

Local Government OMBUDSMAN

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Can the Ombudsman investigate the complaint?

There are certain things that the Ombudsman cannot investigate. We have no discretion in these areas, regardless of any fault by the council. These include:

- the conduct of court proceedings
- some contractual and commercial transactions (please seek advice if in any doubt)
- personnel matters (about an individual's employment, including pay and dismissal)
- some school matters ([more details](#))

There are two particularly complex areas of the law where sometimes the Ombudsman may investigate and sometimes not. These are:

1. Where your client has or had an alternative remedy by taking court action against a council or making an appeal to a statutory tribunal or to a government minister:

Where an alternative right or remedy has already been used

Where someone has already:

- started court proceedings against a council; or
- appealed or started an appeal to a government minister; or
- appealed or started an appeal to a statutory tribunal;

the Ombudsman cannot consider the decision that has or will be the subject of court action or appeal. Once proceedings have started the Ombudsman cannot investigate. Examples are when someone has:

- taken court action against for disrepair in the courts
- appealed to the Secretary of State against a refusal of planning permission
- appealed to a Parking Adjudicator (statutory tribunal) about a penalty charge notice
- submitted an application to the courts seeking leave for a judicial review of a decision.

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

- complaints about delays in making decisions about housing benefit entitlement or in forwarding appeals to the Appeals Service and the injustice that might cause
- a failure to respond to a request for a statement of special educational need (SEN) or a delay in completing it
- where a liability order has been issued for non-payment of council tax the Ombudsman may

consider complaints about the way in which the debt was collected.

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Where an alternative remedy is/was available but has not been used

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

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

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2. Where your client has known about the events complained about for more than 12 months before making a complaint to the Ombudsman or councillor.

As a general rule, we can consider complaints made to us (or to an elected councillor) within 12 months of the date on which the person who is complaining first became aware of the matter. The '12 month rule' is not hard and fast. One of the reasons it exists is because the longer the delay, the harder it is to gather evidence.

The Ombudsman may exercise discretion to investigate complaints about events which occurred more than 12 months ago. Someone may have been prevented from complaining due to a period of ill health, an inability to read or write English, or the mistaken belief that action would be taken to resolve their complaint. We will also take into account the seriousness of the alleged adverse effect in deciding whether to investigate such a complaint.

If you have been advising a client about their complaint against a council for some time you should try and send it to us within the 12 month limit if possible. If you are referring a complaint to the Ombudsman which may be outside of the 12 month limit please explain why it was not made sooner. Remember that the complainant must have been aware of the matter for the restriction to apply.

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