

Berkswell Parish Council - Complaints Procedure

1. Introduction

It is hoped that all the services that the Council provides will be undertaken in a manner that meets with residents' satisfaction. If any resident has any concerns or suggestions, it is appropriate that they contact a councillor or the Parish Clerk to make a proposal or to discuss the issue. Residents can also come to a Parish Council meeting, the dates and locations of which are published on our web site and can address the Council during the "public session". Meetings are relatively informal and councillors always welcome comments from the public.

However, for more serious issues, a member of the public might wish to make a formal complaint. This Policy explains how you should do that and how your complaint will be handled.

2. How to make a Formal Complaint

- 2.1. The complainant should put the complaint about the council's performance/services or the alleged conduct of an employee or councillor in writing to the Parish Clerk. If the Complainant does not wish to put the complaint to the Clerk, then he or she can address it to the Chairman of the Council.
- 2.2. In exceptional circumstances, the Clerk has the authority to accept a verbal complaint about a Council service or action if the issue is either:
 - 2.2.1. Very clear and very urgent and where the delay caused by awaiting a written complaint would be detrimental to the resolution of the issue
 - 2.2.2. Or if the person making the complaint is not capable of making a written complaint due to a disability or other significant reason.
- 2.3. The complaint will be either handled in writing or with a formal meeting. If the Complainant wishes to meet with councillors, then that should be included in the initial letter of Complaint, otherwise the Council will determine whether a face to face meeting is necessary for them understand the issues fully.
- 2.4. Where the complaint is about the alleged conduct of a Councillor involving a failure to follow the Parish Council's code of conduct then a complaint can be made to the Monitoring Officer, Democratic Services, Solihull Metropolitan Borough Council, Council House, Manor Square, Solihull, B91 3QB, rather than to the Parish Council.

3. Action on Receipt of a Complaint and general approach

- 3.1. On receipt of a complaint the Clerk (or Chairman if the complaint is sent to the Chairman) will make an assessment of the type of complaint and route the complaint into the

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appropriate part of this procedure

3.1.1. For a complaint about a council service/performance then paragraph 4 will apply

3.1.2. For a complaint about an employee then paragraph 5 will apply

3.1.3. For a complaint about a Councillor paragraph 6 will apply

3.2. The Clerk or Chairman will acknowledge receipt of the complaint and will in this first or subsequent correspondence

3.2.1. advise the Complainant when and how the matter will be considered by the council.

3.2.2. The Complainant will be advised whether the Clerk (or Chairman) will be recommending to the Council if the complaint will be treated as confidential or heard in public

3.2.3. whether the councillors would like the Complainant to attend personally.

3.2.4. Request the Complainant provide the council with copies of any documentation or other evidence to help proceedings move as quickly as possible

3.3. If appropriate, the Complainant will be invited to attend a meeting and can bring with them a representative if she or he wishes.

3.4. The Council will consider whether the circumstances of the meeting warrant the exclusion of the public and the press. However, any decision on a complaint must be announced at the Council meeting in public in the interest of transparency of Council actions.

4. Complaints about Council Services

4.1. The Chairman will introduce everyone and explain the procedure.

4.2. If attending personally, the Complainant (or representative) should outline the grounds for complaint and, thereafter, questions may be asked by the Clerk or Councillors to ensure they fully understand the issue

4.3. The Clerk will have an opportunity to explain the position to date and questions may be asked by of the Clerk by the Complainant and councillors

4.4. The Clerk and then the Complainant should be offered the opportunity to summarise their position.

4.5. The Clerk and the Complainant should be asked to leave the room while Councillors decide whether or not the grounds for the complaint have been made. If a point of clarification is necessary, both parties shall be invited back.

4.6. The Clerk and the Complainant will be given the opportunity to wait for the decision but if the decision is unlikely to be finalised on that day, they should be advised when the decision is likely to be made and when it is likely to be communicated to them.

4.7. The decision should be confirmed in writing within seven working days of the meeting, together with details of any action to be taken.

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5. Complaints against an individual councillor

- 5.1. A Complaint against a councillor is considered a very serious matter.
- 5.2. The Clerk will make a judgement as to whether the complaint relates to a failure to disclose a pecuniary interest, other alleged criminal behaviour or a general complaint about conduct covered by the Nolan Principles or the Council's code of conduct. It is a criminal offence if a councillor or co-opted member fails, without reasonable excuse, to comply with the requirements to register or declare disclosable pecuniary interests. As such it will be a matter for the Police and not the Council. If the complaint relates to potential criminal conduct then the Clerk will
 - 5.2.1. Advise the Complainant in writing that the complaint relates to potentially a criminal offence and as such, if the complainant wishes to proceed with the complaint, then they should report it to the Police.
 - 5.2.2. Report the complaint for information to the full council in writing for information.
- 5.3.** If the Complaint relates to conduct covered by the Nolan principles or the Council's code of conduct then the Clerk will follow the procedure shown below.
- 5.4. The Clerk will make an initial judgement that enough evidence has been supplied by the complainant to warrant further action. If there is not sufficient evidence the Clerk will request such evidence is provided by the Complainant. It should be noted that this is a light test designed to ensure that the complaint is not made maliciously or trivially.
- 5.5. The Clerk might consider that an informal solution to the complaint might be appropriate, such as an apology. If this is acceptable to both the complainant and the councillor then the matter will be closed at that point.
- 5.6. If the Clerk considers it not appropriate to proceed further with the complaint this advice will be given in writing to the Council and considered. The Council can if it considers it appropriate, require the complaint to be further investigated.
 - 5.6.1. If no further action on the complaint is to be undertaken then the Clerk will advise the Complainant in writing, explaining the decision
- 5.7. If the Clerk considers that further investigation is required, then the Clerk will request the Council to establish an independent investigation to gather evidence through either:
 - 5.7.1. Establishing an investigatory panel comprising at least one independent person.
 - 5.7.2. Or the Council might decide that an independent person will conduct the entire investigation and report his/her findings to the Council
- 5.8. Once the available facts/evidence is established then a Formal Hearing will be held if recommended by the clerk, investigatory panel or the independent person (as appropriate)
- 5.9. The Formal Hearing will be conducted by at least 3 persons who, except in exceptional

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circumstances, will not have been involved in the investigation. One person will be an Independent Person.

- 5.10. Rights of the councillor being investigated:
 - 5.10.1. Be allowed to make their case or explain the situation from their point of view during the investigation process
 - 5.10.2. Be allowed to speak to the independent person
 - 5.10.3. Be invited to attend the formal hearing of a complaint
 - 5.10.4. Be provided with a copy of the complaint and evidence at least 48 hours before the formal hearing
 - 5.10.5. Be allowed to be accompanied by a friend or colleague (not a solicitor) during the investigation or during a formal hearing
 - 5.10.6. Be allowed personally or through a representative to question witnesses (subject to remaining civil and not argumentative) to test the evidence during the formal hearing
 - 5.10.7. Be allowed to respond to the complaint at the formal hearing
 - 5.10.8. Be granted an adjournment of the formal hearing of an appropriate duration to seek advice or to obtain evidence relevant to the complaint
- 5.11. A Decision of a formal hearing will be given within 7 days. Action that can be taken under the 2011 Localism Act are as follows:
 - 5.11.1. A formal letter to the councillor/member.
 - 5.11.2. Formal censure by motion.
 - 5.11.3. Removal of the councillor/member from a committee/committees.
 - 5.11.4. Adverse publicity.
- 5.12. The Council will report evidence of any criminal wrongdoing arising from an investigation to the police or other appropriate authority where this is seen to be in the public interest.

6. Complaints about an employee

Any complaint about an employee will be conducted in accordance with the disciplinary procedure in the employee' statement of terms and conditions and the ACAS code of practice.

7. The Evidential Test

Complaints to the Council are a civil matter. As such the test that will be applied in making decisions will be the civil test of "balance of probabilities" and not the tougher criminal test of "beyond reasonable doubt".