

UNREASONABLE OR UNREASONABLY PERSISTENT COMPLAINANTS

1.0 Introduction

1.1 Generally, dealing with a complaint is a straight-forward process, but in a minority of cases people pursue their complaints in a way which can either impede the investigation of their complaint or can have significant resource issues for officers within the council. These actions can occur either while their complaint is being investigated, or once the investigation has been concluded.

1.2 This guidance is based on what the Local Government Ombudsman regards as good practice in dealing with complainants that are deemed unreasonable or persistent.

2.0 Definition

“Unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with the authority, hinder the authority’s consideration of their, or other people’s, complaints.”

2.1 It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many people who submit complaints are 'persistent' on the entirely reasonable basis that they feel the council has not dealt with them properly and are not prepared to leave the matter there and almost all complainants see themselves as pursuing justified complaints.

2.2 Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but are pursuing them 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 may be amicable but still place very heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.

2.3 Sometimes the situation between the council 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 the council finds itself in the position of having to restrict access to its 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. These actions are extremely rare but are in place to protect staff and avoid disruption to front line services for residents. This guidance does not address these issues of health and safety, but sits alongside existing policies as a means of addressing the full spectrum of behaviours which may have to be addressed.

2.4 This guidance 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 unreasonably persistent. If complaint procedures are operating properly, then responding to expressions of dissatisfaction and requests for information should not cause the council particular problems.

3.0 Why have a policy?

3.1 Having a policy on unreasonably persistent complainants and unreasonable complainant behaviour and corresponding guidance for staff on procedure should help deal with complainants in ways which are demonstrably consistent and fair. It also helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. In the absence of such guidance staff are likely to have greater problems with unreasonable and unreasonably persistent complainants. In addition, it provides a yardstick against which performance can be assessed for monitoring purposes.

4.0 Actions and behaviours of unreasonable and unreasonably persistent complainants

4.1 These are some of the actions and behaviours of unreasonable and unreasonably persistent complainants that the council may find problematic. It is by no means an exhaustive list and every situation will be considered taking into account issues such as the Disability Discrimination Act 1995, and the Mental Capacity Act 2005, and peoples' ability to communicate and understand.

- Refusing to specify the grounds of a complaint, despite offers of assistance with this from the authority's 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 a complaints procedure despite having been provided with information about the procedure's scope.
- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- Making what appear to be groundless complaints about staff dealing with the complaints, and repeatedly seeking to have officers replaced.
- Changing the basis of the complaint as the investigation proceeds and/or denying statements 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 /

the authority's independent auditor / the Standards Committee / local police / solicitors / the 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 which the complainant insists make these 'new' complaints which 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.

5.0 Who decides whether someone should be treated as unreasonable or unreasonably persistent?

5.1 This decision must be made by a Deputy Director, Director or the Chief Executive.

6.0 Considerations prior to taking action under the policy

6.1 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 complainant simply refusing to take no for an answer, and the Local Authority has the option of ending all communication with the complainant, and where appropriate referring the complainant to the Ombudsman. However, where the complaint is ongoing there needs to be some continuing contact with the complainant.

6.2 The decision to designate someone as an unreasonable or unreasonably persistent complainant is onerous and could have consequences for the individual. Before deciding whether the policy should be applied the council will need to satisfy itself that:

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

6.3 If the council is satisfied on these points it should consider whether further action is necessary prior to taking the decision to designate the complainant as unreasonable or unreasonably persistent. Examples might be:

- If no meeting has taken place between the complainant and officer(s), and provided that the authority knows nothing about the complainant which would make this inadvisable, consider offering the complainant a meeting with an

officer of appropriate seniority. Sometimes such meetings can dispel misunderstandings and move matters towards a resolution.

- If mediation may help remedy the complaint.
- If more than one department is being contacted by an unreasonably persistent complainant, consider:
 - setting up a strategy meeting to agree a cross-departmental approach; and
 - designating a key officer to co-ordinate the authority's response(s).
- If the complainant has additional needs, an advocate might be helpful to both parties, consider offering to help the complainant find an independent one.
- Before applying any restrictions give the complainant a warning that if his/her actions continue the authority may decide to treat him/her as an unreasonably persistent complainant, and explain why.

7.0 Options for action

7.1 The precise nature of the action to take in relation to an unreasonable or unreasonably persistent complainant should be appropriate and proportionate to the nature and frequency of the complainant's contacts with the council at that time. The following list is a 'menu' of possible options for managing a complainant's involvement with the authority from which one or more might be chosen and applied, if warranted. It is not exhaustive and often, local factors will be relevant in deciding what might be appropriate action.

- 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 medium of contact (telephone, letter, email etc) and/or requiring the complainant to communicate only with one named member of staff.
- 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.

8.0 Operating the policy

8.1 If a decision is taken to apply the policy, the council will write to inform the complainant that:

- the decision has been taken;
- what it means for his or her contacts with the authority;
- how long any restrictions will last; and
- what the complainant can do to have the decision reviewed.

8.2 The council will enclose with the letter a copy of the policy and 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 complainant through its complaints procedure for any reason; or
- when a decision is taken not to respond to further correspondence, make sure any further letters, faxes or emails from the complainant are checked to pick up any significant new information.

8.3 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 which have been applied before are still appropriate and necessary.

8.4 Reviews of decisions to restrict a complainant's contacts or the council's responses to them should be taken by an officer senior to the person who made the original decision. When reviews are carried out, the council will write to advise the complainant of the outcome and, if restrictions are to continue to be applied, when these will next be reviewed.

8.5 The restrictions will be kept under review. Arrangements will be put in place for a check to be made in six months on whether there has been any further contact from the complainant. If a complainant to whom the council has decided the policy will apply has no contact with the council within that period, the position should be reviewed and a decision taken on whether any restrictions placed on the complainant's contacts should be cancelled. The outcome of this review should be noted on the client records. If the restrictions are cancelled, consideration should be given to re-introducing the restrictions if the behaviour which led to the original decision re-commences.

9.0 Referring unreasonable and unreasonably persistent complainants to the Local Government Ombudsmen

9.1 In some cases, relations between public authorities and unreasonable and unreasonably persistent complainants break down badly while complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances there is often little purpose in following through all stages of the council's complaints procedure and where this occurs the Ombudsman may be prepared to consider complaints before complaints procedures have been exhausted. This is the case even in respect of statutory complaints procedures.

9.2 A complainant who has been designated an unreasonably persistent complainant may make a complaint to the Ombudsman about the way in which he or she has been treated. The Ombudsman is unlikely to be critical of the council's action if it can show that its policy has been operated properly and fairly.

10.0 Unacceptable behaviour of complainants – Policy Statement

“Hillingdon Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them. As part of this service we do not normally limit the contact complainants have with officers. However, the council does not expect their staff to tolerate behaviour by complainants that is unacceptable, for example, which is abusive, offensive or threatening, and will take action to protect staff from that behaviour.

When we consider that a complainant’s behaviour is unacceptable we will tell them why we find their behaviour unreasonable and we will ask them to change it. If the unacceptable behaviour continues, we will take action to restrict the complainant’s contact with our officers.

The decision to restrict access to our officers will be taken by a senior manager. Any restrictions imposed will be appropriate and proportionate. The options we are most likely to consider are:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer and a nominated officer in their absence;
- restricting telephone calls to specified days and times; and/or
- asking the complainant to enter into an agreement about their conduct.

In all cases we will write to tell the complainant why we believe his or her behaviour is unacceptable, what action we are taking and the duration of that action. We will also tell them how they can challenge the decision if they disagree with it.

Where a complainant continues to behave in a way that is unacceptable, we may decide to terminate contact with that complainant and discontinue any investigation into their complaint. In this instance we may refer the complainant to the Ombudsman, even if the complaint has not been through all three stages of the complaints procedure.

Where the behaviour is so extreme that it threatens the immediate safety and welfare of the council’s staff, we will consider other options, for example reporting the matter to the police or taking legal action. In such cases, we may not give the complainant prior warning of that action.”

Unreasonably persistent complainants – Policy Statement

“The council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them. As part of this service we do not normally limit the contact complainants have with officers.

However there are a small number of complainants who, because of the frequency of their contact with council’s officers, hinder our consideration of their, or other people’s, complaints. We refer to such complainants as ‘unreasonably persistent

complainants' and, exceptionally, we will take action to limit their contact with our officers.

The decision to restrict access to our officers will be taken by a senior manager and will normally follow a prior warning to the complainant. Any restrictions imposed will be appropriate and proportionate. The options we are most likely to consider are:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer;
- restricting telephone calls to specified days and times; and/or
- asking the complainant to enter into an agreement about their future contact with us.

In all cases where we decide to treat someone as an unreasonably persistent complainant, we will write to tell the complainant why we believe his or her behaviour falls into that category, what action we are taking and the duration of that action. We will also tell them how they can challenge the decision if they disagree with it. If we decide to treat someone as an unreasonably persistent complainant we will still investigate their complaint and respond in accordance with our local and statutory procedures.

Where a complainant whose case is closed persists in communicating with us about it, we may decide to terminate contact with that complainant. In such cases, we will read all correspondence from that complainant, but unless there is fresh evidence, which affects our decision on the complaint, we will simply acknowledge it or place it on the file with no acknowledgement. New complaints from people who have come under the unreasonably persistent complainant policy will be treated on their merits.”