

Ombudsman has no jurisdiction over District Council electoral officer

Legislation	Ombudsmen Act 1975 , Local Electoral Act 2001, Local Government Official Information and Meetings Act 1987
Agency	Electoral Officer – District Council
Ombudsman	David McGee
Case number(s)	335596
Date	2012

Jurisdiction—Ombudsman has no jurisdiction over Council electoral officer—electoral expense returns not subject to Local Government Information and Meetings Act 1982

This complaint related to the actions of a Council’s electoral officer in not requiring receipts and invoices to be supplied with candidates’ electoral expense returns, as well as the Council’s refusal to take any action on this alleged omission; and the manner in which the complainant’s requests to view electoral expense returns were handled.

The Ombudsman advised the complainant that district councils are listed in the First Schedule to the Act, and Ombudsmen are therefore authorised to investigate complaints against the actions of committees of a district council or of its officers, employees or members acting in their official capacities. The question that arises in this instance, however, is whether or not the Council’s electoral officer is an ‘officer, employee or member’ of the Council. Section 12 of the *Local Electoral Act 2001* (LEA) provides that there must at all times be an electoral officer appointed by the local authority, there is no requirement for this electoral officer to be an officer, employee or member of the local authority. In this regard, section 14(1) of the LEA provides that:

An electoral officer, deputy electoral officer, or other electoral official is not subject to directions of any local authority or community board in the exercise of powers or the carrying out of duties under this Act or regulations made under this Act.

The Ombudsman concluded that it would appear that an electoral officer is not acting in the capacity of an officer, member, or employee of a local authority when performing his or her duties. Members of the public may be appointed to act as an electoral officer, and an electoral officer is not accountable to the local authority for the performance of his or her duties. An electoral officer is therefore a statutory officer in his or her own right, rather than being an officer of a central or local government organisation. As electoral officers are not listed in the First Schedule to the Ombudsmen Act, Ombudsmen are not authorised to investigate complaints against their actions or decisions. The Ombudsman also noted that there was no basis for initiating an investigation of the Council's refusal to take any action on the matter, in view of the stipulation in section 14(1) of the LEA that an electoral officer 'is not subject to directions of any local authority'.

With regard to the second ground of the complaint, the Ombudsman noted that the LEA makes it clear that electoral expense returns are held by appointed electoral officers, rather than the local authorities concerned. Section 109 requires such returns to be provided to an electoral officer and section 110 provides that the electoral officer *'must keep every return under section 109 in the electoral officer's office, or at some other convenient place to be appointed by the chief executive of the local authority...'* Therefore, given also that electoral officers are not named in the schedules to the OA or the *Local Government Official Information and Meetings Act 1982* (LGOIMA), the expense returns are not subject to request under the provisions of the latter act. The fact that the returns might be physically located in the Council's premises does not alter this situation. This is because section 2 of the LGOIMA provides that official information does not include: *'Information which is held by a local authority solely as an agent or for the sole purpose of safe custody and which is so held on behalf of a person other than a local authority'*.

Council staff maintaining and providing access to these records are effectively acting as agents for the electoral officer rather than as Council officers. Section 12(2) of the LEA allows such functions to be delegated by an electoral officer.

This meant that there was no scope for the Ombudsman to consider any refusal to provide copies of the returns or to impose time limits for viewing them. Given that the Council's electoral officer is not subject to an Ombudsman's jurisdiction under either the Ombudsmen Act or the LGOIMA, the Ombudsman was unable to assist the complainant further.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.