

SECTION F

UNREASONABLE AND/OR PERSISTENT COMPLAINANTS

Introduction

Generally, dealing with a complaint is a straightforward process, but in a minority of cases, people pursue their complaints in a way that can either impede the investigation of their complaint or can have significant resource issues for our Council. These actions can occur either while their complaint is being investigated, or once we have concluded the complaint investigation.

This section is based on what the Local Government Ombudsman regards as good practice in dealing with such complainants. Members of staff must ensure that they apply this policy consistently.

What exactly is an unreasonable and/or persistent complainant?

In this section, we use the terms 'unreasonable complainant behaviour', and 'unreasonably persistent complainants'.

For us, unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with us, hinder our consideration of theirs, or other people's, complaints.

It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many of the people who submit complaints to us are 'persistent' on the entirely reasonable basis that they feel we have not dealt with their complaint properly and are not prepared to leave the matter there. Almost all complainants see themselves as pursuing justified complaints.

Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but they choose to pursue these in inappropriate ways. Or they may be intent on pursuing complaints which appear to have no substance or which have already been investigated and determined. Their contacts with us may be amicable but still place very heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.

Sometimes the situation between us and a complainant can escalate, and the behaviour moves from being unreasonable and unreasonably persistent to behaviour which is unacceptable, for example, abusive, offensive or threatening. Such complainants are in a very small minority, but sometimes we end up in the position of having to restrict access to Council premises or even having to resort to legal action to address such behaviour, for example, in the form of anti-social behaviour orders or injunctions.

Page 22 of 34

We have policies and procedures for dealing with unacceptable behaviour and protecting staff from harassment and harm. This guidance does not seek to address these issues specifically, but sits alongside our existing policies on health and safety in the workplace.

This policy covers behaviour that is unreasonable, which may include one or two isolated incidents, as well as unreasonably persistent behaviour, which is usually an accumulation of incidents or behaviour over a longer period.

Raising legitimate queries or criticisms of a complaints procedure as it progresses, for example if agreed timescales are not met, should not in itself lead to someone being regarded as an unreasonably persistent complainant.

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 him or her to be labelled as unreasonably persistent. If complaints procedures are properly followed, then responding dissatisfied customers and requests for information should not cause us particular problems.

Why do we need this policy?

We want to deal with all of our customers consistently and fairly. Having a policy on unreasonably persistent complainants and unreasonable complainant behaviour helps us to do this. It also helps you to understand clearly what is expected of you, what options for action are available, and who can authorise these actions.

Deciding whether someone is an ‘unreasonable’ or an ‘unreasonably persistent’ complainant

These are some of the actions and behaviours of unreasonable and unreasonably persistent complainants that we often find problematic. It is by no means an exhaustive list, but they are common examples that frequently come to the attention of the Customer Advocacy Team.

- Refusing to specify the grounds of a complaint, despite offers of assistance with this from members of staff.

- Refusing to co-operate with the complaints investigation process, while still wishing their complaint to be resolved

- Refusing to accept that issues are not within the remit of our complaints procedure, despite having been provided with information about the procedure’s scope.

Page 23 of 34

- Insisting on the complaint being dealt with in ways that are incompatible with our adopted complaints procedure or with good practice.

- Making what appear to be groundless complaints about the staff dealing with the complaint, and/or seeking to have them replaced.

- Changing the basis of the complaint as the investigation proceeds and/or denying statements that he or she made at an earlier stage.

- Introducing trivial or irrelevant new information which the complainant expects to be taken into account and commented on, or raising large numbers of detailed but unimportant questions and insisting they are all fully answered.

- Electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved.

- Adopting a 'scattergun' approach: pursuing a complaint or complaints with the authority and, at the same time, with a Member of Parliament/a councillor/ independent auditor/the Standards Board/local police/solicitors/the Local Government Ombudsman.

- Making unnecessarily excessive demands on the time and resources of staff whilst a complaint is being looked into, by for example excessive telephoning or sending emails to numerous council staff, writing lengthy complex letters every few days and expecting immediate responses.

- Submitting repeat complaints, after complaints processes have been completed, essentially about the same issues, with additions/variations that the complainant insists make these 'new' complaints that should be put through the full complaints procedure.

- Refusing to accept the decision — repeatedly arguing the point and complaining about the decision.

- Combinations of some or all of these

Our policy on unreasonable and unreasonably persistent complainants

Different considerations will apply depending on whether the investigation of the complaint is ongoing or whether it has been concluded. To some extent the latter is easier to deal with. It is in effect the customer simply refusing to accept an outcome. We then have the option of ending all communication with

Page 24 of 34

the customer, and where appropriate referring the complainant to the Local Government Ombudsman. However, where the complaint is ongoing, there needs to be some continuing contact with the customer.

The decision to designate someone as an unreasonable or unreasonably persistent complainant is difficult and could have serious consequences for the individual. Before deciding whether the policy should be applied we need to be satisfied that:

- the complaint is being or has been investigated properly
- any decision reached on it is the right one
- communications with the customer have been adequate, and
- the customer is not now providing any significant new information that might affect our view on the complaint.

If we are satisfied on these points we need to consider whether further action is necessary before we take a decision to designate the complainant as unreasonable or unreasonably persistent. In all cases, staff should seek advice at an early stage from the Customer Advocacy Team, and certainly before any decision is taken to label a complainant as unreasonable, or unreasonably persistent.

Options for action

The precise nature of the action we decide to take in relation to an unreasonable or unreasonably persistent complainant should be appropriate and proportionate to the nature and frequency of the customer's contacts with us at that time.

The following list, while not exhaustive, sets out some possible options for managing a complainant's involvement with the Council. One or more options may be suitable and therefore may be applied, **if warranted**.

- Placing time limits on telephone conversations and personal contacts
- Restricting the number of telephone calls that will be taken (for example, one call on one specified morning/afternoon of any week)
- Limiting the complainant to one method of contact (telephone, letter, email etc) and/or requiring the complainant to communicate only with one named member of staff or team

Page 25 of 34

- Requiring any personal contacts to take place in the presence of a witness
- Refusing to register and process further complaints about the same matter
- Where a decision on the complaint has been made, providing the complainant with acknowledgements only of letters, faxes, or emails, or ultimately informing the complainant that future correspondence will be read and placed on the file but not acknowledged. A designated officer should be identified who will read future correspondence.

You should consult the Customer Advocacy Team in every case where you plan to take action to limit our contact with a complainant. The Customer Advocacy Team will work with all officers involved to develop an action plan. They will ensure that all members of staff who have been subject to the unreasonable, or unreasonably persistent behaviour of the complainant, are made aware of the existence of the plan and understand the action(s) they must take.

Proper records must be kept by all officers involved, detailing the action being taken and the reasons for this. Our corporate feedback system is accessible to all staff via the intranet, and so the fact that an action plan exists should also be noted on the system.

Operating the policy

Before we apply any restrictions, the complainant must be given a warning that if his/her actions continue, we may decide to treat him/her as an unreasonably persistent complainant, along with an explanation about why we have made this decision.

If a decision is taken to apply the policy, the Council's Customer Advocacy Team must be contacted in the first instance.

The Team will work with the officer or team involved to write to the complainant informing them that:

- the decision has been taken,
- what it means for his or her contacts with us,
- how long any restrictions will last; and

Page 26 of 34

- what the complainant can do to have the decision reviewed.

The Team will enclose with a copy of this policy with the letter.

All staff must ensure that they keep adequate records of all contacts with unreasonable and unreasonably persistent complainants, for example:

- when a decision is taken not to apply the policy when a member of staff asks for this to be done, or to make an exception to the policy once it has been applied, or
- when a decision is taken not to put a further complaint from such a customer through our complaints procedure for any reason, or
- when a decision is taken not to respond to further correspondence (although we must always make sure that any further letters, faxes or emails from the complainant are checked to pick up any significant new information).

When unreasonable and unreasonably persistent complainants make complaints about new issues these should be treated on their merits, and decisions will need to be taken on whether any restrictions that have been applied before are still appropriate and necessary.

Reviewing the arrangements

Reviews of decisions to restrict a customer's contacts or our responses to them must be taken by an officer senior to the person who made the original decision. Again, the Customer Advocacy Team must be informed at the time of any such review. The Team will write to advise the complainant of the outcome and, if restrictions are to continue to be applied, when these will next be reviewed.

All restrictions must be reviewed at least every six months. If a complainant to whom we have decided the policy will apply has no contact with us within that period, we will review the decision and decide whether any restrictions placed on the complainant's contacts should be cancelled. We will note the outcome of this review on our records. If the restrictions are cancelled, urgent consideration will be given to re-introducing the restrictions if the behaviour that led to the original decision re-commences.

In all cases, we must ensure that the customer:

Page 27 of 34

- is given information about the decision-making process and who decides whether the policy will be applied in their case,
- understands the restrictions that will be placed on contacts, and for how long,
- is given full details of their right to have the decision reviewed, and details of how to appeal against the decision,
- is given guidance on the nature of the records we will keep,
- understands which officers of the Council are to be informed that contact with them is being restricted and why, and who will have access to that information on request.

The Customer Advocacy Team will collate information and keep a central record detailing the numbers of complainants to whom this policy has been applied and the types of restrictions that have been imposed.

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