

Local Government OMBUDSMAN

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Assessment Code

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Introduction

While we aim to help people where we can, and it is appropriate to do so, the LGO scheme cannot investigate every complaint it receives. The law places restrictions on our work and we operate with limited resources. That means we only look at the most significant and serious complaints.

To decide which complaints the Ombudsman can look at, we carry out an initial assessment of every complaint using this 'Assessment Code'.

We apply the code in the same way to all complaints, regardless of how we receive them or what they are about. This includes complaints passed to us by an MP or a councillor, and complaints that involve other ombudsman schemes.

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How we apply the Assessment Code

Skilled staff apply the Assessment Code fairly and consistently to assess complaints.

Every complaint is individually considered on its own merits. There are no simple rules, monetary limits, or blanket exclusions that determine the types of complaints we investigate. We decide each case based on its own unique circumstances.

We will publish all our assessment decisions to demonstrate how we apply this code in practice.

Assessment decisions are based on the facts presented to us by both the complainant and the service provider. Where needed, we also make brief factual enquiries to ensure we have the information we need to make a fair and balanced assessment. However we do not carry out an investigation at this stage.

We generally expect the complainant to make clear to us:

- what they believe the service provider has done wrong
- the injustice they claim to have suffered as a direct result, and
- what they are looking for to put the matter right.

We then apply the Assessment Code in two stages:

- **Stage one: 'The jurisdictional stage'**

This looks at the legal restrictions on what we can do – that is, what the law does not allow us to look into.

- **Stage two: ‘The discretionary stage’**

This deals with the choices we make about which complaints to investigate – that is, the options we have when the law allows us to look into a complaint.

We explain these stages in more detail below.

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STAGE ONE: The jurisdictional stage

The Local Government Act 1974 sets out what complaints the law allows the Ombudsman to consider.

The LGO cannot consider complaints about:

- a matter that is going to court
- criminal matters
- some commercial matters
- employment issues, and
- some educational matters.

Neither can we consider a complaint where someone has already appealed to a tribunal or a Minister, or gone to court.

Where none of the legal restrictions above apply, there are a number of things we must consider before deciding whether or not to investigate a complaint. Broadly speaking, there are four conditions a complaint must fulfil before we will investigate it:

- **The complaint is made by a member of the public or by a suitable representative on their behalf** – The Ombudsman cannot consider complaints made by councillors about their role as members of a council. Neither can the LGO consider complaints made by council employees about their employment. Complaints can be made “on behalf of” someone by a wide range of people or organisations, but only with that person’s consent. Where someone is unable to complain in their own right, the Ombudsman must consider whether their representative can represent their best interests.
- **Local complaints procedures should be exhausted** – Most local authorities and service providers have a two or three stage complaints procedure. These are designed to put things right for people quickly and efficiently when things go wrong. We would normally expect someone to be able to show they had exhausted such procedures before using the LGO service. Even where the complainant urgently needs services, their needs will in most instances be met more quickly by approaching the service provider rather than the Ombudsman.
- **The complaint should be made in time** – The Ombudsman would normally expect a complaint to be made to her within a year of the events complained of, unless there were exceptional reasons for the delay.
- **Where someone could get a resolution of their complaint from another body, the Ombudsman expects people to use that route** – There are a wide range of different ways people can appeal against certain decisions they feel are unfair. For example – motorists may appeal against parking tickets, and home owners who want to extend their homes can appeal against refusal of planning permission. Where alternative rights of redress exist, we usually expect people to use them.

If a complaint does not pass 'the jurisdiction stage' of the assessment, it will be closed at this point and the 'discretionary' tests will not be considered.

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STAGE TWO: The discretionary stage

The discretionary stage uses four inter-related tests:

- **The Injustice Test** – This assesses the level of personal injustice the complainant claims to have been caused as a direct result of the actions or inactions of the service provider.
- **The Fault Test** – This assesses the scale and nature of the fault, that the complainant alleges has occurred and whether it is directly linked to the injustice claimed.
- **The Remedy Test** – This assesses how likely it is we will be able to achieve a meaningful outcome to the complaint.
- **The Public Interest Test** – This assesses the level of wider public interest arising from the individual case.

In some cases we will consider the combined impact of all four tests when deciding whether we will investigate. In other situations the significance of one particular test may be enough to determine what action is appropriate.

Our staff will use their experience and judgement to carry out this balancing exercise to apply these tests to the unique facts of each case. Complaints are not scored, weighted or rated according to any numerical formula.

The LGO service is a public authority for the purposes of the Human Rights Act 1998. We apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act. All those who work in public authorities must act in a way that is compatible with the Human Rights Act 1988. The Act is all about treating individuals fairly, with dignity and respect – while still safeguarding the rights of the wider community. We assess local authorities' actions against the principles contained in the Act when deciding whether or not to investigate a particular complaint.

The Injustice Test

The Injustice test is the most important factor in our assessment decision.

We will not normally investigate a complaint unless there is good reason to believe that the complainant has suffered significant personal injustice as a direct result of the actions or inactions of the service provider.

This means that we will normally only investigate a complaint where:

- the complainant has suffered serious loss, harm, or distress as a direct result of faults or failures by the service provider, or
- there are continuous and ongoing instances of a lower level injustice that remain unresolved over a long period of time.

We will not normally investigate a complaint where:

- The alleged loss or injustice is not a serious or significant matter.
- Where the complainant is using their enquiry as a way of raising a wider political or community campaign. In these cases their concerns may be better addressed to their local councillor rather than the Ombudsman.

- Where the complainant is not the person primarily affected and is complaining about a secondary impact on them, rather than acting on behalf of the person directly affected.
- Where the complainant has suffered significant personal injustice, distress and loss, but those events cannot be shown to be directly the result of the actions or omissions of the service provider.

The Fault Test

Fault is a broad concept and covers a wide range of action or inaction by a public body or a care provider.

We will be more likely to investigate a complaint where:

- The type and scale of the fault amounts to a particularly serious failure to meet normally expected standards of public service.
- There is ongoing systemic failure in a service provider's policies or procedures where our intervention may result in a wider public benefit.
- The service provider is directly responsible for the action that has caused the alleged fault.

We will be less likely to investigate a complaint where:

- There is not enough evidence of fault.
- The complaint is simply an expression of discontent about an unpopular or contentious decision which has been made without fault.
- It would be more appropriate for another body to consider the complaint. For example, an allegation of repeated failures in care standards in a residential care home could be referred to the Care Quality Commission.
- The link between the claimed injustice and the actions or omissions of the body complained about is weak or unclear.
- The service provider only has a secondary role in the relationship between the complainant and another party, such as where a person is unhappy with work done by a builder and so complains about their council's building control department.
- It would not be appropriate to investigate most of the complaint, and only smaller, marginal issues remain. So, for example, we will not usually investigate a failure by a council to adhere to its complaints procedure if the complaint itself is not a matter we can consider (ie it does not pass the 'jurisdictional' stage).

The Remedy Test

We will be less likely to investigate a complaint where:

- In our view the service provider's response to the complaint already represents a reasonable and proportionate outcome.
- We are unlikely to achieve a significantly different result.
- There is no achievable or realistic remedy, or no prospect that we will achieve the result that the complainant seeks.
- There is no practical prospect that we would be able to investigate the allegations. (For example, where the complaint depends on the uncorroborated word of one person against another.)
- The claimed loss is disproportionate to the reasonable expectations of what the service provider could be held accountable for. (For example, consequential losses from a missed journey as a result of a temporary bus stop closure).

- The claimed loss is large and would be more appropriately addressed through action in the civil courts. (For example, large commercial or business losses arising from an alleged failure by a public body).

The Public Interest Test

We are more likely to investigate a complaint where:

- It relates to an issue of significant public interest or to an issue of current concern to the Ombudsman.
- It relates to the abuse of power by a public body against a person. This may arise, for example, where a council behaves in an arbitrary and unreasonable manner over the sale of land. In these situations we have an important role in addressing the unequal balance of power between the person and the state, and in highlighting the higher standards expected of public bodies when exercising their administrative or commercial powers.
- Where the 'vulnerability' or particular circumstances of the complainant indicate the Ombudsman's intervention would be merited.

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