

### **Policy on Unreasonably Persistent and/or Vexatious Complainant's Behaviour**

#### **1. Introduction**

- 1.1 Generally, dealing with a complaint is a straightforward process, but in a small number of cases, people pursue their complaints in a way that either can impede the investigation of their complaint or can have significant resource issues for the Council. This can happen while either their complaint is being investigated, or once the Council has finished dealing with the complaint.
- 1.2 This Policy reflects the 'Guidance note on 'unreasonably persistent and unreasonable complainant behaviour' issued by the Local Government and Social Care Ombudsman.
- 1.3 If a complainant behaves in a way that is unreasonably persistent or vexatious, the Council will implement this Policy.

#### **2. Principles**

- 2.1 The Council is committed to dealing with all complaints equitably, comprehensively, and in a timely manner.
- 2.2 The Council does not normally limit the contact that complainants have with Council staff and/or Councillors.
- 2.3 The Council does not expect staff and/or Councillors to tolerate unacceptable behaviour by complainants or any customer. Unacceptable behaviour includes behaviour that is abusive, offensive or threatening (see section 8 below). The Council will take action (by injunction if necessary) to protect staff and/or Councillors from such behaviour.

#### **3. Aim of this Policy**

- 3.1 This Policy contributes to the Council's overall aim of dealing with all complainants in ways that are demonstrably consistent and equitable.
- 3.2 This Policy sets out how the Council will decide which complainants will be treated as vexatious or unreasonably persistent and what the Council will do in those circumstances.

#### **4. Definition of unreasonably and vexatious behaviour**

- 4.1 Because of the nature or frequency of their contact with the Council, a few complainants behave unreasonably and hinder the consideration of their own, or other people's complaints or the delivery of Council services. The descriptions of 'unreasonably persistent' and 'vexatious' may apply separately or jointly to a particular complainant.
- 4.2 There is a difference between 'persistent' complainant behaviour and 'unreasonably persistent' complainant behaviour. The guidelines which accompany this Policy (see below) provide examples of 'unreasonable' and/or 'vexatious' behaviour to help staff and/or Councillors determine this difference. The same considerations and tests apply to both.
- 4.3 There is a difference between 'unreasonably persistent' and 'vexatious' complainant behaviour. Vexatious behaviour in this context, is someone who is not seeking to resolve a dispute between themselves and the Council, but is seeking to cause unnecessary aggravation or annoyance to the Council.

- 4.4 Complainants may have justified complaints or grievances, but are pursuing them in inappropriate ways. Alternatively, they may be intent on pursuing complaints which appear to have no substance or which have already been investigated and settled. Their contacts with the Council may be amicable but still place heavy demands on staff and/or Councillor time, or they may be distressing for all involved.

## 5. Decision making on the application of this Policy

- 5.1 Before making the decision to apply this Policy, some or all of the following steps may be taken:
1. The service manager will ensure that the complaint is being, or has been, investigated properly according to the relevant complaints procedure/process.
  2. Although each complaint is unique, the service manager will deal with the complaint in line with other complaints of a similar nature in order to apply a consistent approach.
  3. The service manager will contact the complainant to:
    - i. discuss his/her behaviour;
    - ii. explain why this behaviour is causing the Council concern;
    - iii. ask him/her to change this behaviour; and
    - iv. explain the actions that the Council may take if his/her behaviour does not change.
  4. If the complainant has not already had a meeting with staff about the complaint and provided that the service manager knows nothing about the complainant that would make this inadvisable, the service manager may consider offering the complainant a meeting with a member of staff of appropriate seniority. Sometimes, such meetings can dispel misunderstandings and move matters towards a resolution.
- 5.2 The decision to apply this Policy:
1. will be an exceptional step, and
  2. be based on a proper risk assessment <sup>1</sup>(where staff or other persons are at risk); and
  3. will be taken at Leadership Team level in consultation with the Head of Legal Services or another Leadership Team member, as set out in the accompanying guidelines detailed below.

## 6. Restrictions imposed

- 6.1 Any restriction that is imposed on the complainant's contact with the Council must be appropriate and proportionate. The options most likely to be considered are included in the guidelines. Even where restrictions are placed on an individual's contact with the Council, they cannot be prevented from submitting a complaint.
- 6.2 When the decision has been taken to apply this Policy to a complainant's behaviour, the Council will contact the complainant in writing to explain:
1. why the Council has taken the decision;
  2. what action the Council is taking;
  3. the duration of that action;
  4. the review process of this Policy; and
  5. the right of the complainant to contact the Local Government and Social Care Ombudsman or the Housing Ombudsman

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<sup>1</sup> LGO Decision -Nottinghamshire County Council (16 009 251)

- 6.3 The service manager will enclose a copy of this Policy and the guidelines that accompany it in the letter to the complainant, or if it is necessary that contact with the complainant is not primarily in writing, the service manager will offer appropriate support to explain the Policy and guidelines to the complainant.
- 6.4 Where a complainant continues to behave in a way that is unacceptable, the service manager may decide to refuse all contact with the complainant and may stop any investigation into his/her complaint.
- 6.5 Where the behaviour is so extreme that it threatens the immediate safety and welfare of staff and/or Councillors, the service manager will consider other options, for example reporting the matter to the police (see section 8 below) or taking legal action such as an injunction. In such cases, the service manager is not obliged to give the complainant prior warning of that action.
- 6.6 New complaints from persons to whom this Policy has been applied, will be treated on their merits and decisions will need to be taken on whether any restrictions which have been previously applied, are still appropriate and necessary.

## 7. Review

- 7.1 The status of the complainant's behaviour judged to be unreasonably persistent or vexatious will be reviewed by the service manager after six months and, if necessary, at the end of every subsequent six months within the period during which the Policy is applied. This status can be withdrawn at any time if, for example, the complainant's behaviour subsequently demonstrates a more reasonable approach. If the complainant submits a further complaint, relating to new matters, the normal complaints procedure will apply.

## 8. Dealing with customers who threaten harm to self or others

- 8.1 Customers occasionally make threats in desperation at their circumstances or in the mistaken belief that such statements will change our approach to their case or decisions that have been made regarding their case. Staff are not qualified to make an assessment about whether threats of this nature are genuine and staff are also not personally responsible for the wellbeing of any customer who may be at risk of self-harm.
- 8.2 If threats of self-harm are made during a telephone call, the caller should be advised that we are not in a position to help and to contact the Samaritans (116 123) if they would like to talk to someone about their feelings or the emergency services if they feel at immediate risk. In all circumstances, make a note of as many details as possible and immediately report the conversation to Kent Police via 101, and also to your service manager. The 101 report should be made by the staff member that dealt with the call. If the call relates to an ongoing case, include details of the threats in a telephone note on the case file or contact record.
- 8.3 If someone calls with the sole purpose of making a threat to put you or others at risk, record as many details as possible in writing and inform the caller that you will be reporting the threats to the police. Immediately report the conversation to Kent Police via 101 and also to your service manager, as above. The service manager will consider whether to notify other agencies.

Details of threats to you and others are to be entered in the Register of Violent and Potentially Violent Persons.

- 8.4 If you are a senior member of staff receiving a communication including threats of this nature, follow this procedure and take any appropriate steps to establish whether further action should be taken. If you think that we should give the customer's details to an appropriate authority, you should consider whether the disclosure would be in the vital interests of the individual and notify the Data Protection Officer so that they may assist and make a formal record of the disclosure.

9. **Equality** – you must also be mindful that the Council has responsibilities under equality and diversity legislation concerning the way it provides its services. Of equal importance, is the Employee Code of Conduct which requires staff to maintain high standards when dealing with customers. However, our need to be patient or make adjustments when providing our services does not extend to having to deal with unacceptable behaviour from customers. We must also be fair to all our customers by prioritising our resources effectively. The time we spend with each customer should be appropriate and proportionate.

We are committed to providing services that are accessible to the broadest range of customers. This commitment also encompasses our legal obligations under the Equality Act 2010. If a customer is having difficulty accessing our services for any reason, we will adjust the way we provide our services where it is reasonable to do so. Where a customer is behaving in a difficult, persistent or unacceptable manner, we must consider whether this may be caused by any personal difficulties or characteristics they have, which may be making our services more difficult to access or use. However, a customer who has rights under the Equality Act 2010 may still be considered to be acting in a persistent, difficult or unacceptable manner under this Policy.

**We want to ensure that our customers' needs are met. Information about this Policy can be provided on audio tape, in Braille, large print, any other format or interpreted in a language other than English.**

10. **Data Protection** - see the [Managing Customer Contact Privacy Notice](#).

# **Guidelines on Unreasonably Persistent and/or Vexatious Complainant's behaviour**

## **1. Introduction**

- 1.1 The Council must expect some degree of pressure from its customers, if they believe that the Council has failed in its service to them or there have been unacceptable delays in the progress of their complaints. Such pressure may be persistent, and in many circumstances, this is reasonable and acceptable.
- 1.2 However, if a complainant behaves in a way that is unreasonably persistent and/or vexatious, the Council will follow the following guidelines.

## **2. Features of an unreasonably persistent and/or vexatious complainant's behaviour**

- 2.1 The following list describes some of the features of complainant behaviour that may be unreasonably persistent and/or vexatious. The list is not exhaustive, nor does one single feature on its own necessarily imply that the person's behaviour will be considered as being in this category. The list merely includes examples of the behaviour and actions that the Council experiences, either individually or in combination:

The complainant:

1. has insufficient or no grounds for their complaint and will be making the complaint only to annoy (or for reasons that he/she does not admit or make obvious);
2. refuses to specify the grounds of a complaint despite offers of assistance;
3. refuses to co-operate with the complaints investigation process while still wishing their complaint to be resolved;
4. refuses to accept that issues are not within the remit of the Corporate Complaints Policy and Procedure or other complaints process despite having been provided with information about the scope of the Procedure or process;
5. refuses to accept that issues are not within the power of the Council to investigate, change or influence (examples could be a complaint about a private car park, or something that is the responsibility of another organisation);
6. insists on the complaint being dealt with in ways which are incompatible with the Corporate Complaints Policy and Procedure or other complaints process or with good practice (insisting, for instance, that there must not be any written record of the complaint);
7. makes what appears to be groundless complaints about the staff dealing with the complaints, and seek to have them dismissed or replaced;
8. makes an unreasonable number of contacts with the Council, by any means (telephone, letter, fax, email or in person) in relation to a specific complaint or complaints (it is impracticable to suggest a number in these guidelines, so staff must use their own judgement to determine what an unreasonable number is in any one case);
9. makes persistent and unreasonable demands or expectations of staff and/or the complaints process after the unreasonableness has been explained in writing (or in another appropriate form) to the complainant (an example of this could be a complainant who insists on immediate responses to numerous, frequent and/or complex letters, faxes, telephone calls or emails);

10. threatens, harasses<sup>2</sup>, verbally abuses, uses physical violence and repetitive language of an obsessive nature to intimidate staff and/or Councillors dealing with their complaint and/or their families;
11. raises subsidiary or new issues whilst a complaint is being addressed that were not part of the complaint at the start of the complaints process;
12. introduces trivial or irrelevant new information whilst the complaint is being investigated and expect this to be taken into account and commented on;
13. raises futile matters where the issue has already been resolved;
14. attempts to vent anger or harass, not obviously to obtain information;
15. asks for information where the effort required would be disproportionate to the matter being pursued;
16. raises matters with the deliberate intention to disrupt or annoy the Council or its employees;
17. raises matters which places a burden on the Council where responding would require a 'grossly oppressive' effort i.e. disproportionate effort in cost and employee time;
18. changes the substance or basis of the complaint without reasonable justification whilst the complaint is being addressed;
19. denies statements he/she made at an earlier stage in the complaints process;
20. electronically records meetings and conversations without the prior knowledge and consent of the other person involved;
21. adopts an excessively 'scattergun' approach, for instance, pursuing a complaint or complaints not only with the Council, but at the same time with a Member of Parliament, other councils, councillors of this and other councils, the Council's external auditor, the police, lawyers and the Local Government and Social Care Ombudsman or Housing Ombudsman;
22. refuses to accept the outcome of the complaints process after its conclusion, repeatedly arguing the point, complaining about the outcome, and/or denying that an adequate response has been given;
23. makes the same complaint repeatedly, perhaps with minor differences, after the complaints process has been concluded and insist that the minor differences make these 'new' complaints which should be put through the full complaints procedure;
24. persistently approaches the Council through different routes about the same issue;
25. persists in seeking an outcome which the Council has explained is unrealistic for legal or policy (or other valid) reasons;
26. refuses to accept documented evidence as factual;
27. complains about or challenge an issue based on a historic and irreversible decision or incident;
28. refuses to accept documented evidence;
29. refuses to identify the precise issues which the complainant wishes to have investigated;
30. refuses to let the matter rest once the complaints process has been exhausted;
31. displays unreasonable demands or expectations e.g. insisting on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice;

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<sup>2</sup> i.e. to disturb persistently, bother continually, pester or persecute

32. has ulterior motives in lodging a complaint;
33. abuses the right to information under the Freedom of Information Act 2000.<sup>3</sup>

'Harass' should be given its ordinary meaning, that is, to disturb persistently, bother continually, pester or persecute.

The case of *Rigby v IC and Blackpool NHS Trust* (EA/2009/0103) provides a good example of 'vexatious' behaviour:

- (i) the provocative nature of comments aimed at staff;
- (ii) the complainant ascribing a lack of integrity and ill intent to Council staff e.g. accusing staff of lying;
- (ii) the complainant using language which it [is] reasonable to expect would cause offence and distress to the recipients; negative tone of the complainant's letters/emails, frequently questioning staff competence and sometimes accusing staff of deliberate wrongdoing thereby reducing staff to tears.

### **3. Being reasonable**

- 3.1 Raising legitimate queries or criticisms of a complaints process as it progresses, for example if agreed timescales are not met, should not in itself lead to someone's behaviour being regarded as a vexatious or an unreasonably persistent.
- 3.2 Similarly, the fact that a complainant is unhappy with the outcome of a complaint and seeks to challenge it once, or more than once, should not necessarily cause his/her behaviour to be labelled vexatious or unreasonably persistent.
- 3.3 It may be helpful to both parties if the complainant had a representative.
- 3.4 If the complainant has specific needs, the Council may suggest a number of support options such the Royal National Institute for the Blind, Citizens Advice Bureau, Age Concern, and Language Line, which the complainant can contact for advice and help.

### **4. Decision-making**

- 4.1 The decision to declare a complainant's behaviour as unreasonably persistent and/or vexatious should be made by the relevant Leadership Team member in consultation with the Head of Legal Services or another Leadership Team member, where the Head of Legal Services is conflicted out, because of involvement in the complaint or with the complainant. A written note of the considerations and decisions should be maintained.
- 4.2 If more than one Department is being contacted by the complainant, perhaps with different complaints, the service manager should consider:
  1. setting up a strategy meeting to agree a cross-Departmental approach, and
  2. the relevant Leadership Team member nominating a key officer to co-ordinate the Council's response(s).

### **5. Options to restrict a complainant's contact with the Council, and other actions**

- 5.1 The options the Council is most likely to consider are:
  1. requesting contact to be in a particular form (for example, letters only);
  2. requiring contact to take place with one named member of staff only;
  3. restricting telephone calls to specified days/times/duration;
  4. requiring any personal contact to take place in the presence of an appropriate witness;

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<sup>3</sup> First - Tier Tribunal General regulatory Chamber Information Rights decision EA/2011/0222

5. letting the complainant know that the Council will not reply or acknowledge any further contact from him/her on the specific topic of that complaint (in this case, a designated member of staff should be identified who will read future correspondence);
  6. banning a complainant from one or more Council premises.
- 5.2 These options are not exhaustive and often local or other factors will be relevant in deciding what might be appropriate action. For instance, any arrangements for limiting a complainant's contact must take account of the complainant's individual circumstances, bearing in mind such issues as age, disability, gender, race and religion or belief etc.

## **6. Actions after a complainant's behaviour has been judged to be unreasonably persistent or vexatious**

- 6.1 The fact that a complainant's behaviour is judged to be unreasonably persistent or vexatious, requires:
1. any restrictions imposed on the Council's contact with him/her to be recorded;
  2. any restrictions imposed to be reviewed at six monthly intervals by the service manager;
  3. personal details about the complainant and about the complaint to be managed and stored appropriately in line with the Council's data protection and records management principles and procedures.