

WATERWAYS OMBUDSMAN – HOW COMPLAINTS ARE HANDLED

The Ombudsman has considerable discretion to decide how far and in what way each complaint should be investigated and resolved. Because all complaints are different they may be handled in a range of different ways. The Ombudsman will always inform you whether or not he believes your complaint is one which he can or should investigate. If he does not think your complaint can or should be investigated, he will explain why. If there appears to be scope to resolve your complaint informally the Ombudsman may pursue that as an alternative to completing a formal investigation.

If the Ombudsman is to investigate your complaint, he will agree with you a summary of the matters to be investigated and indicate how he plans to pursue the investigation. He will want to make sure he understands both sides of the story in order to make an independent and impartial judgement. In some cases he may have sufficient evidence to reach a provisional conclusion from papers you have supplied. In others he may need to do any or all of:

- obtaining comments or documentary evidence from the Trust;
- visiting a site;
- interviewing people involved in the complaint, including you; or
- seeking the views of third parties, or an expert opinion.

During the investigation the Ombudsman will consider evidence from both parties. In most cases, most if not all of the evidence received by the Ombudsman will already be available to both parties. If the Ombudsman is provided evidence by one party, which the other party does not have, the Ombudsman will provide it to the other party if it is relevant to the investigation. Both parties may wish to see copies of the evidence provided by the other party, and this will be provided on request. If information has been provided by a third party, or evidence includes information about a third party, which is personal information covered by current data protection law, the Ombudsman will seek the permission of the third party to provide it. If such permission is not granted it may be necessary to redact personal information from evidence provided to others.

You are not obliged to retain a lawyer or a legal advisor, but if you wish to do so you may seek independent advice, or you may be represented or assisted by a third party (such as a friend or family member), at any stage of the procedure.

At the end of the investigation the Ombudsman will send you a draft decision on your complaint. This will, as appropriate, include a summary of the views of the complainant and the Trust, a summary of the evidence he considers relevant to the decision, an explanation of the Ombudsman's view as to whether there was any maladministration and injustice and, if there was, his recommended remedy or remedies, which may include a financial award and/or a requirement to take some action. You and the Trust will have the chance to comment on that draft decision before the Ombudsman makes a final decision. If you wish to withdraw your complaint at any stage you may do so.

Unless the case is complex, from the time the Ombudsman receives the relevant evidence and opinion (what is known as the Complete Case File), he must complete his investigation within 90 calendar days, although in practice it is likely to take much less. If it is complex and is likely to take more than 90 days, he will inform you before the end of that period.

The Ombudsman does not make a decision on the basis of legal principles, in the way that a court would. This means that an outcome of an Ombudsman's investigation may not be the same as one made by a court.

Where the Ombudsman upholds a complaint, he will aim as far as possible to put the complainant(s) in the position they were before the problem started. Financial remedies will be based on the cost of remedying a situation, or repairing damage, or will take into account any distress or inconvenience caused. Actions may include the Trust marking a hazard, or amending a process to ensure that future problems do not occur or can be dealt with more rapidly if they do.

If the Ombudsman upholds your complaint and makes a recommendation you will have a choice as to whether to accept the recommendations or to decline them. If you accept them, the Trust will be required to carry them out. If you do not, the Trust will not be required to do anything. That will be the end of his involvement, and you may then seek redress via alternative means such as the courts. If you accept any recommendations the Ombudsman will remain involved with the complaint at least until he receives a commitment that appropriate action has been, or will be, taken.

The Ombudsman may publish a short summary of your complaint and his decision (in his annual report or on the website), but will omit any personal details.

If, following an enquiry or investigation, you have any questions or would like further help, you can contact the Ombudsman.

There is nobody above the Ombudsman available to consider appeals about his decisions. However, even if the Ombudsman has considered your complaint, but you have rejected the final decision or have withdrawn from the process, you are not prevented from seeking a remedy in the Courts. In this case, a court may be likely to want to see, and take into account, any decision made by the Ombudsman.

Where an actual or potential conflict of interest arises in relation to a complaint, and there is nobody else available to consider the complaint, the Ombudsman shall explain to both parties the circumstances of the conflict of interest, that they have a right to object to him/her continuing to handle their dispute and that he/she can continue with the complaint only if no party objects. The Ombudsman will maintain a record of any actual or potential conflicts of interest.

February 2019