

Complaints and Appeals Procedure

Section 1: Introduction and intent

The intent is to operate the Programme in an open style, with ample opportunity for discussion and support with the development of projects and activities, and the avoidance of unnecessary administrative burdens on applicants and organisations funded to run projects and activities.

The Programme sets out in its Operating Manual all of its processes and procedures of which this Appeals procedure is one part. The Operating Manual is reproduced in full on www.plainaction.org.uk.

This appeals and complaints procedure is available for individuals or organisations who consider they have not been properly or fairly treated under Plain Action's published processes and procedures including the application procedure.

Section 2: Complaints and appeals against Plain Action's operation of its application and general procedures and overall operations

- 1 Programme Manager.** In the first instance complaints should be made to the Programme Manager, so that if possible any grievance can be satisfactorily and speedily addressed. This also allows for clarification of information and resolution of any misunderstanding. The Programme Manager may at this stage refer informally to the Chairman or other member of the PMG. The Programme Manager will provide a written response to the complainant within ten working days of the matter being raised in writing or of any subsequent exchange of information /meeting with the complainant .
- 2 Chairman** If the complainant is not satisfied with the outcome of step 1 he/she may refer in writing to the Chairman of Plain Action, who will consider a formal complaint with two other members of the PMG who have not been involved hitherto with the matter. The Chairman may seek information from the Programme Manager and others, and may request a meeting with the complainant. The Chairman will respond formally to the complainant within fifteen working days of receipt of the formal complaint or of any meeting / discussion with the appellant.
- 3 Programme Management Group (PMG)** If the complainant is not satisfied with the outcome of step 2 he/she may notify the Chairman in writing within fifteen working days that he/she intends to appeal in writing to the next full PMG meeting, and has the right also to present in person if he/she wishes. The decision of that meeting will be notified to the appellant within five working days of the meeting.

4 **Wiltshire Council (Accountable Body to Plain Action)** If the appellant is not satisfied with the outcome of step 3 he/she may engage with stage 2 of the Wiltshire Council complaints process –

www.wiltshire.gov.uk/council/corporatecomplaints/makingacomplaint.htm

The complaints process will be handled by the Regeneration team within the Economy and Enterprise service under Economic Development, Planning and Housing

Section 3: Appeals and Complaints by funded organisations and projects against the Recovery and Penalties of grant aid

For information: South West RDA Guidance regarding Appeals against Recovery or Penalties

Reference should be made to the Local Action Operating Manuals Guidance issued by South West RDA in January 2009, specifically at 6.12 'Appeals Against Recovery or Penalties'

(a) Statutory procedure Regulation 6(6) of the England Rural Development Programme (Enforcement) Regulations 2000 (SI 2000/3044), as amended by the England Rural Development (Enforcement) (Amendment) Regulations 2001 (SI 2001/431), establishes a formal appeals mechanism against an intention to use certain powers in the enforcement regulations.

(b) The effect is that **before** the RDA or LAG acts to:

- withhold some or all of the grant payable to a beneficiary;
- suspend or terminate an Offer Letter and thereby suspend or terminate entitlement to any outstanding grant;
- recover some or all of the grant paid;
- require from the project/agreement-holder payment of an additional 10% of the grant paid; or
- prohibit a project/agreement-holder from entering into any new RDPE commitment for a period of up to two years,

the LAG **must** first give a written explanation of the reasons why they propose to take any of the above actions and afford an opportunity for the beneficiary to make written representations (we should allow 30 days for the beneficiary to respond). The LAG must then consider carefully any representations received, and review the intended approach (amending it if necessary) before confirming or varying our decision.

(c) In practice, this guidance should not lead to delays in processing interim claims for grant, as a successful appeal against recovery action can be rectified at a later stage. However, if an irregularity occurs at final claim stage, payment will need to be delayed in order to allow the 30 day period for representations before the action is taken to reduce a payment.

(d) The existence of an appeals procedure does not release the claimant from complying with the requirements of the schemes or the LAG from ensuring that these are adhered to.

Scope of action

- i) An irregularity can be either
 - an over-claim which is discovered before payment is made;
 - an overpayment which is discovered after payment.
- ii) Irregularities include the following types of action
 - deliberate negligence/fraud;
 - evidence of lack of competitive contracting or tendering;
 - claimant-supplier collusion;
 - invalid claims;
 - duplicate claims;
 - claims in excess of amounts in the Offer Letter;
 - claims under more than one grant scheme for the same expenditure;
 - claims for ineligible expenditure;
 - claims prior to, or in excess of, expenditure incurred;

Plain Action Procedure re Irregularities, Penalties and Recovery

1. Where an alleged irregularity has been discovered the Programme Manager in the first instance will write and speak to the project holder to allow for clarification of information and resolution of any misunderstanding. The Programme Manager may at this stage refer informally to the Chairman or other member of the PMG. In carrying out the initial enquiry, the Programme Manager as an Authorised Person should make reference to the powers of investigation existing in the Regulation 3 (SI 2000/3044). <http://www.opsi.gov.uk/si/si2000/20003044.htm> and the amendments contained within the Regulations (SI 2001/431) <http://www.opsi.gov.uk/si/si2001/20010431.htm>
2. At the end of the informal process the Programme Manager will determine the extent of the irregularity by considering the:
 - Impact on Scheme Objectives
 - Degree of Intent
 - Previous History
 - Recovery of Agreement
 - Notification and Duration of Breach
 - "Force Majeure" (exceptional circumstances)
3. The Programme Manager will provide a written response to the project holder within ten working days of the matter being raised with the project holder and any subsequent exchange of information /meeting with the appellant.
4. The Written Response will state the irregularity which has been determined, detailing the extent, place, approximate time of the irregularity together with reason for the belief of the irregularity.
5. The Programme Manager will make reference to the range of possible breaches and the powers of recovery contained within the Regulations (SI 2001/ 431). The response will outline the action proposed by the Local Action Group which will be either:
 - Amendment of the Offer Letter and consequent conditions of the Agreement
 - Action to recover monies or assets

6. Where there is to be an Amendment to the Offer, the Programme Manager will work in conjunction with the Accountable Body who is party to the Agreement with the Project Holder to Amend the Offer Letter. Where there are significant changes to either the project activity, outputs, costs involved or timescale, there will be a re-appraisal of the project application.
7. Where the decision is to take action to recover, the Programme Manager will inform and consult with the Accountable Body and South West RDA representatives.
8. If the appellant is not satisfied, within 30 working days of the date of the Written Response he/she may refer in writing to the Chairman of Plain Action, who will consider the representations with two other members of the PMG who have not been involved at any point with the matter.
9. In considering the representations, The Chairman may seek information from the Programme Manager and others, and should normally request an Appeal meeting with the appellant. Any meeting requested should be within 10 working days following receipt of representations.
10. The Chairman will decide whether the appeal should be upheld or rejected making reference to others for technical information as appropriate. The Chairman will respond formally to the appellant within 5 working days following the Appeal meeting with the appellant. This decision must be communicated simultaneously to the Accountable Body and South West RDA EU Monitoring Team.
11. Where the appeal is rejected, the Local Action Group and Accountable Body and South West RDA EU Monitoring Team will then take necessary steps to enact the action originally proposed by the Programme Manager in the Written Response.

Where the appeal is upheld, the Programme Manager will work to the letter of the Chairman's decision to rectify, Amend an offer, or take any other necessary steps to enact the Local Action Group's final determination of the matter. END