

Local government

June 2006



Councils' accounts Your rights: England

Councils exist to serve the public. Most have helplines and helpdesks to help local people sort out problems they may have with services, benefits and local taxes and charges. But, even in the best councils, things can go wrong. This booklet summarises your rights to inspect, question and challenge councils' accounts. It starts with a short outline and then gives you more details if you want to know more. We have produced this booklet to help you, but it is only a guide.

This booklet describes how you can inspect, ask the auditor questions about, or object to your council's accounts. However, you may want to raise other issues about how the council is run. This section aims to help you find the right person to deal with your query.

If you think something has gone wrong at your council, you should:

- phone the council;
- write to the chief executive – in local councils (see note 1 below) this is the clerk; or
- contact your local councillor.

Most councils have their own complaints system which is usually effective. Nearly all complaints are sorted out, either in writing or over the phone, so that everyone involved is satisfied. But occasionally there are problems that someone else needs to deal with.

- If you think that your council has done something wrong, and you are not satisfied with how the council has dealt with your complaint, you should contact a Local Government Ombudsman. There are three local government ombudsmen. If you need more information or want to make a complaint, call the Adviceline on 0845

Note 1: Local councils includes parish councils, town councils, joint committees of these organisations and parish meetings.

602 1983 or visit their website at www.lgo.gov.uk. They will send you some information about how you can take your complaint further, and their names and addresses are at the end of this booklet. The Ombudsman cannot deal with complaints about local councils (see note 1 above).

- If you suspect fraud or improper use of the council's money, you should write to or phone the council's chief internal auditor. Your council will give you their name and address. If you have evidence of fraud, you may want to consider contacting the police.
- For all councils, if you think that a council member's behaviour has fallen below the high standards that public servants are expected to meet, you should contact the Local Government Standards Board for England. They have a helpful website (<http://www.standardsboard.co.uk/>) and their names and addresses are also provided at the end of this booklet. The Standards Board may not hear complaints about a council's officers or other employees.
- If you have a personal complaint or claim against the council, you should get advice from your local citizens advice bureau, local law centre or your solicitor. Your auditor has no powers in these circumstances.
- If you want to inspect your council's accounts, your council will make arrangements for you to do so. The auditor cannot help you with this.
- If, after inspecting the accounts, you want to ask questions or challenge your council's accounts, the council's external auditor may be able to help you. The Audit Commission appoints the external auditor.

We explain these options in more detail under the enquiries section of our website at www.audit-commission.gov.uk/aboutus/contact.asp. We also explain the ways in which you can challenge or 'object to' your council's accounts.

By law, your rights and the external auditor's powers are limited. If you are thinking about going to the auditor, it is important that you understand your rights and the auditor's powers. This booklet should help you. You can find out who the appropriate auditor is, and where to write or phone, by:

- phoning your council;
- downloading the appropriate page from our website (<http://www.audit-commission.gov.uk/aboutus/what-audit.asp?title=Audit>);
- phoning the Audit Commission on 020 7828 1212; or
- e-mailing auditissues@audit-commission.gov.uk.

Your rights: a summary

The basic position

If you just want information about the council's spending, the easiest way to get the relevant information is to ask the council. You can ask the council for information under the Freedom of Information Act 2000. You can get more information about your rights under this act from The Information Commissioner's helpline on 01625 545 7000. Or, visit their website at www.ico.gov.uk.

You also have the right, at any time, to let the council know about any matter that concerns you about their accounts. You may also let the auditor know your concerns at any time.

At certain times in the year, you have a right to inspect your council's accounts in detail. During this time, local voters may also ask the auditor questions about or challenge the accounts.

The right to inspect the accounts

- When your council has finalised its accounts for the previous financial year, usually towards the end of June, it must advertise that they are available for people to look at. You then have 20 working days to look through the accounts and supporting documents if you want to use your right to question the auditor or object to the accounts. You can get copies of the accounts and relevant documents from your council.
- You may not inspect documents that are not relevant to the accounts or are otherwise legally protected. You may have to pay a copying charge.
- The right to inspect the accounts and supporting papers is granted to people who vote in local elections and the council must allow you to do so. However, if you have problems getting this information, the auditor is not able to get involved on your behalf.

The right to ask the auditor questions about the accounts

- You can only ask the auditor questions about an item in the accounts for the year that they are auditing.
- The auditor can only answer 'what' questions and not 'why' questions. In other words, he or she does not have to answer questions about the council's policies, finances, procedures or anything else that is not relevant to an item in the accounts. The auditor does not have to say, at this stage, whether they think something the council has done or an item in its accounts is unlawful.

The right to object to the accounts

- If you think that the council has spent money unlawfully, you can object to the accounts by sending the auditor a formal 'notice of objection', which has to be in writing. To help you, there is a form available at www.audit-commission.gov.uk/aboutus/contact.asp, which you should print out, fill in and send to us at the address on the form. We will then pass it to your council's external auditor. You must also send a copy to the council.

An objection must be about a specific item or items in the accounts.

You must tell the auditor why you are objecting, which item in the accounts you are objecting about and why you think it is unlawful. You must also say what evidence you have to support your objection.

If the auditor agrees to consider your objection, he or she must reach a decision on it, which may include not taking any further action, and provide a statement of reasons if you ask them to. If you are not happy with that decision, you can appeal to the courts.

- You may also object if you think that there is something in the accounts that the auditor should tell the public about in a 'public interest report'. Again, you must set out which item in the accounts you are concerned about and why, and your supporting evidence in writing. The best way to do this is to print out and fill in the form at www.audit-commission.gov.uk/aboutus/contact.asp and send it to us at the address on the form. We will then pass it onto your council's external auditor. You must also send a copy to the council.

The auditor must decide whether to take any action. The auditor will normally give reasons for their decision and you cannot appeal to the courts.

What else you can do

At any time, you can give the auditor information that is relevant to their responsibilities. For example, you can tell the auditor if you think that something is wrong with the accounts or about waste and inefficiency in the way the council runs its services. You do not have to follow any set time limits or procedures. This is also the situation for NHS organisations, where you do not have the right to inspect the accounts, ask the auditor questions about or object to the accounts. The auditor does not have to give you a detailed report of any investigation into the issues you have raised, but they will usually tell you the general outcome.

A final word

Councils, and so local taxpayers, generally meet the costs of responding to questions and objections. Auditors will consider valid objections but will take account of a range of factors in deciding how to deal with them. Under the Code of Audit Practice, which sets out how auditors must carry out their work, auditors must take a balanced approach in deciding how much time and money they should spend in investigating an objection. They will consider:

- how significant the subject matter is;
- whether there is wider public interest in the issues raised;
- the costs of dealing with the matter, as these have to be paid directly by the taxpayer; and
- in the case of objections, not only your rights as an objector, but also the rights of the council.

Your rights in more detail

These notes provide some more information in relation to your rights to inspect, question and object to a council's accounts in more detail, but still in general terms. If you need more specific detail, you should refer directly to the acts, regulations and other documents that are mentioned in the text or get legal advice. Please remember that you do not have the same rights in relation to the accounts of NHS organisations, even though the Audit Commission also appoints their auditors.

Your legal position

Your rights are set out in sections 14, 15 and 16 of the Audit Commission Act 1998 as amended (the ACA 1998). The detailed regulations that set out how you can use these rights are contained in the Accounts and Audit Regulations 2003 (the Regulations).

Your right to inspect the accounts

The ACA 1998 – section 15(1)

At each audit under this Act, other than an audit of accounts of a health service body, any persons interested may:

- (a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and
- (b) make copies of all or any part of the accounts and those other documents.

By the end of June each year, councils finish preparing and will approve their accounts for the financial year which ended on 31 March of that year (see note below.) Larger councils

Note 1: Local councils' accounts for the year ending 31 March 2006 must be approved by 30 September 2006. For the year ending 31 March 2007, accounts must be approved by 31 August 2007 and for the year ending 31 March 2008, by 31 July 2008. After 2008, accounts must be approved by 30 June in each year.

must then tell the public, by advertising in at least one local newspaper, that their accounts and the other documents mentioned in section 15(1) of the ACA 1998 are available for people to inspect for 20 full working days. Town councils, parish councils, parish meetings and the Council of the Isles of Scilly can announce this by putting up a notice in a public place, instead of putting an advert in a newspaper.

The advert or notice must also give the dates, times and places where the public can see and copy the documents. Any person who is interested has the right to inspect and copy the accounts and any 'public interest report' issued by the auditor in that year, or ask for copies to be delivered to them. Councils may make a reasonable copying charge (please see sections 13(2) and 14(1) of the ACA 1998). It is an offence for anyone to try to stop you from inspecting and copying documents, although you are expected to make a mutually convenient appointment to do so. If there is any disagreement about what your rights are, you should contact your council direct or go through the courts. The auditor cannot get involved.

You cannot inspect and copy documents that contain personal information about a member of staff (please see section 15(3) of the ACA 1998). This means, for example, that details of payments or other benefits that an employee receives will be confidential. The council and an auditor cannot give you personal information about anyone when they answer your questions.

Questions and objections

After inspecting the accounts you may ask the auditor questions about them or make a formal objection to them. As the time available to you to do this is limited by law, you should let the auditor know as soon as possible that you have a concern about the accounts. Once the auditor has completed the audit, you will no longer be able to ask questions or object to the accounts for that year.

Asking the auditor questions

The ACA 1998 – section 15(2)

At the request of a local government elector for any area to which the accounts relate, the auditor shall give the elector, or any representative of his, an opportunity to question the auditor about the accounts.

The advert or notice that says the accounts are available for people to inspect will also tell you how you can ask the auditor questions and object to the accounts. Your right to ask the auditor questions is limited. You can ask 'what' questions about items in the accounts but not 'why' questions about a council's policies, finances or procedures that are not about the accounts. Before you ask the auditor any questions, you should inspect the accounts so that you know what they contain. You may then ask the auditor to explain certain points in the accounts before deciding whether or not you want to 'object' (this right is explained later).

If you do ask questions that are not about the accounts, the auditor may suggest that you ask the council for the information you want. But the auditor cannot act as a 'postbox' for questions to, and replies from, your council.

Your questions should be about facts, not opinions. So you should not ask an auditor if they think something a council has done or an item in its accounts is lawful or reasonable.

Objecting to the accounts

The ACA 1998 – section 16

(1) At each audit of accounts under this Act, other than an audit of accounts of a health service body, a local government elector for an area to which the accounts relate, or any representative of his, may attend before the auditor and (in accordance with subsection (2)) make objections –

- (a) as to any matter in respect of which the auditor could take action under section 17; or
- (b) as to any other matter in respect of which the auditor could make a report under section 8.

(2) No objection may be made under subsection (1) unless the auditor has received written notice of the proposed objection and of the grounds on which it is to be made.

(3) An elector sending a notice to an auditor for the purposes of subsection (2) shall at the same time send a copy of the notice to the body whose accounts are being audited.

You, or your representative, can object if you think that an auditor should:

- apply to the High Court, under section 17(1) of the ACA 1998, to confirm that an item in the accounts breaks the law; or
- make a report, under section 8 of the ACA 1998, on a matter that they think the council should consider or tell the public about (a 'public interest report').

Items in the accounts that break the law

An item in the accounts breaks the law if, for example, it records spending or income that:

- the council had no right to spend or receive;
- was spent or received without authority;
- was taken from, or added to, the wrong fund or account; or
- was spent on something that the council has power to spend money on, but which was so unreasonably high that it was unlawful.

If an auditor considers an item to be unlawful, he or she may apply to the High Court to confirm that an item in the accounts is unlawful. If the court agrees, it may order that the accounts are put right. In reaching a decision whether to apply to the courts, the auditor will take account of a number of factors, including the potential benefits given the costs involved.

Report in the public interest

If you are not satisfied with a council's decision or action but your objection does not involve anything unlawful or a failure to account for spending or income, the auditor could consider issuing a report in the public interest or making a recommendation under section 11 of the Audit Commission Act.

Making an objection

If you want to object to a council's accounts, you must give formal notice of your objection, in writing, to the auditor. The formal notice must include:

- why you are objecting;
- the details of any item in the accounts that you think is unlawful; and
- the details of any matter that you think the auditor should make a public interest report about.

There is an on-line form at www.audit-commission.gov.uk/aboutus/contact.asp, which you can print out, fill in and send to us at the address on the form. We will pass it onto your council's external auditor.

The right to object is granted specifically to local electors. So, before accepting any objection, the auditor will want to confirm your identity and that you are an elector of the council in question. However, you may choose to appoint a representative who does not have to meet this identity requirement.

You must also send a copy of your objection to the council. The Local Government Act 1972 explains how to serve notices on councils. Section 231(1) of the act says that the notice:

‘...shall be given or served by addressing it to the local authority and leaving it at, or sending it by post to, the principal office of the authority or any other office of the authority specified by them as one at which they will accept documents of the same description as that document.’

When you are thinking about whether to object, you must realise that councils have the power to decide what they think is the best way to do things. The fact that you may strongly disagree with something the council has done, does not mean that the action is unlawful.

An auditor and a court cannot question a council's policy or decisions unless these are unlawful. If you do decide to make an objection, and if your objection contains personal or sensitive information, you should mark it appropriately to avoid the risk of the information being seen by an inappropriate person. You may show this by marking the objection and the envelope containing it, 'Private and confidential – for the attention of the Chief Executive (or Clerk)'. You cannot use the objection process to make a personal complaint or claim against a council. If you think that your council has done something wrong, the Local Government Ombudsman will investigate the matter. (This does not apply to local councils.) If you think that a council member's behaviour has fallen below the standards that public servants are expected to meet, the Local Government Standards Board for England will investigate the matter. If you think you have a claim against a council, you can get advice from your local citizens advice bureau, local law centre or your solicitor.

Decisions about your objection

When an auditor issues their decision about an objection, they will usually explain their reasons for the decision. If you have made an objection that an item in the accounts is unlawful, and the auditor has not given any reasons for his or her decision, you have six weeks from the time you are told what the decision is to ask the auditor for a 'statement of reasons' in writing. If you are not happy about an auditor's decision, you have the right to appeal. You must register your appeal in the Crown Office at the High Court within 28 days of receiving the auditor's reasons for their decision.

However, an auditor's decision on objections that ask him or her to make a 'public interest report' is final. The auditor will tell you what their decision is but you cannot ask for a statement of reasons or appeal. An auditor will usually give you reasons for his or her decision anyway.

All public interest reports issued by auditors are published on our website (<http://www.audit-commission.gov.uk/pir/>).

Cost

Councils will generally meet the cost of dealing with questions and objections. There may be circumstances in which you may have to pay the costs yourself, for example if you appeal to the courts against an auditor's decision, but lose the case.

Useful addresses

Audit Commission

1st Floor, Millbank Tower

Millbank

London SW1P 4QP

Phone: 020 7828 1212

E-mail: auditissues@audit-commission.gov.uk

Textphone: 020 7630 0421

Fax: 020 7976 6187

Website: www.audit-commission.gov.uk

Local Government Ombudsman

Website: www.lgo.org.uk

Adviceline: 0845 602 1983

Local Government Standards Board for England

The Standards Board for England

1st Floor, Cottons Centre

Cottons Lane

London SE1 2QG

Enquiries: 0845 078 8181

Fax: 020 7378 5001

Minicom: 020 7378 5199

Complaints: 0800 107 2001

E-mail: enquiries@standardsboard.co.uk

Website: www.standardsboard.co.uk



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