



# Policy for handling unreasonable or unreasonably persistent complainants

## Introduction

The Council recognises that whilst efforts are made to provide a consistently high level of service for all service users, there are occasions when dissatisfaction will arise, and complaints will be made.

The Council publishes corporate customer service standards, which clearly set out what customers can expect from the Council, including a formal complaints procedure through which dissatisfaction with services can be expressed. The complaints procedure is designed to ensure that mutually satisfactory resolutions are reached in a timely fashion.

The Council is committed to providing a consistent and equitable service to all its customers. This policy is designed to provide guidance for officers and Members regarding appropriate procedures for dealing with unreasonable or unreasonably persistent complainants in ways which are demonstrably consistent and fair.

In the majority of cases, investigating complaints is a straightforward process. SCDC recognises that customers will exert pressure on the Council when making a complaint, as they believe that the Council has failed in its service to them. Such pressure may be persistent, but in most cases this is reasonable and acceptable.

However, a small minority of complainants may pursue their complaints in ways that can impede the investigation of their complaint, or impose a significant and disproportionate resource requirement on the authority. Such actions can occur during the investigation of a complaint, or once investigations have been completed. In these cases, a complainant can reasonably be defined as unreasonably persistent.

It should be noted that complaints pursued by unreasonable and/or unreasonably persistent complainants may be justified, but inappropriately pursued. It is also possible that they are pursuing complaints without merit, or those which have already been investigated and determined.

The Council does not normally seek to limit the contact complainants may make with officers or Members. However, as the Local Government Ombudsman identify in their guidance for Local Authorities, a small minority of complainants may be considered to exhibit 'unreasonable complainant behaviour' or to be 'unreasonably persistent complainants'.<sup>1</sup>

This policy outlines the procedure for identifying such complainants, suggested actions which may be taken and the ways in which decisions will be taken and reviewed. The aim of the policy is to ensure that unreasonable or unreasonably persistent

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<sup>1</sup> Local Government Ombudsman Guidance note on 'unreasonably persistent' complainants and 'unreasonable complainant behaviour', January 2007, p2



complainants are dealt with fairly, honestly and properly, whilst protecting other service users, officers, Members and the Council against unnecessary detriment.

The Council has a zero tolerance approach to abusive and aggressive behaviour, and does not expect its officers or Members to tolerate such behaviour. The Council understands that the circumstances under which complaints are made may be frustrating for the complainant, but requests that complainants remain calm and work with it to ensure that complaints can be quickly and satisfactorily resolved.

The Council recognises that a part of the role of Members and other elected officials (MPs, MEPs etc) is to pursue matters on behalf of their constituents. This policy is not intended to constrain or inhibit this role.

## Application of policy

Prior to the application of this policy, the Council must ensure that the complaint is being, or has been, investigated properly according to the corporate complaints procedure. This means that whilst every complaint is unique, each complaint will have been handled in line with other complaints of a similar nature in order to ensure a consistent approach.

The Council must also be satisfied that any decisions reached thus far are the right ones, communications with the complainant have been adequate and that the complainant is not providing any significant new information that might affect the authority's views.

Before this policy is applied, Corporate Managers should ensure that appropriate steps have been taken to discuss the complainant's behaviour with the complainant, explain why their behaviour is considered to be unacceptable, and that the complainant has been asked to modify the way in which they approach officers or Members. At this stage, the complainant should be sent a written warning, stating that failure to modify their behaviour may result in restrictions being applied to their contacts with the Council under this policy. A copy of this policy should be sent to the complainant for their reference.

If a meeting between the complainant and senior managers has not taken place, and the Council knows of no reason why such a meeting would be inadvisable, the Council should consider offering such a meeting to the complainant with a view to dispelling misunderstandings and moving matters towards an amicable resolution. It may be considered appropriate to offer to assist the complainant in finding an independent advocate.

It should also be noted that whilst the Ombudsman would usually require a complaint to have exhausted the local complaints procedure before investigation, they also recognise that:

- In some cases, relations between 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 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 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”<sup>2</sup>

## Decision making process

If employees are concerned about the behaviour of a specific complainant, who they believe to be acting in an unreasonable or unreasonably persistent manner, they should report their concerns to their Line Manager or Corporate Manager. If the employee has immediate concerns with regards to a complainant who has been verbally or physically abusive, they should make use of existing arrangements to report incidents of verbal or physical abuse to the Health and Safety Advisor. Such reports will be taken into account by the relevant Corporate Manager and Chief Officer when considering whether this policy should be implemented.

Any decision as to the application of this policy is an exceptional decision, and must be made by senior officers. If a Corporate Manager, in consultation with a Chief Officer, believes the policy may appropriately be applied to a complainant, Form A, attached at Appendix C should be completed.

Consideration should be given to:

- Whether the complainant is raising legitimate concerns
- Whether the complaint is being, or has been, investigated properly
- Whether any decisions reached thus far were the correct ones
- Whether communications with the complainant have been adequate
- Whether the complainant is now providing any significant new information that might affect the Council's view on the complaint
- Whether any circumstances relating to the complainant's mental health, age, gender, sexual orientation or disability have been considered
- Whether possible steps have been taken to inform the complainant that their behaviour is unacceptable.
- How to strike the appropriate balance between the rights of the individual complainant and the need to ensure that other complainants and our staff

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<sup>2</sup> Local Government Ombudsman Guidance note on ‘unreasonably persistent’ complainants and ‘unreasonable complainant behaviour’, January 2007, p8



and Members suffer no detriment, and the Council's resources are used as effectively as possible.

- The appropriate restrictions to be applied.

Such details should be recorded on the corporate complaints log, and on a register of unreasonably persistent or abusive complainants.

## Appeal and review process

Once a decision has been reached, the Chief Officer will write to the complainant, clearly outlining the reasons for which they have been designated as an Unreasonable or Unreasonably Persistent Complainant, and explaining the restrictions which will be applied to future contacts regarding their complaint, the period of time for which these restrictions will apply and the appropriate appeals/review process. A copy of this policy will be included for the complainant's reference.

If the complainant disagrees with their classification under this policy, or with the particular restrictions which have been applied, they will have the right to appeal against the decision. A Chief Officer who was not involved in the original decision should receive the appeal.

The Chief Officer will notify the complainant in writing of the result of the appeal, and will clearly state whether the initial restrictions will be applied, whether a different course of action has been agreed or whether the decision to apply the policy has been overturned.

Any applications of the policy must be reviewed after no more than six months. The review should consider whether the complainant has adhered to the restrictions imposed, and whether the complaint is still under investigation.

If the review determines that restrictions should be lifted, the complainant should be notified in writing, and warned that any repeat of the previous unacceptable or unreasonable behaviour will result in reapplication of the restrictions.

Any new complaints from unreasonable or unreasonably persistent complainants should be treated on their merits. However, if the complainant engages in unreasonably persistent or abusive behaviour with regards to their new complaint, urgent consideration should be given to the application of appropriate restrictions.

## Communication to officers/Members

It is not recommended that details of the individual cases be widely distributed. Details of the complaint and the restrictions applied should be circulated to:

- Executive Management Team
- The Leader of the Council
- The appropriate portfolio holder



- The appropriate local Member in whose ward the complainant resides, or to whose ward the complaint applies

Details of the complaint should not be circulated beyond those listed above, but the names of persistent complainants, together with instructions regarding the appropriate actions which should be taken if contacted by the complainant, for example, the appropriate officer to whom they should be directed, may be circulated to all staff and Members likely to come into contact with the complainant.

## Examples of identifying actions/behaviours

The Council defines unreasonably persistent and abusive complainants as those who, by the frequency or the nature of their contacts with the Council, hinder the Council's consideration of their or other people's complaints. Contacts from such complainants may be amicable, but place disproportionate demands on Council resources, or they may be distressing for all involved. Contacts may relate to justified complaints, those with no substance, or those which have already been investigated and completed. The descriptions 'unreasonably persistent' and 'unreasonable' may apply separately or jointly to a particular complainant.

It should be noted that SCDC recognises that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. However, this does not imply that continued unreasonable behaviour will be tolerated.

Unreasonable behaviour may occur during one or two isolated incidents, whereas unreasonably persistent behaviour would usually be an accumulation of incidents or behaviour over a period of time. It should be noted that the raising of legitimate queries and concerns regarding the application of the complaints procedure is not a just reason for designating an individual as an unreasonably persistent complainant. Similarly, if a complainant expresses dissatisfaction with the outcome of the investigation of a complaint, and seeks to challenge it, this should not necessarily lead to labelling as an unreasonably persistent complainant. Such instances should be progressed through the established complaints procedure.

The list in Appendix A, largely taken from the Ombudsman guidance document, identifies some behaviours which may be indicative of unreasonably persistent or abusive complainants. The list is not intended to be exhaustive, nor is the presence of any of these actions in isolation to be used as justification for the application of this policy. It is merely intended to act as a guide to assist in the identification of unreasonable or unreasonably persistent behaviour.

## Examples of restrictions/actions

Before any actions are taken to restrict contact, the complainant will, wherever possible, be warned. Where behaviour is of such an extreme nature that the immediate safety or welfare of staff or Members is threatened, options outside this



policy will be considered.<sup>3</sup> Prior warning to the complainant that such action will be taken will not necessarily be given.

The appropriate actions to be taken will depend on the stage the complaint has reached in the complaints process. If the complaint has been completed, and referred to the Ombudsman if appropriate, then the authority has the option of ending all communication with the correspondent. In these instances, correspondence must still be monitored and filed to ensure that no new information is supplied. It is a matter of managerial discretion whether correspondence should continue to be acknowledged.

If, however, the complaint is still under investigation, some channels of communication must remain open.

The list in Appendix B is not intended to be exhaustive. It merely seeks to provide guidance with regards to the restrictions which may be considered when dealing with an unreasonably persistent or abusive complainant. The particular circumstances of the case will determine which actions are appropriate. Corporate managers may use actions from the list, or may, if the circumstances require, introduce other restrictions. It is essential that any restrictions to be applied are appropriate and proportionate to the nature and frequency of the complainant's unreasonable or unreasonably persistent contacts, and that a review process, as outlined in section 4.2, is put in place.

## Support for officers/Members

It is recognised that when dealing with unreasonable or unreasonably persistent complainants, members of staff may, from time to time, be subjected to abusive or aggressive contacts from members of the public. The Council does not expect its employees to tolerate being subjected to this type of behaviour and will fully support its staff in the event they are placed in this position. Any member of staff who is subjected to verbal abuse such as swearing, shouting or belittling should initially inform the caller of their unacceptable behaviour. In the event that such behaviour continues, employees are empowered by the Council to terminate the call immediately and report the incident to their line manager, who should then refer the matter to the appropriate corporate manager.

Subsequent to any incident the Line Manager will discuss the incident with the employee involved. The incident should be reviewed as to how the situation arose, and to identify any change of practice or staff preparedness for such situations. If appropriate, the Line Manager will remind the employee of the availability of the PPC advice and support telephone line.

In no circumstances should incidents of verbal or physical abuse be interpreted as an indication that employees are unable to discharge their duties effectively.

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<sup>3</sup> See *Prevention of Violence at Work Guidance*, July 2006 and *Lone Working Policy and Arrangements*



Employees need to know that their concerns are taken seriously and they will not be made to feel foolish or inadequate if they resort to the use of alarms or call for help in situations that prove to be false alarms. However, employees are expected to adhere to advice contained in the Security Guidelines and reasons for not doing so will be examined in the incident review.

Where there is an identified need of counselling for officers who have received unreasonable or unreasonably persistent contact from complainants, the Council will ensure that it is provided in consultation with the employee concerned.

Where an employee wishes, the Council will assist by reporting any incident to the Police, and give any reasonable assistance in furthering any subsequent prosecution.

## Links to other policies

This policy is designed to complement or reflect the following existing policies:

- the Complaints Procedure and Customer Care Standards;
- the Council's statement of zero tolerance of abusive and aggressive behaviour;
- the Council's commitment to equality and fairness in delivering its core objective, to provide high quality, accessible, value for money services;
- the Prevention of Violence at Work guidance;
- the Stress Management policy;
- the Bullying and Harassment policy.

This policy is not designed to cover Freedom of Information, Environmental Information Regulations or Data Protection requests. All members of the public have statutory rights to information as determined and described in the relevant legislation. Councils must respond to such requests except under the circumstances outline in the relevant legislation.

## Policy reporting and review

Applications of this policy should be reported annually as part of the complaints reporting process. This report will include the number of times that the policy has been invoked and the restrictions imposed. The report will not include details of individual complaints, or information by which the complainant could be identified.

It is anticipated that this policy should be reviewed after six months, and thereafter on an annual basis.



## Appendix A – Identifying characteristics of unreasonable or unreasonably persistent complainants.

- Refusal to identify specific grounds for a complaint, despite offers of assistance from the authority's staff.
- Refusal to cooperate with the complaints investigation process whilst still wishing for their complaint to be resolved.
- Refusal to accept the difficulty of verifying events and facts after a significant period of time has passed.
- Refusal to accept information provided without providing good reasons why the information should be refused.
- Attempting to use the complaints procedure in order to pursue a personal vendetta against an employee team or Member.
- Making repeated groundless complaints about the officers or Members handling their complaint.
- Lodging numbers of complaints in batches over a period of time, resulting in related complaints being at different stages of the complaints procedure.
- Refusal to accept that the issues about which they are complaining are not within the scope of the complaints procedure despite having been provided with information regarding the procedure's scope.
- Demanding outcomes that the complaints procedure is unable to provide e.g. overturning of court decisions, dismissal or criminal prosecution of staff, actions that would be illegal or infringe the rights of others.
- Insisting on the complaint being dealt with in ways that are incompatible with the adopted complaints procedure or good practice.
- Changing the basis of the complaint as the investigation proceeds, and/or denying statements made at an earlier stage.
- As an obstructive action, pursuing the same complaint with multiple authorities/bodies at the same time, for example with the authority and, at the same time, with an MP/a Member/the independent auditor/the Standards Board/the police/solicitors/the Ombudsman.
- Using valid new complaints to resurrect issues which were included in previous complaints
- 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.
- Raising, at a late stage in the process, significant information which was in the complainant's possession when he or she first submitted a complaint, and which the complainant knew to be of relevance to the case but withheld deliberately to be obstructive.
- 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 that they are fully answered.
- Repeated denials of receipt of adequate responses in spite of records of correspondence specifically addressing their questions.



- Making unreasonable demands on council resources and failing to accept that these may be unreasonable. For example, insistence on responses to complaints or enquiries being provided more urgently than is reasonable.
- Persistent contact via multiple channels demanding responses or meetings with officers when the complaints procedure has been fully and properly implemented and exhausted.
- 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.
- Making statements that they know are not true, or persuading others to do so.
- Supplying manufactured ‘evidence’ or other information that the complainant knows is incorrect.
- Electronically recording meetings, telephone calls and conversations without the prior knowledge and consent of the other persons involved.
- Using obscene, racist, homophobic, sexist, ageist, gender or sexuality related, religion or belief based offensive or threatening language or behaviour in any method of contact with the Council.
- Seeking to coerce or intimidate staff, or abusing or distressing them by the language and tone of voice or behaviour, including body language, in personal contacts or telephone conversations or emails.
- Threatening, aggressive or abusive behaviour in direct personal contacts with staff.
- Threatening, abusive or violent behaviour or actions directed at other people involved in the events that gave rise to the complaint.
- Repeated refusals to accept the final outcome of the complaints procedure and further complaints about the outcome.

## **Repeatedly pressing for further investigation of matters that have already been addressed.**

### **Appendix B – Potential restrictions**

- Placing time limits on telephone conversations and personal contacts.
- Restricting the number of telephone calls that will be taken in terms of number and time period e.g. one call on one morning per week.
- Limiting the access channels by which the complainant may contact the council.
- Requiring the complainant to communicate only with a designated member of staff.
- Requiring an independent witness to any personal contacts.
- Asking the complainant to enter a written agreement regarding their future conduct whilst a complaint is being progressed.
- Banning a complainant from entering the Council’s premises.



- Involving the police where a complainant is suspected of having committed a criminal offence e.g. harassment, assault (actual or threatened).
- Refusal to register or process any further complaints on the same matter.

If the complaint has exhausted the complaints process: providing only acknowledgements to correspondence, or informing the complainant that future correspondence will be read and filed but not acknowledged. A designated officer should monitor all future correspondence for new information.



## Appendix C – FORM A – Case for designation of a complainant as unreasonable or unreasonably persistent

### Case for application of policy

Name of Complainant:.....

Name of Corporate Manager:.....

Name of Initiating Officer:.....

Date of Submission: .....

Background leading to referral (*include details of relevant supporting documentation, including reports, notes of telephone conversations or meetings, written correspondence etc. Such documentation should be attached*)