

UNREASONABLY PERSISTENT COMPLAINANTS AND VEXATIOUS COMPLAINTS POLICY

Introduction

- 1 Whilst the Council endeavours to respond with patience and sympathy to the needs of all complainants there are times when there is nothing further that can reasonably be done to assist or to rectify a real or perceived problem. Because of the frequency of their contact with the local authority, or the unresolvable and persistent nature of their complaints, a small number of complainants will need to be considered under this policy.
- 2 Before implementing any of the provisions of this policy, the Complaints Manager will consider whether the Council has correctly followed its procedures in relation to complaints (or the provision of information), whether full and reasonable responses have already been given, and whether the complaint (or request for information) is now inappropriately persistent. This policy will only be pursued if appropriate.

Unreasonably persistent Complainants

- 3 Features of an “unreasonably persistent complainant” may include:
 - ⇒ a person who makes the same complaint repeatedly (sometimes with minor differences), but never accepts the outcomes;
 - ⇒ a person who demands frequent and lengthy contact with staff
 - ⇒ a person who seeks an unrealistic outcome and is determined to persist until it is reached;
 - ⇒ a person with a history of making other unreasonably persistent complaints;
 - ⇒ a person who persistently approaches the local authority through different routes about the same issue in the hope of getting different responses: or
 - ⇒ a person who behaves in an aggressive manner to staff when presenting their complaint, or is verbally abusive or threatening

It is important to distinguish between reasonably persistent complainants, where matters have not been addressed or new matters have arisen, and unreasonably persistent complainants. There will be instances where it is not unreasonable that a complainant is persistent: these cases need to be recognized and accepted.

Vexatious complaints

- 4 A vexatious complaint is likely to include some or all of the following:
- ⇒ the complaint arises from a historic and irreversible decision or incident;
 - ⇒ the complainant continually introduces new elements to, or changes aspects of, the complaint partway through the investigation;
 - ⇒ the complainant makes and breaks contact with the local authority on an ongoing basis; or
 - ⇒ the complaint is clearly designed to inconvenience or embarrass the Council, its Members or its Officers; or is part of a campaign or lobby against the Council
 - ⇒ the complaint is irrational

Definition of unreasonably persistent complainant or vexatious complaint

- 5 For the purpose of this policy:
- (i) an unreasonably persistent complainant is a person who pursues either:
 - (a) reasonable complaints in an unreasonable manner; or
 - (b) unreasonable complaints; or
 - (c) unreasonable or unrealistic outcomes to a complaint
 - (ii) a complaint may be treated as vexatious if it is considered that:
 - (a) the sole purpose of the complaint is to cause the Council inconvenience, harassment or expense; or
 - (b) the complaint is unreasonable or has no serious purpose; or
 - (c) the complaint is part of an organised or concerted lobby, campaign, or protest aimed at or against the Council

Criteria for determining unreasonably persistent complainants or vexatious complaints

- 6 Before imposing any restrictions or sanctions on an unreasonably persistent complainant, or determining that the complaint is vexatious, the Council must be satisfied that they fall within the following criteria.
- 7 A complainant may only be deemed to be unreasonably persistent or a complaint vexatious where the Corporate Complaints Manager, and the relevant Head of Service, agree that one or more of the following applies:
- (i) The person persists in pursuing a complaint where the Council's complaints process has been fully and properly implemented and exhausted, or makes the same complaint repeatedly (perhaps with minor differences), but refuses to accept the outcomes.
 - (ii) The person persistently changes the substance of a complaint or continually raises new issues or seeks to prolong contact by continually raising further concerns or questions whilst the complaint is being addressed. (Care must

be taken, however, not to disregard new issues that are significantly different from the original complaint as these will need to be addressed as separate complaints.)

- (iii) The person is repeatedly unwilling to accept documented evidence given as being factual, or denies receipt of an adequate response in spite of correspondence specifically answering their questions, or does not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
- (iv) The person repeatedly fails to identify clearly the precise issues that they want to be investigated, despite reasonable efforts to help them specify and clarify the nature and substance of the complaint, and the complainant's desired outcome
- (v) The person repeatedly focuses on a trivial matter to an extent that is out of proportion to its significance, and continues to focus on this matter. (Determining what is a trivial matter can be subjective and careful judgement will need to be used in applying this criteria.)
- (vi) The person has threatened or used physical violence, or has harassed or repeatedly been verbally abusive to staff dealing with the complaint. (Whilst the Council has a separate Policy dealing with such issues they may also be considered relevant to this Policy.)
- (vii) The person, in the course of addressing a complaint, has made an excessive number of contacts with the Council thus placing unreasonable demands on employees. (Careful judgement will have to be used to determine "excessive" contact, taking into account the specific circumstances of each individual case. In some complex cases it will be reasonable for the complainant to expect to have considerable contact with the Council.)
- (viii) The person persistently approaches the Council through different routes about the same issue in the hope of getting different responses.
- (ix) The person makes unreasonable demands on the Council and its employees and fails to accept that these may be unreasonable (for example, insisting on responses to complaints being provided more urgently than is reasonable or within the Council's complaints procedure or normal recognised practice).
- (x) The person makes unreasonable complaints which impose a significant burden on the resources of the Council, and where the complaint:
 - (a) clearly does not have any serious purpose or value; or
 - (b) is designed to cause disruption or annoyance; or
 - (c) has the effect of harassing the Council or its staff; or
 - (d) can otherwise fairly be characterised as obsessive or manifestly unreasonable; or
 - (e) is part of an organized campaign or lobby.

- (xi) The person makes repetitive complaints or allegations that ignore the responses that the Council has supplied in previous correspondence.
 - (xii) The person repeatedly makes complaints that are not within the remit of the Council to investigate.
- 8 Unreasonably persistent complainants or vexatious complaints can cause high levels of stress and frustration to staff who have to deal with them. It is therefore important that the Council can demonstrate in all cases that it is applying the criteria, and any restrictions or sanctions imposed, in a fair and objective manner. Whenever the Council applies these criteria, all facts taken into consideration and reasoning must be documented.
- 9 The unreasonably persistent complainant will receive the same standards of response (in terms of being timely, accurate and courteous) as any other person.

Action in response to unreasonably persistent complainants or vexatious complaints

- 10 Where the above criteria have been applied and a complainant has been determined as being unreasonably persistent or a complaint as vexatious, the Council must decide what actions will be taken.
- 11 The Council recognises that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental health problem, and there is a need to be sensitive to these matters.
- 12 The Council a duty to protect its staff, and to ensure that the best use is made of its resources. In some circumstances, it will be necessary to take action in order to try and control the disruption to staff and to services that can be caused by the actions of unreasonably persistent complainants.

Initial notification

- 13 In all cases the complainant will be written to either by the relevant Director, or Head of Service, or by the Corporate Complaints Manager: who should write will depend on the circumstances. The nature of the unacceptable behaviour will be made clear in the letter, and the complainant will be asked to modify that behaviour forthwith.

Restricting access

- 14 If the complainant persists with the same behaviour after having been asked to modify this, then the Council will consider restricting the access of the complainant.

- 15 It is not possible to stipulate how the Council will choose to respond to every situation: the circumstances, matters at hand and the behaviour of the complainant will all play a part in deciding what to do.
- 16 However, there are certain options that might be considered. These include:
- (i) Refusing to accept a complaint (for example where any of 7 (i) – 7 (v) above apply)
 - (ii) Refusing to amend the terms of the complaint (for example where 7 (ii) above applies)
 - (iii) Requesting contact in a particular form (eg by letter only) (for example where any of 7 (iv), (vi) or (ix) above apply)
 - (iv) Requiring contact with a named officer (for example where 7 (viii) above applies)
 - (v) Restricting any telephone calls to specified days and times, and/or limiting the duration of calls (for example where any of 7 (vii) or (ix) above apply)
 - (vi) In the case of unreasonably persistent letter writers, or the writers of repeatedly vexatious letters, it might be reasonable to inform them that in future letters will be kept on file, but will not be responded to
 - (vii) Refusing any further contact (in exceptional circumstances only, for example where any of 7 (vi), (x), (xi) or (xii) above apply)
- 17 In applying any of the options listed in para 16 above, the following must be applied:
- 18 In respect of applying 16 (i) and (ii), the agreement of the Corporate Complaints Manager and the relevant Head of Service must be obtained. The complainant will be informed of their right to complain to the Ombudsman, if they consider that they have suffered an injustice due to maladministration by the Council. In the case of complaints that fall within the Children Act Representations Regulations or the Local Authority Social Services Complaints Regulations, the agreement of the Director of Legal & Democratic Services must also be obtained before refusing to accept or amend a complaint.
- 19 In respect of applying 16 (iii) to (vi) above, the agreement of the Corporate Complaints Manager and the relevant Head of Service must be obtained. The complainant will be informed of their right to complain to the Ombudsman, if they consider that they have suffered an injustice due to maladministration by the Council.
- 20 In respect of applying 16 (vii) above, the agreement of the Corporate Complaints Manager, the relevant Corporate Management Team member, the Director of Legal & Democratic Services and the Chief Executive must be obtained. The complainant will be informed of their right to complain to the Ombudsman, if they consider that they have suffered an injustice due to maladministration by the Council.
- 21 The complainant must be notified in writing when any of the above restrictions are being applied. In respect of 16 (i) to 16 (vi), the complainant will be informed that they can appeal this decision to the relevant Corporate Management Team member.

- 22 The list at para 16 is not extensive. If other restrictions are being considered, these must be reasonable and commensurate with the nature of the problem. Any other restrictions must be agreed between the Corporate Complaints Manager and the relevant Head of Service before being implemented. Where restrictions or measures other than those listed in 16 above are being imposed, the complainant must always be advised that they can appeal the decision to the relevant Corporate Management Team member, unless the Corporate Management Team member has already approved the measures. In these cases the complainant must be informed of their right to complain to the Ombudsman, if they consider that they have suffered an injustice due to maladministration by the Council.
- 23 Whenever the Council considers that a complaint or complainant is unreasonably persistent or vexatious, and decides to apply any restrictions, all facts taken into consideration, reasoning employed, decisions reached and actions to be taken must be properly documented.

Elected Members, Members of Parliament and MEPs

- 24 Whenever it is agreed that measures should be taken or restrictions imposed in respect of unreasonably persistent complainants or vexatious complaints that have been received via an elected Member (Councillor, MP, or MEP), then the elected Member should usually be copied in to any correspondence informing the complainant as to what measures the Council is taking and why.
- 25 In some cases it might be necessary to inform the elected Member but not copy her/him into correspondence to the complainant: for example where 'client confidentiality' or data protection legislation would be breached, or where a person's human rights might be compromised.

Internal communications

- 26 One of the characteristics of unreasonably persistent complainants is that they approach the local authority through different routes about the same issue in the hope of getting different responses. In order to ensure that the actions described above are effectively implemented across the Council, e-mails and the Lotus Notes tile will be utilised.
- 27 Once a complainant has been deemed unreasonably persistent, or it has been agreed that a person is submitting vexatious complaints, and the actions to be taken / restrictions to be applied have been properly agreed:
- 1 an e-mail alert will be sent to all Heads of Service, CMT Members, and Service Area Complaints Co-ordinators informing them of the brief details of the case, and
 - 2 the details of the complainant, along with actions, restrictions, lead contact officer etc will be posted on the Vexatious Complaints Lotus Notes tile.

- 28 Details will be kept on the Lotus Notes database for a period of 6 years following the last known contact with the Council in respect of the relevant complaint(s).

Author and Contact

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IMPLEMENTING THE UNREASONABLY PERSISTENT COMPLAINANTS/ VEXATIOUS COMPLAINTS POLICY

ACTION CHECKLIST

1. Department identifies Unreasonably Persistent Complainant / vexatious complaint(s)
2. Senior officer (CMT member, Head of Service or equivalent) agrees that action is required
3. Head of Service (or equivalent) contacts Corporate Complaints Manager
4. Consideration by Head of Service (or equivalent) and Corporate Complaints Manager as to whether person meets criteria (Paras 7 (i) – (xii) of Policy)
5. If criteria met, then Head of Service and Corporate Complaints Manager consider appropriate action(s)
6. Complainant written to (Head of Service or Corporate Complaints Manager). Letter sets out the nature of the unacceptable behaviour, and requests complainant to modify behaviour
7. If complainant persists, Head of Service and Corporate Complaints Manager consider further action(s) to restrict access to Council / staff (Paras 14 - 16 of Policy)
8. Director of Legal & Democratic Services, CMT Member and Chief Executive to be involved if necessary (Para 20 of Policy)
9. Complainant notified of actions being imposed, and informed of right to complain to Local Government Ombudsman
10. Ombudsman notified of actions being taken, if appropriate
11. Councillors, MPs etc notified where appropriate (Para 23 of Policy)
12. E-mail alert sent to all CMT Members, Heads of Service and equivalent, and Service Area Complaints Co-ordinators
13. Details of complainant/ complaints/ actions taken/ restrictions imposed/ lead contact officer/ etc put on Vexatious Complaints Lotus Notes tile