cases the customer should be encouraged to provide their contact details so that the matter can be dealt with thoroughly and completely.

5 How can Customers make a Complaint?/ Receiving Complaints

- 5.1 Customers can express dissatisfaction by any method (e.g. by telephone, email, letter etc.) and there is no difference between a 'formal' and an 'informal' complaint in that both require a response.
- 5.2 The Council is committed to resolving issues without the need to invoke the formal complaints procedure and this approach should be taken wherever possible. It saves time and money, and hopefully enhances the Council's reputation. A resolution might be as simple as offering a further appointment or a date by when the customer can expect to have received a service. Complaints that start badly often escalate, placing unnecessary demands on the Council and the customer.
- 5.3 Whatever the issue, and however trivial it might seem, the customer has a right to express their opinion. The Council is committed to treating everyone fairly, promptly and with respect. This means that we will respond to all contacts within 5 working days and, if a full response can't be provided, we will explain why and provide a date by when the customer can expect a further update (see Section 6 on Timescales).
- 5.4 All Members and officers should be aware of the complaints process and how to access it. They should be clear about their roles and what they can and cannot do (See Section 7 on Roles and Responsibilities). If you are unclear, advice is available through your line manager or the Customer Services and Visitor Information Manager as appropriate.

- 5.5 All Members and officers coming into contact with service users should be able to take responsibility for finding out enough to be able to advise a customer about making a complaint, rather than leaving them to make contact with a different service or partner. If a customer has more than one issue (e.g. a request for service (“my rubbish hasn’t been collected”) and a complaint (“last week the bin man was rude to me”) officers should be able to separate out the different elements.
- 5.6 Where a customer contacts us by phone, or face-to-face, we will actively listen to what they have to say. This means reflecting back key points to show that you understand what they’re saying. You should always be honest with the customer. Be careful not to raise customer expectations and do not offer something you cannot deliver. If it is clear the Council has got something wrong apologise on the Council’s behalf and, where possible, tell the customer what you intend to do to prevent a reoccurrence in the future.
- 5.7 **Customers should never be told that an issue cannot be dealt with unless details are put in writing.**
- 5.8 However, when an issue becomes a formal complaint it is important that the investigating officer has a clear understanding of the issue and how the customer has been affected. Therefore, when an issue reaches Stage 1 of the complaints process customers should be encouraged to put their complaint in writing. If they would find this difficult they should be asked if there is someone (e.g. a relative or friend) who could help them. If there is no-one who can help, the officer dealing with the customer should make appropriate arrangements to assist the customer – e.g. by arranging an advocate, translation facilities or a home visit.
- 5.9 The following details should be recorded for each complaint (these are the same details sought by the Talk Back form):
- the customers contact details (name, address, telephone number and email address) and preferred method of contact;
 - a list of relevant points, highlighting any important issues;
 - details of how the customer has been affected;
 - an explanation of what the customer is seeking to achieve; and
 - a signature (if the customer is visiting the Council).
- Customers should be encouraged to provide copies of any documents supporting their complaint.
- 5.10 Customers may seek advice on what they may gain from making the complaint. If you are unable to resolve an issue at the point of contact you are not in a position to suggest possible outcomes which, to some extent, will depend on the outcome of any investigation. You can advise them that their aims should be realistic and proportionate to the problems they have had. The Council is committed to making service improvements and it will put things right where it can. You should be careful not to raise customer expectations (e.g. by suggesting compensation may be considered).
- 5.11 It is disruptive to customers to have a number of people to deal with and therefore it is important that they know who is handling their complaint at any given time. Whether or not you’re able to deal with the complaint personally you remain responsible for it until another officer takes over and accepts that

responsibility. If you're passing the complaint to someone else tell the customer this but give your own contact details. You should not give the contact details of the officer you've passed the complaint to until you're sure they're aware of it and have accepted it.

6 Timescales

- 6.1 The LGO considers 12 weeks from the receipt of a complaint to a final response sufficient time to deal with a complaint, though it expects most complaints to be dealt with more quickly than this. The 12 weeks covers the whole process – i.e. Stage 1 and Stage 2 and as such the corporate Customer Comments, Compliments and Complaints Policy sets the following timescales:
- 5 working days to acknowledge the complaint ;
 - 10 working days for a full Stage 1 response with a caveat that if it is likely to take longer (see para. 6.3) the customer is contacted and advised of this;
 - 5 working days to acknowledge a response to a Stage 1 decision notice; and
 - 10 working days for a full Stage 2 response, again with a caveat that if it is likely to take longer the customer is contacted and advised of this.
- 6.2 The LGO recognises that in very exceptional circumstances the process may take longer than the 12 weeks and suggests that in such cases timescales are agreed with the customer and the customer is regularly updated on progress as appropriate.
- 6.3 It is important that customer expectations in terms of timescales are met as a failure to do so may lead to the complaint escalating. The acknowledgment should therefore clearly state when the customer can expect a full response (or an update on progress) (see paras. 12.11 – 12.18). However, the date given should be realistic – the LGO has found cases where the pressure to respond at Stage 1 has led to poor quality, defensive responses resulting in the complaint escalating.
- 6.4 Where there is a clear, serious and continuing detrimental effect on the service user or others, and an issue needs to be addressed as a matter of urgency, the related complaint should be given priority.
- 6.5 Complaints may be linked to other procedures, such as legal or disciplinary proceedings and, in the interests of fairness it may not be possible to provide a full response until those proceedings are complete. However, this is not always the case and complaints should not be unnecessarily delayed because other proceedings are involved.

7 Roles and Responsibilities

Chief Executive

- 7.1 To refer complaints to the LGO when the Council has nothing more to say on the matter (see para. 8.6).

Customer Services and Visitor Information Centre Manager

- 7.2 To take overall responsibility for the Customer Comments, Compliments and Complaints Policy.
- 7.3 To oversee the operation of the Policy and monitor compliance through reviewing system reports as appropriate.
- 7.4 To provide advice on the Policy and this guidance as requested.
- 7.5 To consult with Management Team on unreasonably persistent complainants as appropriate and ensure appropriate records are maintained and designations are appropriately reviewed.(see para. 15.9).

Service Heads

- 7.6 To be responsible for complaints about their service, to deal with any service or staff issues arising and to incorporate feedback into service improvements as appropriate.
- 7.7 To ensure all staff in their Service are briefed and kept up to date with their responsibilities under the Customer Comments, Compliments and Complaints Policy and this guidance.
- 7.8 To allocate responsibilities for investigating complaints to appropriate officers within their Service.
- 7.9 To consider the validity of any complaints against investigating officers in their service and to respond accordingly (see para. 12.8).
- 7.10 In the absence of the original investigating officer, to consider any responses from customers to Stage 1 decisions issued by their Service in accordance with this guidance, to clarify matters with the customer where appropriate, to decide on the course of action and to update the customer accordingly (see paras. 13.4 and 13.8)
- 7.11 To respond to Stage 2 complaints allocated to them in accordance with the Customer Comments, Compliments and Complaints Policy and this guidance (see paras. 13.11 – 13.16).
- 7.12 To jointly designate unreasonably persistent complainants as appropriate through Management Team meetings and to inform the Customer Services and Visitor Information Centre Manager of their decisions (see para. 15.9).
- 7.13 To consult the Chief Executive on complaints where the Council has nothing more to say for a decision on whether to refer the matter to the LGO (see para. 8.6).

Front Line Staff

- 7.14 To keep up to date with service standards, legislative requirements etc. relevant to their role.
- 7.15 To keep up to date with complaint handling procedures.

- 7.16 To respond to customers promptly and to treat them fairly and with respect.
- 7.17 To actively listen to customers and to find out sufficient information to enable the matter raised to be dealt with effectively in accordance with this guidance.
- 7.18 To assist customers in making complaints as necessary and in accordance with this guidance.
- 7.19 To seek advice as appropriate on matters of uncertainty.

Investigating Officers

- 7.20 To keep up to date with complaint handling procedures.
- 7.21 To accept responsibility for complaints concerning their Service or to pass them on where appropriate (e.g. the officer doesn't have sufficient independence to carry out a fair and balanced investigation).
- 7.22 To decide, in consultation with other Services concerned, who will co-ordinate complaints involving more than one Service.
- 7.23 To have a clear understanding of complaints passed to them, to agree the scope of the complaint with the customer and to understand how the customer has been affected.
- 7.24 To be mindful of the need to protect confidentiality where applicable and of the potential implications of the Data Protection and Freedom of Information Acts.
- 7.25 To carry out fair, thorough and balanced investigations and to make decisions based on the evidence obtained.
- 7.26 To ensure decisions are properly supported and complaints files are complete.
- 7.27 To respond to customers in accordance with the Customer Comments, Compliments and Complaints Policy and this guidance.
- 7.28 To raise issues with managers as appropriate (e.g. concerns raised by the complainant about the competence of the investigating officer, matters requiring urgent action or changes to procedures/working practices etc.).
- 7.29 To consider new allegations raised by the complainant and to respond appropriately in line with this guidance (see para. 12.20)
- 7.30 To ensure any actions needed in response to complaints are implemented per the decision letter to the complainant (see para. 12.54)

Information Management Officer

- 7.31 To act as the point of contact between the Council and the LGO and to co-ordinate the Council's responses to the LGO.

PAs to the Leader and Chief Executive

- 7.32 To allocate the Stage 2 review (see paras. 13.9 – 13.10)

8 Role of the Local Government Ombudsman

8.1 The LGO investigates complaints to provide remedy and redress when decisions are not properly taken by a council or a failure of service provision has occurred. Examples include:

- delay;
- incorrect action or a failure to take action;
- failure to follow proper procedures or the law;
- failure to reply or to provide information;
- inaccurate or misleading statements;
- inadequate record keeping;
- inadequate consultation; or
- broken promises.

The LGO will also comment on poor internal complaints processes and offer support and advice for improvement

8.2 The LGO may not investigate a complaint if it feels the complainant has not been significantly affected by the matter concerned. For the LGO to consider a complaint the complainant should have suffered an 'injustice' from the fault of the council. 'Injustice' can include:

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

8.3 There are certain things the LGO will not investigate (e.g. individual employment issues), details of which are available on the LGO's website at <http://www.lgo.org.uk/guide-for-advisors/can-we-investgate/>

8.4 The LGO encourages councils to resolve complaints at the earliest opportunity and will normally expect complaints to have been dealt with internally before they start an investigation. Exceptions include:

- where the matter is urgent (i.e. where a complainant is homeless or imminently will be);
- where the Council has unreasonably delayed handling the complaint;
- complaints where the Chief Executive has exercised discretion not to investigate further (see para. 8.6);
- complaints where the LGO feels the Council will not handle the matter effectively; and
- cases where the complainant's circumstances indicate a need for priority (e.g. where a referral to the Council would disadvantage an already disadvantaged complainant).

8.5 Whilst the LGO will not normally investigate complaints until they have been through the Council's procedure, where a customer is determined to approach the Ombudsman it is not for the Council to prevent that. Where appropriate, officers should tell customers that the LGO expects complaints go through the Council's procedure before it goes to them and that, if they were to go to the

LGO, they are likely to pass the complaint back to the Council for it to complete its procedure.

- 8.6 In exceptional cases where it is clear that the Council has nothing more to say on the complaint (e.g. where a complainant tries to pursue the same issue from a different angle and the Council sees no value in investigating the matter) this should be made clear to the person making the complaint, and the Chief Executive may ask the LGO to consider the matter without it having been through all of the Council's procedure. Such complaints should be brought to the attention of the Service Head concerned for discussion with the Chief Executive and a decision on the action to be taken.
- 8.7 If the LGO investigates a complaint and it finds the Council has done something wrong it may make recommendations to the Council on how to put things right. For example, by asking the Council to:
- apologise;
 - make payment in recognition of the injustice;
 - reconsider a decision which was not taken properly; or
 - review/improve procedures.
- 8.8 Each year the LGO publishes an annual review of each council through a letter sent to the Chief Executive (and subsequently reported to the Audit Committee) and available on its website. The review provides an opportunity to comment on the outcome and impact of complaints. When the LGO finds evidence of systemic failings that affect all service users a report is usually issued that councils are by law required to consider and then inform the LGO of the action it will take.
- 8.9 Housing Ombudsman (to be developed later when more guidance available and to follow corporate procedure as far as possible)

9 Complaints involving Partners or Contractors

- 9.1 Where there is a complaint about a service which is delivered by a third party, such as a partner or contractor, the Council remains accountable to its customers for any service failure and thus for ensuring any complaints are properly resolved. Therefore, the agreement with the third party should cover complaints handling procedures. Irrespective of whether there is a formal partnership agreement in place, there needs to be proper arrangements to ensure customers are not passed between the organisations involved.
- 9.2 Customers will often expect the Council to deal with complaints through its procedure and as such it would be helpful if the complaints handling procedures agreed with the third party are in line with the Council's Policy and these guidelines. If they're not, both parties should be clear on why there are differences and be able to explain these to service users.
- 9.3 The LGO has made the following recommendations relating to drawing up protocols with partners:
- when the partnership is first created, there should be clarity regarding accountability for different parts of the work that will be carried out;

- there should be a clear statement as to who is responsible for handling complaints and providing redress;
- there needs to be effective communication with service users, so that they understand what to do in the event of something going wrong; and
- there should be strong commitment to learning from complaints, so that services may be improved.

10 Complaints Records

10.1 All information relating to a complaint should be held on a complaint 'file' which should:

- provide a clear audit trail from the original complaint to the decision and implementation of any corrective actions;
- provide the chronology/timeline; and
- enable someone else to pick up a case and quickly understand the situation/position. This is particularly important should the complaint progress to Stage 2 or the LGO.

10.2 The following information (if available/applicable) should be held on complaints files:

- relevant dates (e.g. the date the complaint was received, date acknowledged etc.);
- details of the complaint (i.e. agreed scope);
- a record of all conversations;
- copies of all letters;
- file notes supporting any actions taken;
- the investigation plan (the investigating officer may be called upon to justify the investigation or decision reached);
- details of the decision (i.e. upheld, partially upheld or not upheld) including the reasons why and any supporting documentation
- details of any corrective action or service improvements resulting from the complaint including the date of implementation.

10.3 Records relating to complaints should be destroyed 3 years after their administrative use.

11 Confidentiality and Data Protection and Freedom of Information

11.1 Information relating to individual complaints needs to be treated carefully and all Members and officers need to be aware of the principles of the Data Protection Act 1998 (DPA) and the Council's duty to protect an individual's confidentiality. Whilst a customer might complain about a third party, Members and officers should be careful not to disclose personal information about that third party when responding to the complainant. Any doubts should be directed to the Council's Information Management Officer – Rosebella Kotonya (Ext. 2192).

11.2 Similarly, Members and officers need to be sure that when giving information in relation to a complaint the person receiving the information has the right to receive it. This means that before talking to someone you should establish their

identity. If a third party is acting on behalf of a complainant you should ensure that they are acting in the knowledge of the complainant and that the complainant is happy for relevant information to be shared with the third party (see Section 3).

- 11.3 Customers may be reluctant to make complaints, or to put their name to complaints, because they do not want to cause upset, or they are concerned that it will affect the way they are treated in future. Whilst, on rare occasions, it might be appropriate and possible to have the complaint dealt with by someone outside the service area involved this will not always be the case and normally the only assurances that can be given is that any information the customer provides is confidential to the Council.
- 11.4 Under the Data Protection Act 1998 (DPA), individuals have a right to access information about themselves. If a subject access request is received, a decision will be needed on which data the subject has a right to access.
- 11.5 Anyone can make a request for access to any information held by the Authority under the Freedom of Information Act 2000 (FoIA). Potentially the FoIA gives one individual a right of access to information about another but if providing the third party information would breach the data protection principles it is exempt from disclosure.
- 11.6 All data access requests should be dealt with in consultation with the Information Management Officer and further guidance is also available on Information Commissioner's website – www.ico.gov.uk
- 11.7 Complaints files hold personal data (e.g. documents relating to the initial contact with the customer including the customer's details, views etc.) and non-personal data (e.g. the Authority's policies or procedures) and may hold the personal data of more than one person (e.g. a witness statement). For information to be personal data it must relate to an individual and allow an individual to be identified from it.
- 11.8 Under FoI, a third party may request information relating to a specific complaint. Where personal data is concerned it would be inappropriate and unfair to release the information. However, the legitimate interest of the public in the information being disclosed must be taken into account and therefore the Council should consider how to de-personalise the information. Further advice is available from the Information Management Officer.
- 11.9 Some complaints are about a failure to provide information requested (failure to comply with FoI legislation and guidance). These are outside this complaints procedure and should be referred directly to the Head of Governance.
- 11.10 Some complaints are about the provision of too much information (in breach of DPA legislation or guidance). These complaints should be dealt with in the same way as any other complaint but where a breach has occurred this should be reported to the Council's Information Management Officer who can also provide further guidance.

12 Stage 1 Formal Complaints

- 12.1 If a complaint cannot be resolved at the point of service delivery, usually because matters need to be investigated further, it should be dealt with as a Stage 1 complaint.
- 12.2 There are five elements to Stage 1 as follows:
- acknowledging the issue and agreeing the scope of the complaint;
 - investigating the complaint;
 - making a decision on the evidence obtained;
 - communicating the decision; and
 - taking action to put things right where they have gone wrong.
- 12.3 Stage 1 complaints are dealt with by designated senior officers, usually Section Heads, within the Service which is the subject of the complaint. If a complaint covers more than one Service the officers concerned should agree which of them will take responsibility for co-ordinating the investigation and response. Services need to ensure that complaints are dealt with by officers with sufficient authority to ask questions. Ideally the person dealing with a complaint should also have some degree of independence to ensure valid points raised are considered and to help prevent a defensive response which may result in time consuming circular correspondence.

Complaints against staff

- 12.4 Staff may be the subject of complaints either directly or through the service they provide. In all cases it is important that they are treated fairly. They should be informed of complaints made against them and given the opportunity to comment. **They should not respond to the complainant.** At the end of the investigation they should be made aware of whether the complaint has been upheld or not.
- 12.5 Understandably staff may feel defensive and upset if a complaint concerns them. They may be worried about the potential consequences which, if things have gone seriously wrong, may involve disciplinary action, albeit in a very small number of cases. When speaking to staff about complaints against them it may be helpful to draw their attention to the fact that the complaints system is a mechanism for learning rather than for apportioning blame.
- 12.6 Whilst a formal record should be made of any meetings with a member of staff concerning a complaint against them for the complaints record, the meeting is a fact finding exercise to determine the course of action to be taken and as such the member of staff has no right to be accompanied.
- 12.7 There may be occasions where customers will try to use the complaints process to pursue a personal vendetta against a member of staff. In such instances it is important to separate out as early as possible aspects of the complaint against the authority and allegations against the officer concerned so that each can be dealt with appropriately. For example, it may be more appropriate to deal with allegations against officers under disciplinary procedures rather than the complaints process – in such circumstances the complainant would only need to be told that the matter is being dealt with under the Council's disciplinary procedures. They would not be entitled to know the outcome.

- 12.8 Some complainants may complain about the person investigating their complaint. Whilst they may have legitimate criticisms, some may do this to try to intimidate the officer concerned, to derail an investigation not going in their favour or to try to get the investigation reallocated to someone they think will see things their way. The complainant cannot dictate who will investigate their complaint. The investigating officer concerned will need to speak to their Service Head to determine whether the new complaint needs to be looked into. If not, and the investigating officer concerned is comfortable continuing the investigation, the Service Head should inform the complainant accordingly – i.e. that they are satisfied that the complaint is unfounded and the investigating officer will continue with the investigation as notified previously. If the complaint about the investigating officer needs to be looked into, a decision is needed on whether it would be better to reallocate the complaint for investigation. In any event the response to a complaint about an investigating officer should be sent by that officer's Service Head.

Complaints against Elected Members

- 12.9 Any complaints about the actions or conduct of an Elected Member should be referred to the Council's Monitoring Officer.

Acknowledging the Issue and Agreeing the Scope of the Complaint

- 12.10 Upon receiving a complaint for investigation the officer concerned needs to establish:
- *whether the complaint falls within the scope of the Council's Customer Comments, Compliments and Complaints Policy*
If it doesn't (e.g. is about a disagreement with a Council Policy) the customer needs to be informed and if there is an alternative way for them to pursue the issue this should be pointed out;
 - *whether the complaint concerns another organisation either wholly or in part*
If it involves another organisation and the Council, an agreement needs to be reached on which party will take the lead in investigating the decision (see also Section 9); and
 - *whether they have had any role in the events which gave rise to the complaints* (see para. 12.3).
- 12.11 Complaints should be acknowledged within 5 working days of receipt. The acknowledgement should include the date when a customer can expect a further update or full response (see Section 6).
- 12.12 The approach to acknowledging the complaint (i.e. telephone call, email, letter etc.) will depend upon the way the customer made contact and the nature of the complaint, but wherever possible the process of acknowledging the complaint should be combined with agreeing the scope of the complaint.
- 12.13 It may be fairly easy to establish the scope of the complaint from the information given (i.e. the letter, Talk Back form etc.) but this isn't always the case and further contact may be needed with the customer to clarify matters.
- 12.14 It is important that the officer dealing with a Stage 1 complaint fully understands the nature of the complaint, the extent to which the customer feels they have been or are to be affected and what they hope to achieve through complaining.

A failure to agree the scope of the complaint at the start may lead to problems later in the process if the customer starts to digress. Establishing what the customer seeks to achieve may save time on investigation if the resolution is relatively straight forward.

- 12.15 Direct contact with the person making the complaint (e.g. through telephone contact or a visit) can be seen as time-consuming but such contact is valuable to the Council and the customer and helps to build a positive relationship at the start. As well as potentially saving time in clarifying the complaint and establishing the desired outcome which helps provide a proportionate response, it's a way of agreeing the way forward (e.g. when and how contact should be made etc.).
- 12.16 There may be occasions when, despite best efforts, the grounds of the complaint are still unclear and there is no apparent reason (e.g. a learning disability or special need) for the complainant not providing the information needed. In these cases the complainant should be told that the investigation cannot go any further until the complaint is clarified. The officer concerned should make it clear what information is needed and a deadline should be given for the receipt of that information. LGO guidance states that *"if by the deadline there still isn't a complaint that can be investigated, write to tell the complainant that is the position"*.
- 12.17 Once the scope of the complaint has been established it is best practice for the details to be formally set out for the customer in an email or letter. This could form part of the acknowledgement or be a summary statement agreed during an initial meeting with the customer. The advantages of this are:
- both the Council and customer are clear on the scope of the complaint at the outset thus reducing the likelihood of the customer complaining at a later stage that the investigation has not addressed their concerns; and
 - it helps drafting the report/letter for the customer on the findings of the investigation.
- 12.18 The formal summary of the complaint needs to be clear and should include:
- details of the officer handling the complaint;
 - a numbered or bullet pointed list of issues to be investigated (if there are issues which won't be investigated these should be listed separately with the reasons why (e.g. outside the scope of the complaints policy, not significant enough to warrant investigation));
 - details of what the complainant thinks has gone wrong and how they believe it has affected them (the complainant's own words should be used where appropriate);
 - reference to the Customer Comments, Compliments and Complaints Policy and the fact that the complaint is being dealt with at Stage 1 of the process;
 - a statement of what the customer should do if they disagree with anything set out in the summary; and
 - a date by when the customer should have a full response to their complaint (or an update on progress if this is appropriate).
- 12.19 If the complainant doesn't agree with the summary this needs to be resolved and personal contact with the complainant may help. You will need to establish what the complainant doesn't agree with and why. It may help to ask them to

propose an alternative but if their version isn't something that can be dealt with under the complaints policy they need to be told this.

- 12.20 Some complainants will make further allegations whilst a complaint is under investigation. In these cases the investigating officer needs to establish whether the new allegations are linked to the matters under investigation to determine whether they should be included. This may mean extending the timescale for the investigation and notifying the complainant accordingly. If the allegations are not closely linked to the matters under investigation the complainant should be told that these will need to be pursued as a new complaint. All additional allegations should be responded to within 5 working days.

Investigating the complaint

- 12.21 It is important to plan the investigation of a complaint, especially if the complaint is complex, and in some cases it is helpful to write a draft decision letter/report at the start to help identify any gaps in knowledge or information. When planning the investigation it may be helpful to consider the following questions:
- *what are the main issues of the complaint and what events/conversations/decisions will the outcome depend on?*
 - *what information will I need (e.g. policies, procedures, background information etc.) and how will I get it? and*
 - *will I need to interview anyone and what information will I need to make best use of the interview?*
- 12.22 Identifying and assessing all possible sources of information may be particularly important if there is a direct conflict between two parties on a crucial part of the complaint – e.g. where a customer denies an officer visited them on a certain date a visit recorded in a diary and associated expense claim will support the officer's version of events whereas a leave record will do the opposite.
- 12.23 Decisions need to be made on how you will access information, for example:
- whether the person you have approached has the authority to release the information; and
 - how secure will the response be (e.g. if you are away from the office).
- 12.24 In preparing to meet the customer it is helpful to prepare for potential questions – e.g. questions about who might accompany them (e.g. relative, friend, solicitor), whether or not they can tape the interview and whether or not they can have a copy of any notes taken. It is acceptable for the complainant to be supported by a relative or friend but it would not normally be appropriate for them to be accompanied by a solicitor or someone from the media. Neither is it acceptable for the interview to be recorded. However, there is no reason why the complainant shouldn't have a copy of the interview notes. It is useful to agree the boundaries (i.e. who will attend etc.) with the customer in advance so that any concerns can be raised with Legal Services in good time.
- 12.25 You should be clear about the information you want to obtain from the interview and, as far as possible, questions should be prepared in advance. Open questions (i.e. questions that don't have a yes/no answer) tend to be useful in drawing out information you wouldn't get otherwise but you need to beware of going off on a tangent. Closed questions (i.e. those with a yes/no answer) are useful for confirming facts. Questions should be unambiguous, precise and

focussed and you should be prepared to ask unplanned, supplementary questions based on information gained during the course of the interview. Leading questions should be avoided.

- 12.26 During the course of the interview paraphrasing should be used where appropriate to check the understanding of both parties. At the end of the interview it is useful to summarise key points to allow any misunderstandings to be corrected and to help prevent future disputes.
- 12.27 Having obtained information to form a decision on the complaint you need to be sure that that the decision will be well supported and will stand up to scrutiny. It might be helpful to put yourself in the complainant's place and ask yourself if you would be satisfied with a decision based on the evidence you have. If necessary seek assistance from a colleague.

Making a decision on the evidence obtained

- 12.28 Information gathered during the course of the investigation needs to be evaluated to reach a decision on the complaint. When evaluating information it is important to consider whether the information is reliable, relevant and important (i.e. central or peripheral). In determining the reliability of information you might consider whether:
- the source is reliable, independent etc;
 - it is consistent with other information received;
 - if recording an event, how long after the event it was produced;
 - if a publication or advisory document, it has been updated or superseded;
 - it is a statement of opinion or fact; and
 - it can be corroborated.
- 12.29 Having established the facts relating to a complaint the officer concerned should reach a decision on:
- whether the Council has been at fault and, if so, how has the complainant been disadvantaged; and
 - if the complainant has been disadvantaged by some fault of the Council, how the Council should put things right.
- If there has been no fault on the Council's part then any difficulty the complainant is having cannot be laid at the Council's door. If there has been a fault but the complainant has not been disadvantaged there is no action needed to put things right for the complainant. However action may be needed to prevent others being disadvantaged.
- 12.30 Decisions need to be based on evidence which is clear, unambiguous, relevant and which has been applied objectively.
- 12.31 There are many causes of maladministration or service failure but the following questions based on guidance from the LGO may help in reaching a decision:
- *Have the Council and the staff involved understood any statutory requirements which apply and has it fulfilled those requirements?*
Failure to comply with legal requirements is one of the most common reasons for findings of maladministration.
 - *Has the Council got policies or procedures covering the issue raised and have these been followed?*

Maladministration is sometimes found because a council fails to do something which its own policy or established practice requires – e.g. the failure to notify neighbours about a planning application despite a policy stating this should be done.

- *Can the Council demonstrate that relevant criteria have been applied objectively and that any decision taken is consistent with others relating to the same matter?*

Criteria should be clear and relevant and applied objectively so that decisions are not made on an inconsistent, ad hoc or subjective basis – e.g. it would be difficult to demonstrate clarity and objectivity where decisions to provide a service are based on merit rather than some sort of points system or 'first come, first served' basis.

- *Has the Council communicated with customers consistently and effectively in line with any related requirements?*

There would be a failing if a customer has been given preferential treatment by being informed of something which should also have been relayed to the complainant.

- *Has the Council rigidly applied policy thus preventing the proper consideration of any exceptional circumstances?*

If a policy contains a positive statement (i.e. what will be done) then the citizen is entitled to expect that the promise is fulfilled but a negative statement (i.e. what won't be done) is a general guideline. It is inappropriate to fetter discretion by operating a policy which specifies in advance circumstances where discretion will never be exercised – e.g. an absolute rule that council tenant applications for a transfer will not be considered if there are any rent arrears, no matter how small, how they've arisen or what exceptional circumstances there are.

- *Where a decision has been made which is inconsistent with established policies or other relevant plans or guidelines, were there adequate and relevant grounds for it?*

e.g. when dealing with planning applications councils are required by law to have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. They should determine the application in accordance with the plan unless material considerations indicate otherwise. The plan should normally be given considerable weight in the decision and strong contrary planning grounds would have to be demonstrated to justify a proposal which conflicts with it.

- *Have relevant codes of practice and government circulars been considered and the advice in them followed, unless there were justifiable reasons for not to do so?*

Whilst there is no legal obligation to follow such codes or advice, the Council could be vulnerable to criticism if it was unable to show, when challenged, that it had at least given adequate consideration to them.

- *Has there been proper consideration to the views of relevant parties in making a decision?*

Whilst a committee or officer acting under delegated powers is not obliged to agree with any views put forward, either as a result of consultation or by relevant officers, there is an onus on the decision taker to give proper consideration to those views – e.g. the assessment of a medical officer that a homeless couple is vulnerable for medical reasons should not be rejected without adequate grounds.

- *Have decisions been made or action taken prematurely?*
E.g. whether a consultation period is statutory or non-statutory it should be allowed to run and the council should then properly consider the views expressed by the end of that period (and any later views which arrive in time to be considered).
- *Has the customer been properly informed of an adverse decision?*
E.g. a failure to put the reasons in writing may give the impression that the decision was made arbitrarily and unsuccessful applicants may be unable to make informed judgements or to properly prepare for an appeal if they have insufficient information regarding the reasoning they are to counter.
- *Were decisions or actions taken as required and within a reasonable time?*
It is not good practice to fail to do something which ought to have been done and this is the most common cause for findings of maladministration by the LGO. In some cases there are statutory timescales whereas in others timescales may be suggested (e.g. in government circulars) as reasonable expectations. The Council should aim to meet all statutory or advisory timescales. Where there are no externally specified time limits, action should be taken within a period which is reasonable in the circumstances. Setting target times in-house may be helpful in that it sets the standards so that customers know what to expect and it provides a guideline for staff enabling performance monitoring and corrective action where necessary.
- *Was there sufficient authority for a decision under delegated powers and was the use of delegated powers appropriate in the circumstances?*
The use of delegated powers is a discretion and not an obligation and officers with delegated powers need to be alert to the possibility that a particular issue would be better referred to a committee for consideration. The authority to act under delegated powers should be recorded in writing and the terms of the authority should be clear and specific so that the delegated power is not misinterpreted. An example of the inappropriate use of delegated powers might be the planning officer approving a planning application which did not conform to the Council's policy guidelines.
- *Have all the relevant and material facts been established?*
In some cases there is a statutory duty to establish the facts – e.g. housing authorities must make enquiries into the circumstances of an applicant for housing if they have reason to believe the applicant may be homeless. Whether there is a statutory duty or not it is good practice to establish all the relevant and material facts and the Council may be criticised by the LGO for not doing so – e.g. through failing to properly investigate complaints about nuisance from neighbouring tenants.
- *Has the Council sought appropriate specialist advice where necessary?*
Maladministration has been found by the LGO where councils have neglected to seek specialist advice where it was felt that the nature of the issue made it appropriate to do so in order to carry out a thorough evaluation – e.g. expert advice on the effects of noise and the need for safety measures in relation to a planning application for a development such as a rifle range not being sought.
- *Have any individuals or organisations who might reasonably consider that they would be adversely and significantly affected by a proposed action been consulted?*
In some cases consultation is a legal requirement and must be undertaken but it is good practice to go further and consider consultation in any situation

where it could reasonably be thought that fairness requires it. Whilst it may be difficult to determine who should be consulted on a particular issue, the Council should always seek to act fairly and it is often better to run the risk of notifying too many people rather than not enough. Where consultation is undertaken it is important that adequate and accurate information is given about the issues, and sufficient time is allowed to consider comments received and to respond accordingly. If a proposal is significantly revised as a result of consultation the Council needs to consider whether a second round of consultation is appropriate.

- *Has the Council given adequate consideration of all the options available?*
It is good practice to identify all available options and to ensure that they are properly considered. The Council is open to criticism from the LGO if it fails to do so – e.g. through a failure to consider the use of discretionary powers under housing legislation to prevent the landlord of a property allowing it to fall into such disrepair that it becomes unfit for human habitation.
- *Has a report been provided to committee when required and was the report materially accurate and covering all the relevant points?*
The LGO has been critical on occasions where officers have not put a report to a committee where there were serious, persistent or long-standing problems which the committee should have been told about. Where reports have been criticised it is commonly because there were significant omissions or inaccurate or misleading statements.
- *Has correct action been taken, including action to implement decisions made?*
Examples of incorrect action include:
 - a planning permission letter being issued without the conditions agreed at committee; and
 - a computer inputting error resulting in a housing benefit cheque going to a tenant despite an arrangement that it should be paid to the landlord resulting in the landlord not receiving a significant amount of money owed to him when the tenant left.
- *Has the Council taken appropriate action to resolve difficulties or disagreements?*
It is good practice to try to resolve difficulties or disagreements by discussion and negotiation in the first instance but to take formal action when it is clear that informal attempts at resolution are not working. A warning should be issued before embarking upon formal action. An example of failing to take appropriate action might be a failure to embark early enough on legal action to terminate the tenancy when tenants are causing nuisance or are harassing their neighbours.
- *Has the Council made misleading or inaccurate statements?*
Customers will expect, and are entitled to expect, that any statements made to them by the Council are accurate and unambiguous. Members and officers need to be circumspect in their statements to members of the public and not give the impression that they are giving an undertaking on behalf of the Council unless that is what is intended. Whilst it is helpful to deal with issues through direct discussion it is good practice to confirm discussions or advice in writing to minimise any risk of misunderstanding – e.g. a failure to document planning advice might result in a customer believing a proposal to their plans would be acceptable and result in planning permission being granted when it would not.

- *Has the Council formulated undertakings with care and discharged any responsibilities arising from them appropriately?*
It is important that undertakings are not given lightly, that they are expressed carefully and clearly, and that they are only given when the Council is confident it can fulfil them. Provisos (e.g. subject to the availability of funds) should be stated where appropriate. If, in exceptional circumstances, the Council cannot fulfil an undertaking the Council should consider compensation as appropriate. The LGO can ask the Council to pay compensation – e.g. if a prospective purchaser of a site is told that a residential development would be acceptable but after the purchase planning permission is refused.
- *Has the Council taken appropriate action to avoid unfair discrimination?*
Some forms of discrimination (e.g. sex or race) are proscribed by legislation but unfair discrimination may result in other instances too – e.g. where a householder is given the opportunity to bid for a plot of land but a neighbour in similar circumstances is not.
- *Has the Council properly informed customers of any rights of appeal or avenues for pursuing a complaint where they are adversely affected by a decision?*
Whether there is a statutory obligation or not, it is good practice to make clear to those affected by decisions the further avenues that may be open to them if they are dissatisfied.

12.32 The LGO website (<http://www.lgo.org.uk/News>) also has examples of LGO cases which may be a useful point of reference when reaching a decision.

12.33 The basis of the decision, the date it was taken and the officer responsible, should be apparent from the complaint file.

12.34 In some cases there will be insufficient evidence to form an opinion and, if possible, a view will have to be formed on the 'balance of probabilities'. There may be exceptional circumstances when reaching a decision either way is near impossible and the complainant will have to be told that a decision cannot be made. Every effort should be made to reach a conclusion and where this is not possible the extent of evidence gathered should be reconsidered with a view to finding more information or more conclusive evidence.

Communicating the Decision

12.35 Responses to complaints should be clear and evidence-based. They should also be provided in the timescales set out in earlier contacts with the complainant (see Section 6).

12.36 The LGO has guidance recommending the content of decision letters as follows:

- a statement of the complaint - this should be the summary agreed with the complainant at the start of the process;
- the steps taken to investigate the complaint and the things taken into account – e.g.

"In considering your complaint I have:

- *read the records of your contacts with the Health and Housing Service;*
- *interviewed officers who have dealt with your case;*

- *examined Council policies relating to your complaint; and*
- *researched relevant legal background”;*
- the decision and reasons for it – e.g.
“I have come to the conclusion that your complaint is justified for the following reasons:”
This should be followed by headings from the list of points in the statement of the complaint. Under each heading there should be a summary of the complaint made relating to that point, a detailed explanation of relevant findings (key issues, facts, policies, law etc.) and your opinion based on those findings – i.e. whether the council upholds, partly upholds or does not uphold the complaint. It may be appropriate to append documentary evidence;
- a summary of the decision may be appropriate if the letter/report is lengthy, although this is not specifically recommended by the LGO;
- **if the complaint is upheld the letter should contain an apology** and details of the action to be taken to put things right for the complainant, including who will do it and when. It may also be appropriate to include any service improvements as a result of the complaint (see paras. 12.39 – 12.42); and
- what the complainant should do if they disagree with the decision. The following wording is suggested but should be tailored to the individual circumstances:
“If you are not happy with the outcome of your complaint you can ask that it be reviewed stating why you disagree with the outcome. If you produce significant new evidence which may make a material difference, you will need to provide an explanation of why that information was not previously made available. Please refer to our complaints booklet for further details on taking the matter further at www.lancaster.gov.uk/complaints”.

Taking Action to Put Things Right Where They Have Gone Wrong (including Rights to Compensation)

- 12.37 Section 92 of the Local Government Act 2000 confirms that councils are empowered to remedy injustice arising from maladministration where the complaint is made only to the Council and not the LGO.
- 12.38 If there is maladministration it does not necessarily follow that the complainant has suffered injustice as a consequence. It is not enough to know the complainant suffered a disadvantage as the disadvantage may have been caused by the actions of the complainant or a third party. For a finding of maladministration causing injustice it should be clear, on the balance of probabilities, that the injustice, either wholly or partly, occurred as a consequence of the Council’s maladministration.
- 12.39 If it becomes apparent, during the course of the investigation, that the Council has got it wrong, action should be taken as soon as possible to:
- save time and money by preventing things getting worse;
 - build trust, increase customer satisfaction and promote a positive image; and
 - enhance the Council’s reputation for complaints handling.

- 12.40 If the Council has got things wrong it should **always apologise**. Sometimes an apology is all that the complainant wants. An apology is not an acceptance of liability. Section 2 of the Compensation Act 2006 makes clear that an apology in itself does not amount to an admission of negligence or breach of statutory duty.
- 12.41 Sometimes the complainant may just want to know that the same thing won't happen again and the fact that their complaint has led to real improvements might mean a great deal to them; in these cases the complainants should be informed of the changes to practices/procedures as a result of their complaint.
- 12.42 If a specific action is needed (e.g. repairs are needed to a council house) the complainant should be told when this will be done and by whom.
- 12.43 Where there is no other way of putting things right (e.g. through the passage of time) financial compensation may be the only option but this should only be considered where there has been a significant injustice.
- 12.44 Where a complainant has incurred costs which they would not have incurred but for the maladministration it may be appropriate reimburse all or some of those costs (e.g. abortive expenditure in respect of a land purchase which the Council agreed and then cancelled). In such cases a decision is needed as to whether it was reasonable for the complainant to incur these costs. Where the costs relate to professional fees for pursuing the complaint (e.g. legal fees, planning consultancy fees) a decision on reasonableness should take into account:
- the complexity of the case;
 - the circumstances of the complaint;
 - whether the complainant is vulnerable; and
 - whether the complainant could reasonably have been expected to pursue the complaint without advice.
- It may be appropriate to contribute to the costs incurred rather than reimburse them in full. Where legal fees are involved it would also be relevant to establish whether the complainant got assistance with the fees from elsewhere.
- 12.45 When determining the loss of a non-monetary benefit (e.g. a council tenant unable to use a room through the lack of a repair) it may be difficult to quantify the loss. An objective approach might be available – e.g. it might be appropriate to ask “what would the council have had to pay to make alternative provision over the time period involved”. However, a calculation on that basis may be disproportionate to the injustice (i.e. a small amount of money might relate to a major injustice or vice versa) and the effect on the complainant has to be considered.
- 12.46 If a complainant owns something which has lost value through maladministration by the Council (e.g. property devalued as a result of a planning decision), and any action the Council might take to restore the amenity would not fully compensate for the injustice, an assessment is needed of the value before the maladministration and the probable value after the maladministration. In such cases it may be appropriate to seek an independent valuation.
- 12.47 Compensation for a lost opportunity (e.g. the complainant was deprived of a right of appeal through the Council not informing them of that right) is likely to be fairly small as the complainant has only lost an opportunity and the actual outcome which might have occurred is unknown. However, if there is some

certainty over what the outcome might have been, compensation should take this into account.

12.48 Compensation for distress, including stress, anxiety, frustration, uncertainty, worry, inconvenience or outrage should only be considered where the complainant has clearly suffered significantly more than if the situation had been managed correctly. Compensation needs to take into account:

- the severity of the distress;
- the length of time involved;
- the number of people affected (might include complainants' family);
- whether the person affected is vulnerable; and
- any professional opinion about the effects on the individual.

12.49 If paying compensation which is not for a specific purpose (e.g. a redecoration allowance in lieu of the council decorating after repairs), it might be reasonable to offset the compensation against any debt.

12.50 When determining the remedy it is important to focus on what the consequences were rather than on what went wrong. The remedy should be appropriate and proportionate to any harm suffered and should seek, where possible, to put the complainant back in the position they would have been in if the fault had not occurred.

12.51 When deciding the remedy it may be appropriate to take account of the complainant's views but you should always exercise your own judgement taking into account:

- anything the complainant did or did not do which contributed to the harm they suffered (e.g. the complainant did not take action to mitigate the effect of maladministration when they could reasonably have been expected to do so); and
- if appropriate, the time and trouble they went to in pursuing their complaint.

12.52 Guidance from the LGO states that in some cases it may be appropriate to compensate for the complainant's 'time and trouble' in pursuing their complaint. Such payments should not be standard practice and should only be considered where the complainant has had to endure delays and/or difficulties which are clearly over and above what could reasonably be expected. The LGO may recommend time and trouble payments in any findings of maladministration and injustice but such payments may also be considered at local level. Guidance states that such payments recommended by the LGO are normally between £50 and £250 but early local settlements are likely to be lower. The amount is determined through considering relevant factors such as:

- the passage of time, including response times by the authority;
- the amount of time the complainant had to devote to pursuing their complaint;
- difficulties experienced by the complainant in dealing with the authority; and
- any inadequacies in responses to the complainant by letter, telephone etc. and whether this was a result of wilful action or poor administration; and
- the level of minor expenses (e.g. telephone costs, travel costs etc.) not quantified as a separate element of compensation.

Where compensation for 'time and trouble' is included in a composite payment it is important that this is made clear to the complainant.

- 12.53 There may be rare instances where people other than the complainant have been similarly affected and it may be appropriate to consider their situation with a view to applying a similar remedy. The LGO can only formally recommend a remedy for the person who has made a complaint or a person on whose behalf a complaint has been made.
- 12.54 It is important that any actions proposed as a result of a complaint are implemented within a reasonable timeframe and that the responsibility for doing so is properly assigned. Whilst the investigating officer may assign responsibility to someone else they, as the officer responsible for the complaint, remain responsible.

13 Stage 2 Formal Complaints

- 13.1 Some complainants will be dissatisfied with the response they get from the Stage 1 investigation of their complaint and they have the right to question or challenge the response. The complaint only becomes a Stage 2 complaint when the Stage 1 process has been exhausted (i.e. a thorough investigation covering the agreed scope of the original complaint has been carried out) and the Stage 1 investigating officer has nothing more to say on the matter.
- 13.2 At Stage 2 complaints are reviewed by an officer independent of the service area concerned, the review to establish:
- whether the Stage 1 investigation was adequately thorough and impartial; and
 - if any fault was found, whether things have been put right for the complainant.

Stage 2 is not a re-investigation of the complaint.

- 13.3 There are several stages to the Stage 2 process as follows:
- acknowledging and establishing the basis of the dissatisfaction and determining whether a Stage 2 review is required;
 - allocating the Stage 2 review;
 - taking ownership of the Stage 2 review;
 - reviewing the Stage 1 investigation; and
 - informing the complainant of the outcome of the Stage 2 review.

Acknowledging and Establishing the Basis of the Dissatisfaction and Determining whether a Stage 2 Review is required

- 13.4 Complainants may express their dissatisfaction with Stage 1 responses in a number of ways (e.g. letter, email, telephone call etc.). All contacts should be directed to the original investigating officer or the Service Head in their absence.
- 13.5 It is important to establish the basis of the complainant's dissatisfaction with the Stage 1 response (i.e. what do they disagree with and why) and, where possible, to get this documented and agreed by the complainant. Where the basis of the dissatisfaction is obvious (i.e. clear from the documentation received) to save time, this could be reflected back to the complainant in the acknowledgment letter (see para 13.7). Where it isn't obvious the officer concerned should arrange to contact the complainant to clarify the issues raised.

- 13.6 The Stage 1 investigating officer (or their Service Head) is to decide whether the dissatisfaction warrants a Stage 2 review. In determining whether a complaint should progress to Stage 2 the officer concerned should consider the points raised in response to the Stage 1 decision against the agreed scope of the original investigation to establish whether:
- i) the Stage 1 investigation has overlooked an element of the original complaint;
 - ii) new information has been provided which, if it had been available at the time, would have been considered at Stage 1;
 - iii) new information or allegations have been made which are outside the scope of the original investigation; or
 - iv) there is no new information which would have influenced the outcome of the Stage 1 investigation.

Where i) or ii) applies the complaint should be dealt with in the service concerned, perhaps by the original investigating officer.

Where iii) applies the complainant needs to be advised that the issues raised are outside the scope of the original investigation and that if they wish to pursue the issues they will be treated as a new complaint.

Where iv) applies the complaint should progress to a Stage 2 complaint.

- 13.7 Complainants should be informed of the decision on how the complaint is to be progressed within 5 working days of them making contact. If the complainant has been contacted to clarify the basis of their disagreement this may be done verbally but where appropriate followed up formally. Letters or emails should state:
- the basis of the complainant's dissatisfaction with the original decision; and
 - a date by when the complainant should expect further contact (i.e. within 10 working days).

- 13.8 If the decision is not formally communicated to the complainant by the investigating officer (or their Service Head) a file note should be made for the officer who is to conduct the Stage 2 review to help them prepare the acknowledgement letter (see para. 13.12). The note should set out the key points of:
- the complainant's disagreement with the Stage 1 response; and
 - the decision to proceed to Stage 2.

Allocating the Stage 2 Review

- 13.9 Where the Stage 1 investigating officer determines the complaint should progress to Stage 2, details should be passed to the Leader's or Chief Executive's PA for allocation to a Service Head independent of the issue concerned.
- 13.10 All information relating to the complaint should be available for the Service Head (or their nominated representative) for the Stage 2 review.

Taking Ownership of the Stage 2 Review

- 13.11 Responsibility for Stage 2 reviews rests at Service Head level. The Service Head may delegate the review to an officer within their Service but the final Stage 2 decision letter should go out in the Service Head's name.
- 13.12 The reviewing service should make contact with the complainant within 10 working days of their Service Head having been allocated the complaint. Where possible this should be the final decision letter but where this is not possible the complainant should be given the date by when they should receive the decision. The following wording may be appropriate where the decision cannot be issued in 10 working days –

Dear xxxxx

In accordance with the Council's Customer Comments, Compliments and Complaints Policy I have been requested to review your complaint with regard to xxxxx.

I am currently reviewing your case and will contact you with my decision by (date).

Reviewing the Stage 1 Investigation

- 13.13 The Stage 2 review is not a reinvestigation of the complaint but a check that:
- the original Stage 1 investigation was carried out in accordance with the Council's Customer Comments, Compliments and Complaints Policy;
 - the investigation was appropriate, thorough and fair;
 - communication with the complainant was timely, appropriate and in-line with the Customer Comments, Compliments and Complaint's Policy;
 - the decision made was appropriate based on the evidence available; and
 - the remedy, if any, was appropriate and was implemented as notified to the complainant.
- 13.14 Whilst all paperwork relating to the Stage 1 investigation should be available to the Stage 2 reviewing officer, in some cases it might be useful to speak to the original investigating officer during the course of the Stage 2 review.

Informing the Complainant of the Outcome of the Stage 2 Review

- 13.15 A formal Stage 2 response should be issued in all cases either by letter or email, though this may be confirmation of a conversation with the complainant. The Stage 2 response should be sent out in the name of the Service Head responsible for the Stage 2 review and ideally the response should be reviewed by a relevant officer in the Service the complaint concerns (e.g. the Service Head, original investigating officer etc.) first to ensure there are no factual inaccuracies.
- 13.16 The Stage 2 response should include:
- details of the complaint – e.g.
“The investigation into your original complaint dated xxx and concerning xxx has been reviewed as a Stage 2 complaint per the Council's Customer

Comments, Compliments and Complaints Policy. I understand that you were dissatisfied with the original response to your complaint on the following grounds:

- *xxx; and*
 - *xxx”*
 - a statement of the complaint about the officer carrying out the Stage 2 review – e.g.
“A review of your complaint has been carried out on my behalf by xxx, who is outside the service area which is the subject of your complaint.”
 - the steps taken to carry out the review – e.g.
“In reviewing your complaint consideration has been given to the material substance of the complaint and whether it has been dealt with in accordance with the Council’s own policy and procedures. Documentation held in relation to your complaint has been reviewed and (name of reviewing officer) has met with relevant officers to help gain a balanced view of the matter.”
 - the decision and reasons for it. How this is set out will depend on the grounds for dissatisfaction. If they were specific then each specific point should be set out in the letter/email followed by a summary of the findings of the Stage 2 review. If the dissatisfaction was of a general nature it may be helpful to set out headings relating to the matters considered during the review followed by a summary of the findings under each – e.g.
 - failure to follow Council policy, procedures, rules or standards of service;
 - failure to take account of relevant matters in the Stage 1 investigation;
 - neglect or unjustified delay;
 - unhelpful attitude of a Council employee; and/or
 - malice, bias or discrimination.
 - an overall conclusion (i.e. whether the complaint is upheld or not), an apology if appropriate and details of any action proposed as a result;
 - where appropriate (e.g. the complainant has been persistent and potentially may become unreasonably so as a result of the Stage 2 decision), a statement that the Council has nothing further to say on the matter; and
 - what the complainant should do if they disagree with the decision – i.e. reference to the LGO or Information Commissioner as appropriate.
- The following wordings are suggested:

“If you are not satisfied with how your complaint has been dealt with you have the right to refer the matter to the Local Government Ombudsman. Contact details for the Local Government Ombudsman are as follows:

*The Local Government Ombudsman
PO Box 4771
Coventry CV4 0EH*

*Tel:0300 061 0614
Fax: 024 7682 0001
website: <http://www.lgo.org.uk>”*

“Where you are dissatisfied with the way that any Data Protection issue has been dealt with under this policy you can refer the matter to the Information

Commissioner. Contact details for the Information Commissioner's Officer are as follows:

*Information Commissioner's Office
Casework and Advice Division
Wycliffe House
Water Street
Wilmslow
Cheshire
SK9 5AF
Tel: 0303 123 1113
Email: enquiries@ico.gsi.gov.uk
Website: <http://www.ico.gov.uk>*

14 Complaints about the Council made through the LGO.

- 14.1 When the LGO is considering a complaint against the Council it will contact the authority as necessary by emailing info@lancaster.gov.uk
- 14.2 The Information Management Officer is primarily responsible for managing the relationship with and co-ordinating responses to the LGO. She will regularly check the inbox, passing information on to services as appropriate, colleagues in Legal Services providing cover in her absence.
- 14.3 Information requests from the LGO often have timescales attached, the timescale dependent upon the nature of the request. For example, an information request in respect of a complaint it is investigating may have 28 days attached whereas a request to apply the Council's complaints policy will normally have 12 weeks attached. In either case officers concerned should meet the requirements of the LGO in consultation with the Information Management Officer.
- 14.4 All responses to the LGO should be through the Information Management Officer so that the Head of Governance may have sight of the response before it is sent.

15 Dealing with Unreasonable persistent complainants

- 15.1 A minority of customers can pursue their complaints in ways which may be considered unreasonable. Their behaviour may be considered unacceptable, or they may be unreasonably persistent in their contacts and submission of information. Unreasonably persistent complainants can impede the investigation of their complaint and can have significant resource issues for the Council. These actions can occur either while their complaint is being investigated, or once the council has concluded the complaint investigation.
- 15.2 The Council's Customer Comments, Compliments and Complaints Policy seeks to ensure unreasonably persistent complainants are dealt with fairly by ensuring that, as far as possible, the substance of their complaint is addressed. However, at the same time, the Policy seeks to ensure the resources expended on dealing with the matter are proportionate. The key to success is the effective

management of customer expectations and their behaviour. This guidance seeks to support the Policy through examples.

15.3 It is important to distinguish between 'persistent' complainants and 'unreasonably persistent' complainants. Customers who take their complaints to the LGO are 'persistent' because they feel their complaint has not been dealt with properly. 'Unreasonably persistent' complainants are those who pursue their complaints (which may be justified) in inappropriate ways for example by:

- refusing to specify the grounds of a complaint, despite offers of assistance (see also para. 12.16);
- refusing to accept that certain issues are not within the scope of the Customer Comments, Compliments and Complaints Policy;
- refusing to co-operate with the complaints investigation process;
- making unnecessarily excessive demands on the time and resources of staff while a complaint is investigated, e.g. excessive telephone calls, emails, long and complex letters every few days and expecting immediate responses;
- changing the basis of the complaint as the investigation proceeds (see paras. 12.10 – 12.20);
- denying or changing statements made previously;
- continually raising new issues or seeking to prolong contact by continually raising further concerns or questions upon receipt of a response whilst the complaint is being addressed;
- continually focusing on trivial matters to an extent which is out of proportion to its significance;
- being unwilling to accept documented evidence (e.g. council Tax records) or denying receipt of any adequate responses in spite of correspondence specifically answering their questions;
- persisting in pursuing a complaint, where the council's complaints procedure has been fully and properly implemented;
- refusing to accept that facts can sometimes be difficult to verify after a long period of time;
- adopting a "scattergun" approach – i.e. pursuing a complaint or complaints with several parties (e.g. MPs, LGO, External Audit) at the same time as contacting the Council;
- recording meetings or telephone conversations without the prior knowledge and consent of other parties involved;
- making what appear to be groundless complaints about staff dealing with the complaints, and seeking to have them removed;
- submitting repeat complaints, after complaints processes have been completed about the same issues, with additions/variations which the complainant insists make these "new" complaints which should be considered; or
- refusing to accept the decision and repeatedly arguing points with no new evidence.

15.4 The Council will not tolerate deceitful, abusive, offensive, threatening or other forms of unacceptable behaviour from complainants. If this occurs the complainant should be dealt with in accordance with the Council's procedures for protecting staff against harassment and harm and consideration should be given to placing the complainant on the staff warning register. Details of the

Staff Warning Register procedure can be found on the Intranet under Health and Housing\Council Housing\Health and Safety

15.5 When considering whether a complainant's behaviour is unreasonable it is important that they are told why their behaviour is considered as such so that they have the opportunity to change it before restrictions are applied. It may be helpful to offer a meeting with an appropriately senior officer to explore scope for a resolution. The officer meeting the complainant should explain why the complainant's behaviour is considered unreasonable and the courses of action the Council might take (see paras. 15.13 – 15.14) should be discussed.

15.6 Where a complainant's behaviour is impeding an ongoing investigation the following phrases may be useful when contacting them:

I do not need any further information from you at this stage.

Please do not revert to sending large and numerous emails as these are difficult to deal with and do not help me progress the investigation.

You have sent (x number) of emails in the last (number) weeks all with similar enclosures and comments.

By copying numerous officers into your emails you are causing confusion.

I will not respond to every email you send as this will lead to me repeating the same information.

As I explained to you when we last spoke your daily telephone calls serve only to hold up work on your complaint.

I appreciate you are anxious to know what is happening. I assure you I will keep you up to date on the progress of the investigation by writing to you.

I will contact you if I need further information from you.

You should not expect to hear from me before (date). I assure you I will write to you before (date) to give you an update.

15.7 In some instances, it might help to work with the complainant to find a suitable independent advocate through whom all communication can be directed.

15.8 Where a complainant is contacting several Services, Service Heads need to decide which of them will co-ordinate the council's approach/response to the complainant. A strategy meeting to agree a cross-departmental approach might be useful.

15.9 The decision to designate someone's behaviour as unreasonable rests with Management Team. Before designating someone persistent the Council needs to be satisfied that:

- the complaint is being or has been investigated properly;
- any decision reached on the complaint is the right one;
- there has been appropriate communication with the complainant; and
- the complainant is not providing any significant new information that might affect the organisation's view on the complaint.

- 15.10 Once a complainant has been designated unreasonably persistent a record should be made stating the date, the name of the officer making the decision and the reason why. The record and any supporting documentation should be held centrally by the Customer Services and Visitor Information Manager.
- 15.11 Decisions not to designate someone unreasonably persistent should also be recorded with the reasons why. These should also be held by the Customer Services and Visitor Information Manager.
- 15.12 The complainant should be formally notified promptly that they have been designated unreasonably persistent. The letter should be on the lines of the following format:

“The Council sees complaints as an effective tool to help manage its business and improve the services it provides to its customers. Its complaints system aims to provide a feedback mechanism which:

- meets customer needs;*
- identifies and leads to improvements; and*
- meets guidelines provided by the Local Government Ombudsman.*

The Council seeks to ensure all customers accessing the complaints procedure are treated fairly, promptly and sensitively and that the substance of all complaints is, as far as possible, addressed.

You first complained to the Council on (date). The substance of your complaint was (brief details – perhaps refer to previous correspondence such as the initial acknowledgement letter).

(A brief history of events to date with references to previous letters etc. where appropriate).

The Council has a duty to effectively manage public funds and to ensure any actions taken are proportionate to the matter in hand. Having reviewed your case I consider the amount of time being spent on your complaint(s) is now unreasonable (the reasons why)

For these reasons I propose (set out the restrictions to apply and how long they are to be applied).

You have the right to appeal against my decision by contacting xxx within one month of the date of this letter.”

The letter can also state, if appropriate, that future correspondence will be read by a named designated officer and placed on file but not acknowledged, unless it contains material new information.

- 15.13 The Council has several options for dealing with unreasonably persistent complainants. Any actions taken should be proportionate to the nature and frequency of the complainant’s current contacts and should take into account the complainant’s behaviour and circumstances. The objective is to manage the complainant’s unreasonable behaviour in such a way that their complaint can be brought to a conclusion quickly. Options include:
- placing limits on the number and duration of contacts with staff;
 - offering a restricted time slot for necessary calls;
 - limiting the complainant to one medium of contact (telephone, letter, email etc);

- requiring the complainant to communicate only with one named member of staff;
 - requiring any personal contacts to take place in the presence of a witness and in a suitable location; or
 - refusing to register and process further complaints about the same matter.
- 15.14 Where the relationship between the Council and complainant has broken down badly while complaints are under investigation and there is little prospect of achieving a satisfactory outcome there is nothing to be gained through following through the stages of the Council's complaints procedure. In these circumstances, the LGO may, exceptionally, be prepared to consider complaints before complaints procedures have been exhausted, if the request is made by both sides to the dispute.
- 15.15 Even though a complainant has been designated 'unreasonably persistent' all future contacts from the complainant should be considered on their own merit. Where the contact refers to the same issue it should still be checked for any significant new information. Whether or not the complainant gets a response will depend upon the restrictions applied per the formal notification that they have been designated unreasonably persistent but the file in Customer Services should be updated with each contact and the reason for the course of action taken.
- 15.16 The 'unreasonably persistent' status needs to be periodically reviewed. This will normally be after 12 months. At review restrictions should be lifted and relationships returned to normal unless there are good grounds to continue the extension (e.g. continued persistence). Whatever the outcome the complainant should be formally notified and where appropriate a new review date stated. Again the complainant has the right to appeal.
- 15.17 A complainant who has been treated as behaving unreasonably may make a complaint to the LGO about it. The LGO is unlikely to be critical of the Council's action if it can show that it acted proportionately and in accordance with its own procedures.

16 Reviewing, Monitoring and Reporting Arrangements

- 16.1 The corporate complaints procedure aims to provide a comprehensive record of complaints. It is recognised a system is needed to support the procedure which provides:
- an audit trail;
 - a mechanism to track progress and follow up delays;
 - a mechanism to identify trends; and
 - a tool to demonstrate learning from complaints.
- System options are currently being considered and any changes will result in this guidance being updated.
- 16.2 Any system is to be owned by the Customer Services and Visitor Information Centre Manager and it is hoped that in time the officer will regularly review reports from the system to ensure the principals of the Customer Comments,

Compliments and Complaints Policy are being applied and timescales are being met.

- 16.3 The Customer Services and Visitor Information Centre Manager will review the quality of responses to complaints on a sample basis and any issues will be raised with those concerned as appropriate. If necessary recommendations for changing the complaints system/procedures will be put to senior managers.
- 16.4 Reporting arrangements are still to be determined and will be influenced by system capabilities. The consensus of the Complaints Officer Working Group is that a corporate picture of complaints is needed at Management Team level on a regular basis (i.e. the number of Stage 1/Stage 2 complaints and the number upheld, not upheld etc. with brief details where appropriate to enable further investigation if necessary). Arrangements for reporting to Members are to be considered in the longer term.

17 Learning

- 17.1 The Customer Comments, Compliments and Complaints Policy includes a general aim –
- “To learn from our successes and mistakes; to use feedback from customers to continually improve our services”.
- 17.2 The ability to share complaints information corporately will, to some extent, be dependent upon system reporting arrangements. The Complaints Officer Working Group is considering ways to improve learning from complaints and it is hoped proposals for regular reporting to Management Team will help. Other options under consideration include:
- sharing the annual LGO report corporately with information relating to the original complaint; and
 - the formation of a group for officers responsible for handling complaints to share experiences.