

POLICY FOR DEALING WITH UNREASONABLY PERSISTENT COMPLAINANTS AND UNREASONABLE COMPLAINANT BEHAVIOUR

Introduction

- 1 Eastleigh Borough Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to complainants. Having a policy on unreasonably persistent complainants and unreasonable complainant behaviour helps the Council to deal with complainants in ways which are consistent and fair.

Definitions

- 2 The Local Government Ombudsman has defined 'unreasonable' and 'unreasonably persistent' complainants as those who, because of the frequency or nature of their contacts with the local authority, hinder the authority's consideration of their, or other people's, complaints.
- 3 Examples of unreasonably persistent complainant behaviour include –
 - Introduction of trivial or irrelevant new information and expecting it to be taken into account and commented on, or raising large numbers of detailed but unimportant questions and insisting they are all fully answered.
 - Adoption of a 'scattergun' approach – pursuing a complaint with one department and, at the same time, with other departments within the authority and/or with other parties, eg, the MP, a Councillor, the Police, solicitors, or the Local Government Ombudsman.
 - Making excessive demands on the time and resources of staff whilst the complaint is being investigated – eg, excessive telephoning or sending e-mails to numerous Council staff, writing lengthy complex letters every few days and expecting immediate responses.
 - Submission of repeat complaints – after the complaints process has been completed – essentially about the same issue but with additions/ variations which the complainant insists make these 'new' complaints which s/he wants to be put through the full complaints procedure.
 - Refusal to accept the decision reached on the complaint – repeatedly arguing the point and complaining about the decision.

This list is not exhaustive and unreasonably persistent complainant behaviour is not limited to one (or a combination of any) of the above.

4 Unreasonable complainant behaviour can come about when the situation between the Council and a complainant escalates and the complainant's behaviour becomes unacceptable (eg abusive, offensive, or threatening). Examples of unreasonable complainant behaviour include –

- Refusal by complainant to specify the grounds of a complaint, despite offers of assistance from Council staff.
- Refusal by complainant to cooperate with the complaints process, yet still wanting his/her complaint to be resolved.
- Refusal to accept that issues raised are not within the remit of the Council's complaints procedure.
- Insistence that the complaint be dealt with in ways which are incompatible with the Council's adopted complaints procedure.
- Making apparently groundless complaints about staff dealing with the complaint and seeking to have those staff removed/replaced.
- Changing the basis of the complaint as the investigation proceeds and/or denying statements s/he made at an earlier stage.
- Electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved.

This list is not exhaustive and unreasonable complainant behaviour is not limited to one (or a combination of any) of the above.

Aim

- 5 The aim of the policy for dealing with unreasonably persistent complainants and unreasonable complainant behaviour, is to deal fairly and honestly with the complainant whilst ensuring that other service users and Council officers do not suffer any detriment from people making repeated and persistent, unreasonable complaints – whilst recognising the rights of complainants under the Human Rights Act 1998.

Dealing with Unreasonably Persistent Complainants

- 6 The decision to designate someone as unreasonably persistent can only be made by a member of Management Team, in consultation with the Portfolio Holder and any other Members considered appropriate (or, in relation to vexatious and repeated requests for information under the Freedom of Information Act 2000, by the Head of Legal Services in liaison with Management Team, who will be guided by the Information Commissioner's Office).

Assessing whether the action is proportionate and necessary

- 6.1 Consideration of the following points, together with any other relevant factual information, will be necessary to assess whether the proposed action is proportionate and necessary –

- Is the complaint being investigated properly and in accordance with the Council's policy for investigating complaints?
- Is there another, more specific, path for the complainant to follow (eg, an appeal process if s/he is complaining about, say, a planning decision or a benefits decision)?
- Are the correct timescales being adhered to?
- Has the complainant been advised of any delays that may have occurred?
- Are the considerations/decisions reached – as part of the investigation – being reached correctly?
- Have communications with the complainant been adequate, clear and coordinated?
- Has consideration been given to the possibility of mental health problems, learning disabilities, or personality disorders?
- Is the complainant now providing any significant new information that might affect the Council's view on his/her complaint?

Assessing whether further action is necessary before designating the complainant 'unreasonably persistent'

6.2 If satisfied on these points, consideration should be given as to whether further action is necessary prior to making the decision to designate the complainant as unreasonably persistent, for example –

- Have any meetings taken place between the complainant and an investigating, or senior, officer? If not (unless there is a known risk about such a meeting), would this be likely to help the situation? (The complainant may be accompanied by an advocate, if s/he wishes, if it is considered that a meeting may help the situation.)
- Is more than one Unit being contacted by an unreasonably persistent complainant? If so, consideration could be given to setting up a strategy meeting to agree a cross-Unit approach and designate a key officer to coordinate the Council's response.

Ongoing complaints

6.3 If, having followed all the steps of the Council's corporate complaints procedure a complainant is still dissatisfied, s/he may refer his/her complaint to the Local Government Ombudsman.

Completed complaints

6.4 Where the complaint has gone through both stages of the Council's corporate complaints procedure and it has been explained to the complainant that if s/he is still not satisfied then s/he can take the

complaint to the Local Government Ombudsman, but correspondence from the complainant continues, then a senior officer – with the agreement of Management Team – will write to the complainant to inform him/her that the matter is at an end and the Council will not enter into further correspondence about the complaint, and any further letters on the same subject will be read and placed on file, but will receive no acknowledgement or response.

Applying restrictions

- 6.5 Before applying any restrictions, the complainant should be given a warning in writing that if his/her actions continue, the Council may decide to treat him/her as an unreasonably persistent complainant and explain why.

Options for action

- 6.6 The precise nature of the action the Council decides to take should be appropriate and proportionate to the nature and frequency of the complainant's contacts with the Council at that time.
- 6.7 The following is a list of some possible actions for managing a complainant's involvement with the Council. (The list is not exhaustive and local case-by-case factors may be relevant in deciding appropriate action.) –
- Placing time limits on telephone conversations and personal contacts.
 - Restricting the number of telephone calls that will be taken (eg, one call on one specified day of any week).
 - Limiting the complainant to one contact medium (eg, telephone, letter, e-mail) and/or requiring the complainant to communicate with one named member of staff.
 - Requiring personal contacts to take place in the presence of a witness.
 - Refusing to register/process further complaints about the same matter.

Dealing with Unreasonable Complainant Behaviour

- 7 The Council has a duty to ensure the health, safety and welfare of its staff and it does not expect staff to tolerate language or behaviour by complainants which is abusive, offensive, or threatening.
- 8 Members of staff who feel threatened or intimidated by the language or behaviour of complainants should report their concerns to their manager who will consider –

- whether to write to the complainant, requiring him/her not to repeat the behaviour and, if necessary, setting conditions and restrictions for further contact with staff, or
- whether to report the incident to the Police.

Telephone contact

- 8.1 During a telephone conversation, if staff consider that the caller is becoming aggressive and/or offensive, they will inform the caller that they will terminate the conversation unless such behaviour ceases. If the aggression continues, the member of staff will terminate the call and a note will be placed on file explaining why the call was terminated.
- 8.2 Repeated calls of this nature constitute harassment which should, after consultation with a senior officer, be reported to the Police.

Personal contact

- 8.3 Visitors to Council premises may show aggressive behaviour when they do not achieve the aim of their visit. Triggers for unreasonable behaviour can include –
- Not being able to see the person s/he holds responsible for his/her current situation or discontentment.
 - Not being allowed instant access to the Chief Executive or a Head of Unit.
 - Not being able to resolve his/her complaint during his/her visit.
- 8.4 Examples of aggressive and unreasonable behaviour can include –
- Shouting loudly and making demands to see the officer s/he holds responsible.
 - Making threats to members of staff who are trying to help.
 - Using abusive and upsetting language to members of staff.
 - Refusing to leave until the problem is resolved.
 - His/her continued presence causes disruption/distress to other visitors.
- 8.5 Difficult situations such as this can sometimes be resolved by being patient, remaining calm, listening and identifying the exact nature of the problem.

8.6 If it is not possible to resolve the situation –

- Ensure another member of staff is present. If this is not practicable, assess the situation and decide what action you should take (eg, leave the room to seek assistance).
- Telephone a senior manager to ask for further assistance if necessary.
- If applicable, try to remain behind the desk/table/counter – this acts as a barrier and maintains a distance, thus reducing the risk of violent behaviour.
- If the complainant refuses to calm down, press the alarm button (where available) for assistance.
- Explain clearly that you are unable to help any further but that you will pass on the details of his/her complaint to the relevant person, then (if necessary) ask the complainant to leave the premises.
- As soon as possible after the incident, write up a clear account of what has happened, listing those present at the time. Sign and date the document.

8.7 Where the behaviour is so extreme that it threatens the immediate safety and welfare of the Council's staff, other options will be considered – eg, reporting the matter to the Police or taking legal action. In such cases, the complainant may not be given prior warning of that action.

Application of the Policy

9 If the decision is made to apply the policy, the relevant Head of Unit (or member of Management Team) will write to the complainant to –

- Inform him/her that the decision has been taken to invoke the policy.
- Explain what it means for his/her contacts with the Council.
- Explain how long any restrictions will last.
- Explain what the complainant can do to have the decision reviewed.
- Enclose a copy of this policy with the letter.

Records

10 Adequate records must be kept of all contacts with unreasonably persistent complainants and complainants behaving unreasonably. The information should be treated as confidential and only shared with those who may be affected by the decision.

- 11 Key information to be recorded includes –
- When a decision is taken to apply (or not to apply) the policy following a request to do so by a member of staff.
 - When a decision is taken to make an exception to the policy after it has been applied (if, say, extenuating circumstances subsequently come to light).
 - When a decision is taken (and the reason) not to put a further complaint from the same complainant through the complaints procedure.
 - When a decision is taken not to respond to further correspondence (having made sure that any further letters, faxes, e-mails, etc, from the complainant do not have any significant new information).

Future Complaints by the Same Complainant

- 12 When/if the complainant makes a complaint about a new issue, this should be treated on its merits and a decision will need to be taken on whether any restrictions which have been applied before, are still appropriate/necessary.

Reviews of Decisions

- 13 Reviews of decisions to restrict a complainant's contacts, or the Council's responses to those contacts, should be carried out annually by the appropriate Officer in liaison with the Management Team.
- 14 If no further contact has been received from the complainant over a period of 12 months, consideration may be given to cancelling the restrictions. (However, urgent assessment will be necessary to re-introduce them if behaviour which led to the original decision recommences.)

Referral to the Local Government Ombudsman

- 15 In some cases, relations between the authority and the complainant can break down and there is little prospect of achieving a satisfactory outcome. In such circumstances there is often little point in working through all stages of the Council's complaints procedure. Where this occurs, the Ombudsman may be prepared to consider a complaint before the Council's complaints procedure has been exhausted.
- 16 A complainant who has been designated '*unreasonably persistent*' or using '*unreasonable complainant behaviour*', may make a complaint to the Ombudsman about the way in which s/he has been treated.
- 17 The Ombudsman is unlikely to be critical of the Council's action if it can be shown that the Council's policy has been operated properly and fairly.

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