

CR02/2008 – Guidance on how to identify and manage unreasonable complainant behaviour and manage unreasonably persistent complaints

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Distribution: Heads of Service
Customer Relations Network

Issued by: Customer Relations, Customers and Communities Directorate

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Purpose

1. Guidance to all staff to ensure a consistent approach
2. Information on when and how to apply the guidance
3. Information about the Local Government Ombudsman policy on these behaviours

Action

Customer Relations Service Leads are asked to ensure that their Service is aware of this guidance, where to find it and to seek advice from Customer Relations whenever it might be considered appropriate to apply it.

Summary

From time to time a complaint will arise from a member of the public whose behaviour is particularly challenging. This guidance defines what is unacceptable or unreasonable complainant behaviour, how to identify it and options for how to manage it constructively and consistently.

Unreasonable complainant behaviour

The County Council's policy on complaints from the public demonstrates that we value complaints and will investigate them thoroughly and impartially. We also have a duty to ensure the safety and welfare of our staff.

Occasionally, complainants display behaviour that is unreasonable and unacceptable, which the County Council does not expect its staff to tolerate, and we will take action to protect them. Examples are behaviour that is offensive, abusive or threatening, either orally or in writing.

When we consider that a complainant's behaviour is unacceptable, we will tell them why and ask them to change it. If the behaviour continues, we will take action to restrict the complainant's access to our officers and/or premises.

The decision to take action will be taken by the Head of Customer Service. The action will be appropriate and proportionate, and may include,

- Requiring contact in a particular form (for example, letter only)
- Requiring contact with a named officer only
- Restricting contact
- Asking the complainant to enter into an agreement about their contact with us

In all cases we will write to the complainant to advise them why we consider their behaviour to be unacceptable, that a decision has been made to restrict access, and how they can have that decision reviewed.

Where a complainant continues to behave in a way that is unacceptable, we may decide to terminate contact and discontinue any investigation into their complaint.

Where the behaviour is so extreme that it threatens the immediate safety or welfare of County Council staff, we may report the matter to the police or take legal action. We may not give the complainant prior warning of that action.

Unreasonably persistent complainants

The County Council's policy on complaints from the public demonstrates that we value complaints and will investigate them thoroughly and impartially. We are also accountable for the proper use of public money and must ensure it is spent wisely, both for complainants and the wider public.

There is a small number of complainants who, because of the frequency of their contact with us, 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 and/or premises.

The decision to restrict access will be taken by the Head of Customer Service 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, letter only)
- requiring contact to take place only with a named officer
- restricting telephone calls to specified days and times
- 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 them why we believe their 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 continue treating someone as an unreasonably persistent complainant and we are still investigating their complaint three months later, we will carry out a review and decide if restrictions will continue.

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 file with no acknowledgement.

New complaints from people who have come under the unreasonably persistent complainants policy will be treated on their merits.

Policy on complaints from the public

The following policy statement defines how the Council intends that complaints are to be treated. It reflects the Council's customer focussed values and our commitment to listen to and learn from feedback from the public. It is quoted here for reference.

- We welcome complaints for the opportunities they give us to inform policy and improve service delivery.
- We encourage customers to complain by making it as easy as possible for them to find out how to do so.
- We maintain procedures for the management and investigation of all complaints made to officers and to Members, and continually monitor them to ensure they are fit for purpose.
- We investigate complaints thoroughly, objectively and impartially.
- When complaints are upheld we put things right.
- When we find maladministration has caused injustice we seek a remedy that would, so far as is possible, put the complainant back into the position they would have been but for the fault.

This policy is component of the Council's Corporate Governance and Assurance Framework.

Guidance on how to identify and manage unreasonable complainant behaviour and unreasonably persistent complainants

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Unacceptable actions and behaviours

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 our complaints procedures are operating properly, then responding to expressions of dissatisfaction and requests for information should not cause us particular problems.

These are some of the actions and behaviours of unreasonable and unreasonably persistent complainants which we may find problematic. It is not an exhaustive list.

- Refusing to specify the grounds of a complaint, despite offers of assistance with this from 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 verbal or written threats or adopting an aggressive or bullying tone.
- Making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have them 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.
- Refusing to work solely with the nominated investigator and/or adopting a 'scattergun' approach: pursuing a complaint or complaints with the Council and, at the same time, with a Member of Parliament/a councillor/the Standards Board/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 emailing 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.

Recognising or identifying the behaviour

- It is not always obvious at the outset that a complainant is or may become unreasonable, so when the first signs appear, they will be recorded.
- If the complaint is being made by telephone or face to face and any of these behaviours are displayed, the complainant may be asked to modify their behaviour.
- When recording the complaint on the Complaints, Comments and Compliments database, the unreasonable behaviour will be described, along with any statements made about modifying it. The call taker will report the incident to the line manager.
- Staff will be aware that individuals have the right to access to information held about them under Freedom of Information Act and Data Protection Act. It is important that the complaint record contains only factual records about what was said and how the call taker felt as a result of the behaviour.
- Some behaviours only become apparent during the course of investigating a complaint. At the point where the behaviour is considered to be a matter for concern, the complaint investigator will contact Customer Relations for guidance and support.
- If it is agreed that the behaviour is unacceptable, the investigator will write to the complainant explaining why and asking them to modify it.

- We recognise that individual members of our staff will have varying levels of tolerance to offensive, abusive and threatening behaviour. The line manager will take action to understand the impact on staff of any incident and provide support, including, if appropriate, advising them of the Council's Employee Assistance Scheme and how to access it. Refer to non-violence [F4 - Aggression and Violence](#), and [appendix 3 Violence to staff](#) – Support and Counselling, for detailed guidance.

Considerations prior to taking action under the guidance

Different considerations will apply dependant on whether the investigation of the complaint is ongoing or 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 Council have the option of ending all communication with them, and where appropriate referring them to the Ombudsman. However, where the complaint is ongoing there may need to be some continuing contact with the complainant.

The decision to designate someone as an unreasonable or unreasonably persistent complainant is onerous, and could have serious consequences for the individual. In making the decision whether or not to apply this guidance, we must be satisfied that:

- the complaint is being, or has been investigated properly;
- communications with the complainant have been adequate; and
- the decision reached is sound, based upon all the available information.

Options for action

The precise nature of the action the Council decides 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 is a list of possible options for managing a complainant's involvement with us 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 and at a particular frequency.
- Requiring any personal contacts to take place in the presence of a witness.
- Requiring the complainant to sign an agreement on their future behaviour towards staff or and/or whilst on Council premises.
- Refusing to register and process further complaints about the same matter.
- Where a decision on the complaint has been made, providing the complainant only with acknowledgements 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 that correspondence.

Operating the guidance

Authority to act

Decisions to take action under these policies will be taken by the Head of Customer Service.

- If, after consultation with Customer Relations, we consider that action should be taken, the complaint investigator will prepare a statement describing the circumstances and reasoning and a proposed course of action. This will be discussed with the Head of Customer Service.
- Where Freedom of Information has any bearing on the matter, the Freedom of Information Officer, Legal Services, will be consulted.
- If a decision taken to restrict access results from offensive, abusive or threatening or any other behaviour that causes distress, Customer Relations are responsible for recording the circumstances on the Health & Safety Incident database (See [Safety Manual - Section G3 - Accident and Incident reporting](#)).
- Consideration will be given to which officers and Members need to be made aware, and they will be kept informed on decisions to restrict access.

If a decision is taken to apply measures, the Head of Customer Service will write to inform the complainant:

- that the decision has been taken;
- the guidance we are applying (and enclose a copy);
- what it means for his or her contacts with the Council;
- how long any restrictions will last;
- what the complainant can do to have the decision reviewed; and
- the names of officers and Members who have been notified.

Review

A complainant who is subject to any measures may request that the decision be reviewed at any time. Such a request will be considered by the Head of Customer Service. When reviews are carried out, we will write to advise the complainant of the outcome and, if restrictions are to continue to be applied, when these will next be reviewed.

Keep any restrictions under review. Arrangements should be put in place for a check to be made in, say, six months on whether there has been any further contact from the complainant. If a complainant to whom we have decided restrictions 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 County Complaints Database. If the restrictions are cancelled, urgent consideration should be given to re-introducing the restrictions if the behaviour which led to the original decision re-commences.

When unreasonable and unreasonably persistent complainants make complaints about new issues, these should be treated on their merits. Consideration must be given to whether or not any current restrictions should apply, or if restrictions that have been applied before are still appropriate and/or necessary.

Record Keeping

Keep adequate records of all contacts with unreasonable and unreasonably persistent complainants, for example:

- when a decision is taken not to apply restrictions when a member of staff asks for this to be done, or to make an exception to the guidance once it has been applied; or
- when a decision is taken not to put a further complaint from such a complainant through the 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.

Records will be kept for a period not exceeding 5 years from the date of the latest correspondence.

Referring unreasonable and unreasonably persistent complainants to the Local Government Ombudsmen

In some cases, relations with unreasonable and unreasonably persistent complainants could 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 Ombudsmen may be prepared to consider complaints before complaints procedures have been exhausted. This is the case even in respect of statutory complaints procedures.

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

The Ombudsman's own internal policies on 'unacceptable behaviour' and on 'unreasonably persistent complainants' are attached as appendices to this guidance.

Appendix 1

Local Government Ombudsman's policy on unacceptable behaviour

The Ombudsmen recognise that they are often the last resort for complainants. They also have a duty to ensure the safety and welfare of their staff.

The Ombudsmen are 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 they do not normally limit the contact complainants have with their offices. However the Ombudsmen do not expect their staff to tolerate behaviour by complainants which is unacceptable, for example, which is abusive, offensive or threatening, and they 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 offices.

The decision to restrict access to our offices will be taken at Assistant Ombudsman level or above. 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 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 which is unacceptable, we may decide to terminate contact with that complainant and discontinue any investigation into their complaint.

Where the behaviour is so extreme that it threatens the immediate safety and welfare of the Commission'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.

Commission for Local Administration in England

Date policy approved: December 2005

Appendix 2

Local Government Ombudsman's policy on unreasonably persistent complainants

The Ombudsmen recognise that they are often the last resort for complainants. They are also accountable for the proper use of public money and must ensure that that money is spent wisely and achieves value for complainants and the wider public.

The Ombudsmen are 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 they do not normally limit the contact complainants have with their offices.

However there are a small number of complainants who, because of the frequency of their contact with the Ombudsmen's offices, 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 offices.

The decision to restrict access to our offices will be taken at Assistant Ombudsman level or above 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:

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- asking the complainant to enter into an agreement about their future contacts 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 carry on treating someone as an unreasonably persistent complainant and we are still investigating their complaint six months later, we will carry out a review and decide if restrictions will continue.

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.

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