



## **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. 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.
- 2 The majority of complaints are dealt with through the complaints procedures without difficulty and the Compliment, Comments and Complaints Policy will therefore apply to most complaints received by Eastleigh Borough Council.

### **Definitions**

- 3 The Local Government and Social Care 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. The term 'contacts' refers to any channel or method of contact and is not limited to contact via the complaints process.
- 4 It should be noted that almost all complainants see themselves as pursuing justified complaints.
- 5 Unreasonably persistent complainants may have legitimate complaints but be 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 with Eastleigh Borough Council may be very emotionally charged and distressing for all involved, or they may be agreeable but still place very heavy demands on staff time.
- 6 Sometimes the situation between Eastleigh Borough Council and a complainant can escalate and the behaviour moves to that which is unacceptable and unreasonable, for example, abusive, offensive or threatening behaviour. Such complainants are in a very small minority, but sometimes Eastleigh Borough Council finds itself in the position of having to instigate action under this policy.
- 7 In extreme situations, the Council may resort to involving the Police or taking legal action to address such behaviour.
- 8 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.
- 9 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

them to be considered unreasonably persistent /vexatious.

- 10 Unreasonable complainant behaviour can come about when the situation between the Council and a customer escalates and the customer's behaviour becomes unacceptable (e.g., abusive, offensive, or threatening). Examples of unreasonable complainant behaviour include:
- Refusing to specify the grounds of the complaint, despite offers of assistance
  - Refusing to accept that certain issues are not within the scope or remit of the complaints procedure.
  - Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or within good practice.
  - Refusal by the complainant to cooperate with the complaints process, yet still wanting their complaint to be resolved.
  - Introduction of new, trivial or irrelevant information at a late stage 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.
  - Covertly recording meetings and conversations.
  - Submitting falsified documents from themselves or others.
  - Adoption of a 'scattergun' approach – pursuing a complaint with one team and, at the same time, with other teams within the Council and/or with other parties, e.g., the MP, a Councillor, the Police, solicitors, or the Local Government and Social Care Ombudsman.
  - Making excessive demands on the time and resources of staff whilst the complaint is being investigated – e.g., 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 minor additions/ variations which the complainant insists make these 'new' complaints which they want to be put through the full complaints procedure.
  - Submission of the same complaint previously investigated and completed, essentially about the same issue but with minor additions/variations by a third party on behalf of the original complainant.
  - Refusal to accept the decision reached on the complaint – repeatedly arguing the point and complaining about the decision, with no new evidence.
  - Making apparently groundless complaints about staff dealing with the complaint including seeking to have those staff removed/replaced.
  - Changing the basis of the complaint as the investigation proceeds and/or denying statements they made at an earlier stage.
  - Inappropriate behaviour towards Council staff investigating or involved in the complaint such as inappropriate use of language, aggression or violence.
  - Combinations of some or all of the above.

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

## **Aim**

- 11 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 staff 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.

12 The objectives of the policy are to:

- Ensure all staff understand the objectives and requirements of the Unreasonably Persistent Complainants and Complainant Behaviour Policy.
- Promote problem solving and to avoid apportioning blame. The emphasis should be on finding a solution.
- Satisfy those who complain or comment that they have been dealt with promptly, fairly, openly and honestly.
- Resolve complaints quickly and as close to the point of service delivery as acceptable and appropriate.
- Protect staff from abusive and unacceptable behaviour from customers.

## **Dealing with Unreasonably Persistent Complainants**

### **Prior to applying restrictions**

13 Before a decision is made on whether to apply this policy, the complainant should be given a warning in writing by the Service Manager (or member of Executive Leadership Team) to explain why they find their behaviour is unreasonable /unacceptable, ask them to change the behaviour and that if their actions continue, the Council may decide to treat them as an unreasonably persistent complainant.

### **Assessing whether the action is proportionate and necessary**

14 Consideration of the following points, together with any other relevant 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 (e.g., an appeal process if they are 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 issues such as poor mental health or mental illness, learning disabilities, or personality disorders?
- Is the complainant now providing any significant new information that might affect the Council's view on their complaint?

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

- 15 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 they wish, if it is considered that a meeting may help the situation).
  - Is more than one team being contacted by an unreasonably persistent complainant? If so, consideration could be given to setting up a strategy meeting to agree a cross-team approach and the designation of a key officer to coordinate the Council's response.

### **Options for action**

- 16 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.
- 17 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 (e.g., one call on one specified day of any week).
  - Limiting the complainant to one contact medium (e.g., 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.
  - Other action may be taken, for example reporting the matter to the police or taking legal action. Where such action is necessary the Council may not give warning.
  - Only meet the complainant at Council Offices and by appointment only.
- 18 Where following restriction of access being implemented, a complainant continues to behave in a way that is unacceptable the Council may:
- Terminate contact through the various mechanisms of contacting the Council .
  - Temporarily or permanently restrict/not allow access to Eastleigh Borough Council offices.
  - Report the matter to the police.
  - Take legal action.

## **Dealing with Unreasonable Complainant Behaviour**

- 19 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. Contact can include but is not limited to:
- Face to face
  - Telephone
  - Email/correspondence
  - Online/social Media
- 20 Examples of aggressive and unreasonable behaviour can include:
- Shouting and making unreasonable demands.
  - Making threats to members of staff who are trying to help.
  - Using abusive and upsetting language to members of staff.
  - Refusing to leave Council premises until the problem is resolved.
  - Their continued presence causes disruption/distress to others.
- 21 During an interaction, if staff consider that the customer is becoming aggressive and/or offensive, they will inform the customer that they will terminate the interaction unless such behaviour ceases. If the aggression continues, the member of staff will terminate the interaction and a note will be placed on file explaining why.
- 22 Unreasonable or repeated behaviour of this nature could constitute harassment which should, after consultation with a senior officer and the Legal Services Manager, be reported to the Police.
- 23 Difficult situations such as these can sometimes be resolved by being patient, remaining calm, listening and identifying the exact nature of the problem. The health and wellbeing of staff is paramount, and consideration should be given to the safe systems of work.
- 24 Where the behaviour is so extreme that it threatens the immediate safety and welfare of the Council's staff, other options will be considered – e.g., reporting the matter to the Police or taking legal action. In such cases, the complainant may not be given warning of that action.

### **Application of the Policy**

- 25 The decision to designate someone as unreasonably persistent can only be made by a member of the Executive Leadership Team accountable for the Service Area, in consultation with the Portfolio Holder and any other Councillors considered appropriate (or, in relation to vexatious and repeated requests for information under the Freedom of Information Act 2000, Environmental Information Regulations 2004 or the Data Protection Act 2018, by the Legal Services Manager in liaison with a member of the Executive Leadership Team accountable for the Service Area, who will be guided by the Information Commissioner's Office).
- 26 If the decision is made to apply the policy and designate the complainant as a persistent complainant and/or complainant behaving unreasonably, the relevant Head of Service/Service Manager (or member of Executive Leadership Team) will write to the complainant to:
- Inform them that the decision has been taken to invoke the policy and outline the

reasons why.

- Explain the restrictions which will be applied and what it means for their contact(s) 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**

27 Adequate records must be kept when this policy is applied. The information should be treated as confidential and only shared with those who may be affected by the decision. The records will be maintained by Customer Care in line with the Council's Retention Schedule and General Data Protection Regulations (GDPR):

- When a decision is taken to apply (or not to apply) the policy following a request to do so by a member of staff.
- The decision taken and by whom; including details of the assessment made and why it is proportionate.
- The restrictions applied, the timescale and review dates.
- 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, e-mails, etc., from the complainant do not have any significant new information).

## **Future Complaints by the Same Complainant**

28 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 by the Service Manager in consultation with their Executive Head on whether any restrictions which have been applied before, are still appropriate/necessary. It is recognised that any new complaint may represent a genuine service failure and therefore needs to be reviewed objectively regardless of who is bringing the complaint.

29 Once the complaint has been considered, a risk assessment will also be carried out by the Service Manager in consultation with their Executive Head based on past and current knowledge of the complainant's behaviour and the likelihood of re-occurrence of any unacceptable behaviour.

30 Any decision not to pursue a new complaint must be clearly recorded within the complaint record and retained in line with the Council's Retention Schedule and General Data Protection Regulations (GDPR).

## **Reviews of Decisions**

31 Reviews of decisions to restrict a complainant's contacts, or the Council's responses to those contacts, should be carried out annually by the Service Manager in liaison with a member of the Executive Leadership Team accountable for the service area and a record of this review will be retained.

32 If no further contact has been received from the complainant over a period of 12

months, consideration should be given to whether it would be reasonable to cancel the restrictions. (However, urgent assessment will be necessary to re-introduce them if behaviour which led to the original decision recommences.). The outcome of this review should be recorded in the records held by Customer Care.

- 33 After review, the Service Manager will notify the complainant, in writing, the outcome. If restrictions are not cancelled, an explanation of the reason(s) why will be provided to the complainant.

### **Referral to the Local Government and Social Care Ombudsman**

- 34 In some cases, relations between the Council 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.
- 35 A complainant who has been designated '*unreasonably persistent*' or using '*unreasonable complainant behaviour*', may make a complaint to the Ombudsman about the way in they have been treated.
- 36 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.

### **Responsibility for the Procedures**

- 37 Overall responsibility for the Unreasonably Persistent Complainants and Unreasonable Complainant Behaviour Policy will lie with the Monitoring Officer under the Local Government and Housing Act 1989.
- 38 The Customer Care Team will take responsibility for the application of all aspects of the procedures at service and organisational level (other than complaints relating specifically to requests for information under the Freedom of Information Act 2000, Environmental Information Regulations 2004 and the Data Protection Act 2018 which will be the responsibility of the Legal Services Manager). The Service's Executive Head will act as overall coordinator for unreasonably persistent complaints and unreasonable complainant behaviour handling in their service areas.

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