

Appendix 1

Policy on the management of unreasonable complainant behaviour

(City of Wolverhampton Council)

1. INTRODUCTION

- 1.1 Complaints about City of Wolverhampton Council are processed in accordance with the City of Wolverhampton Council Complaints Policy and Procedure which is guided by the Local Government and Social Care Ombudsman's (LGSCO) guidance on good practice. Dealing with complaints is generally a straightforward process, but in a minority cases people pursue their complaints in an unreasonable way that can impede the investigation of their complaint or take up an unwarranted amount of Council resources. These actions can occur either while their complaint is being investigated, or once the investigation has been completed. The aim of this policy is to identify situations where the complainant or their behaviour could be considered as unreasonable and to detail how to respond to such situations.
- 1.1 It must be recognised that complainants may sometimes act out of character at times of anxiety or distress and reasonable allowances should be made for this

2. Definition of unreasonable complainant behaviour

- 2.1 The Council have adopted the LGSCO's definition of 'unreasonable complainant behaviour' and 'unreasonably persistent complainants'.

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

- 2.2 It is important to differentiate between 'persistent' complainants and 'unreasonably persistent complainants. Many of the customers who submit complaints to the LGSCO are 'persistent' because they feel that the authority has not dealt with their complaint properly and are not prepared to leave the matter there. 26% of the complaints investigated by the LGSCO conclude either by report or by local settlement, this indicates that this persistence is frequently justified. Almost all complainants see themselves as pursuing justified complaints.
- 2.3 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 unreasonable or 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 unreasonable or unreasonably persistent

- 2.4 Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but may pursue 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 the Council may be amicable but still place heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.
- 2.5 The Council do not expect staff to tolerate unacceptable behaviour by complainants or any customer. Unacceptable behaviour includes behaviour which is abusive, offensive or threatening and may include;
- Using abusive or foul language on the telephone
 - Using abusive or foul language face to face
 - Sending multiple emails
 - Leaving multiple voicemails
- 2.6 Such behaviour which is seen to be related to a relevant disability will be considered in the wider context of the Council's responsibilities to disabled people as defined by the Equality Act 2010.

3.0 Aims of this policy

- 3.1 The aim of this policy is to contribute to our overall aim of dealing with all complainants in ways which are demonstrably consistent, fair and reasonable, in order to implement a procedure whereby the complainant can continue to be treated equitably and fairly. This policy in no way overrides the Council's obligations to deal with complaints effectively, fairly and within timescales.
- 3.2 It sets out how we will decide which complainants will be treated as unreasonable or unreasonably persistent, and what we will do in those circumstances. The policy is for the information of staff, staff in the City of Wolverhampton Council's partner organisations and councillors as well as customers.

4.0 Unreasonable persistent complainants and/or unreasonable complainant behaviour

- 4.1 Complainants or anyone acting on their behalf may be deemed to be 'unreasonable' where current contact with them shows they meet one or more of the following criteria;
- 4.1.1 Persisting in pursuing a complaint where the Council's Complaints Procedure has been fully and properly implemented and exhausted, including the LGSCO.

- 4.1.2 The substance of a complaint is changed or new issues are raised persistently or complainants seek to prolong contact by unreasonably raising further concerns although care must be taken not to disregard new issues, which differ significantly from the original complaint.
- 4.1.3 Complainants are unwilling to accept documented evidence of facts or deny receipt of an adequate response despite correspondence specifically answering their questions / concerns. This could also extend to complainants who do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
- 4.1.4 Complainants refuse to specify or do not clearly identify the precise issues or grounds they wish to be investigated despite reasonable efforts to help them to do so by staff.
- 4.1.5 Complainants focus on a trivial matter to an extent, which is out of proportion to its significance, and continue to focus on this point. It should be recognised that determining what is trivial can be subjective and careful judgement must be used in applying the criterion.
- 4.1.6 Complainants have, in the course of pursuing a registered complaint, had an excessive number of contacts (or unreasonably made multiple complaints) with the Council placing unreasonable demands on Council employees. Such contacts may be in person, by telephone, letter, fax or electronically. Discretion must be exercised in deciding how many contacts are required to qualify as excessive, using judgement based on the specific circumstances of each individual case.
- 4.1.6 Complainants have harassed or been abusive or verbally aggressive or threatening or bullying on one or more occasions towards staff dealing with their complaint – directly or indirectly – or their families and/or associates. All incidents of harassment or aggression must be documented, dated and reported to the Line Manager.
- 4.1.7 Complainants are known to have electronically recorded meetings or conversations without the prior knowledge and consent of the other parties involved. It may be necessary to explain to a complainant at the outset of any investigation into their complaint(s) that such behaviour is unacceptable and can, in some circumstances, be illegal. It would be reasonable to give consent for electronic recording of meetings where a customer has disability that causes them difficulty in retaining information e.g. a brain injury.
- 4.1.8 Complainants making unnecessarily excessive demands on the time and resources of the Council or its 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.
- 4.1.9 Complainants refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved.
- 4.1.10 Complainant 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.

- 4.1.11 Complainant insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
 - 4.1.12 Complainant making what appears to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced.
 - 4.1.13 Complainant 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.
 - 4.1.14 Complainant 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 Board/local police/solicitors/the Ombudsman.
 - 4.1.15 Combinations of some or all of these.
- 4.2 Complainants can be deemed as unreasonable in any situation where physical violence has been used or threatened towards staff or their families / associates at any time. In the event of this type of behaviour, personal contact with the complainant will be communicated with via a means that does not endanger or offer the potential for endangerment to an employee. If the unreasonable complainant is unable to read or write, then the use of a mediator / advocate should be explored. Any incidents of this nature, must be documented, reported to the Complaints Manager, and where appropriate the Police.
- 4.3 The Council will deal with the reasonable requirements of all customers and in particular those customers who are disabled. Consideration should be given to putting people in touch with third sector organisations such as the Citizens Advice Bureau, an Advocacy Service or a suitable support agency (e.g. MIND, Steps to Health) which can provide assistance to them during the complaints process.

5.0 Dealing with unreasonable complainants

- 5.1 The decision to classify a complainant as unreasonably persistent or as behaving unreasonably should be made by the Director of the service concerned in conjunction with Complaints Manager. In the case of dispute about the classification of a complainant, the matter will be referred to the Managing Director for a final decision.
- 5.2 Once the decision has made to designate someone's behaviour as unreasonable, checks should be made with all service areas of the council and managing agents of the Council (Wolverhampton Homes, Tenant Management Organisations and Estate Management Organisations) to establish if the complainant has exhibited similar

behaviour with any other departments/service areas. If it is established that other departments are being contacted by the complainant perhaps with different complaints, then a joint meeting must be set up to consider/agree a cross departmental approach and nominating a key officer to coordinate required action/response.

- 5.3 A written record should be kept detailing why the complainant is deemed to be unreasonable. The record should include full details of what information has been considered, how decisions have been made in order to demonstrate that the Council has acted in a fair and objective way

6.0 Initial Notification

- 6.1 When unreasonable or unreasonably persistent behaviour has been identified, the unacceptable behaviour should be explained to the complainant by letter or their preferred method of communication and the complainant will be asked to modify their behaviour. If any relevant disability related needs or rights are identified it may be appropriate to communicate with the complainant face to face, through an advocate or via another method accessible to the parties involved. The letter or preferred method of communication should also include an explanation of the action the organisation is likely to take if the behaviour is not modified. The policy should be shared with the complainant and they should be advised that restrictive actions may need to be applied if their behaviour continues or is not modified.
- 6.2 The complainant should also be informed that any course of action taken only relates to contact with the Council over their specific complaint. It does not and is not intended to, have any impact on any other dealings between the Council and the complainants on other related issues.
- 6.3 The notification should be circulated for information of others involved in the complaint and it must be kept on record.

7.0 Options for action

- 7.1 The Council will ensure that the complaint is being, or has been investigated properly according to the corporate complaints procedure. Any action taken by the Council will be proportionate and appropriate to the nature and frequency of the complainant's contacts with the Council at that time.
- 7.2 Restrictions will be tailored to deal with the individual circumstances of the complainant and may include:
- 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 that is accessible to them and reasonable for the Council to use (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.
- Restricting access to one or more Council premises (N.B Care must be taken not to interfere with a complainant's statutory rights e.g. to attend Council meetings or view papers, when making such a decision, and to ensure that the premises offered are accessible to the complainant)
- Letting the complainant know that the organisation will not respond to any further contact in regards to the specific topic of that complaint. Any letters, faxes or emails of correspondence received will be read, acknowledged and placed on their file. All correspondence will be checked to identify any new issues and appropriate action will be taken in relation to this. A designated officer will be identified who will read future correspondence.

7.3 The above options are not exhaustive and other factors individual to the case or service may be relevant in deciding on an appropriate course of action. For example, any arrangements made for restricting a complainant's contacts will take into account the complainant's circumstances such as age, disability, level of literacy, etc.

8.0 Operating the policy

8.1 In the event that a decision has been made to apply the policy, the Director in consultation with the Complaints Manager, will write to the complainant explaining the following:

- Why the decision has been taken
- What it means for their contacts with the Council
- How long any restrictions will last
- What the complainant can do to have the decision reviewed
- A copy of the policy will be enclosed with the letter.

8.2 A copy of the decision letter will be sent to Assistant Director or their nominated member of staff.

9.0 New complaints from complainants who are designated as unreasonable/unreasonably persistent

9.1 New complaints from people who have previously been identified as an unreasonable complainant by this policy will be treated on their merits. The Complaints Manager will decide whether any restrictions which have been applied previously are still appropriate and necessary in relation to the new complaint. A 'blanket policy' of ignoring genuine service requests or complaints is not operated by the Council.

10.0 Reviewing decisions to restrict access

10.1 All restriction decisions will be reviewed by the Council after 3 months and at the end of every subsequent 3 months during the period which the policy is to apply. It will either be re-imposed for a further 3 months and all parties informed or it will be withdrawn.

10.2 The complainant will be informed of the result of this review whether the decision to apply the policy this policy has been changed or extended.

10.3 If a complainant disagrees with the notification of the decision, they should contact the Council within 14 days to request for the decision to be reviewed setting out their reasons.

10.4 If after the complainant has received a decision in writing following the review with which they do not agree or feel that the review of the decision is unreasonable, they may refer the issue to the Local Government and Social Care Ombudsman, PO Box 4771, Coventry, CV4 0EH.

If you have any queries regarding this policy, please contact Customer Feedback Team Complaints Team on 01902 551901.