

## **POLICY FOR DEALING WITH UNREASONABLY PERSISTENT COMPLAINTS AND CUSTOMER BEHAVIOUR AND VEXATIOUS REQUESTS**

### **1. Introduction**

This policy sets out our approach to the relatively few customers whose actions or behaviour we consider to be unacceptable. We aim to deal fairly, honestly, consistently and appropriately with all complainants and requests for information but we retain the right to restrict or change access to our services where we consider a customer's actions to be unacceptable. Our aim in doing this is to ensure that other customers and our staff do not suffer any disadvantage from customers who act in an unacceptable manner.

This policy is consistent with anyone's rights under the Data Protection Act 1998, Freedom of Information Act 2000 and Environmental Information Regulations.

### **2. Purpose**

The purpose of the document is to

- Define unreasonable customer behaviour
- Explain what we consider to be unreasonable customer behaviour and how we will deal with it
- Define vexatious requests
- Explain what we consider to be a vexatious request and how we will deal with these.

This policy helps members, staff and partners to understand what options for action are available, and who can authorise these actions. It also assists staff to manage the expectations and behaviour of complainants while their complaint is addressed and when we can refuse a request for information.

The objectives of the policy are to:

- Ensure that the objectives and requirements of this Policy are understood
- Promote problem solving and 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 members, staff and partners from abusive and unacceptable behaviour from customers
- Protect members, staff and partners from unreasonable, aggressive or violent behaviour by customers
- Ensure staff and customers understand how we can deal with vexatious requests for information

This policy should be read in conjunction with any other relevant Council policies relating to exclusion of services and employee health and safety.

The Council welcomes feedback from service users and will always try to resolve any complaint or request for information as quickly as possible and therefore this policy should only be applied where absolutely necessary.

With each complaint we must consider whether it is persistent, unreasonably persistent or a new complaint. With each request for information we must consider whether it is manifestly unjustified, inappropriate or improper use of formal procedure.

This policy covers behaviour associated with customer complaints, complaints about the standards of our elected members, requests for information and general customer contact.

We need to differentiate between those customers whose concerns relate to a series of service failures and those customers whose behaviour is unreasonable.

Customers can be frustrated and aggrieved and it is therefore important to consider the substance of the complaint. However, sometimes customers pursuing complaints or other issues treat members, staff and our partners in a way that is unacceptable.

Whilst some complaints may relate to serious and distressing incidents, the Council does not tolerate abusive, offensive or threatening behaviour and will take steps to protect staff who are subject to unreasonable behaviour.

## **Section 1 - UNREASONABLY PERSISTENT COMPLAINTS AND CUSTOMER BEHAVIOUR**

### **3. Definition of unreasonable behaviour**

Customers may act out of character when under stress and we do not view behaviour as unacceptable just because a customer is forceful or determined. However, the actions of customers who are angry, demanding or persistent may result in unreasonable demands on workloads and behaviour towards staff.

Unreasonable behaviour 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.

We differentiate between 'persistent' customers and 'unreasonably persistent' customers.

Customers making a complaint can be 'persistent' where they feel we have not dealt with their complaint properly and are not prepared to leave the matter there. For example, it is not unreasonable for a customer to criticise how their complaint is being handled when our published procedures are not followed.

However, some customers may have justified complaints or requests but may pursue them in inappropriate ways such as lengthy phone calls, emails expecting immediate responses, detailed letters or emails every few days. Others may pursue complaints or requests which have no substance or which have already been considered and dealt with. Their contacts with us may be amicable but still place very heavy demands on staff.

These are some of the actions and behaviours of unreasonably persistent customers which the Council's departments often find problematic. It is by no means an exhaustive list, but they are examples that frequently come to our attention:

- Refusing to specify the grounds of a complaint, despite offers of assistance
- Refusing to co-operate with the complaints investigation process
- Refusing to accept that certain issues are not within the scope of a complaints process
- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or within good practice
- Making unjustified 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 they have made at an earlier stage.
- Introducing new information, at a late stage, which the customer 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
- Covertly recording meetings and conversations
- Submitting falsified documents from themselves or others
- Bringing complaints designed to cause disruption or annoyance or lacking any serious purpose or value
- Adopting a 'scattergun' approach: pursuing parallel complaints on the same issue with a variety of organisations.
- Making excessive demands on the time and resources of staff and members with lengthy and/or repeated telephone calls, emails to numerous Council officers, or detailed letters every few days and expecting immediate responses
- Causing distress to staff – including use of hostile, abusive or offensive language or an unreasonable fixation on an individual member of staff
- Submitting repeat complaints, with minor additions/variations, and insisting that these make 'new' complaints
- Refusing to accept the outcome decision of a complaint – repeatedly arguing the point and complaining about the decision, with no new evidence
- Insisting on pursuing unjustified complaints and/or unrealistic outcomes to legitimate complaints. Taking actions that are out of proportion to the nature of the complaint, even when the complaints procedure has been exhausted
- Behaviour which has a significant and disproportionate adverse effect on the Council's resources and other residents
- Inappropriate behaviour towards Council staff investigating or involved in the complaint such as inappropriate use of language, aggression or violence
- Persistently approaching the Council through different routes about the same issue.
- Persistently complaining about elected members without grounds for complaint

Care must be taken not to discard new issues which are significantly different from the original issues, however these should be treated as a separate complaint issue.

#### **4. Designating behaviour as unreasonable**

It is vital that all attempts are made to maintain effective communication and relationships with customers. Prior to taking action under this policy, the investigating officer should ensure that:

- Every reasonable effort has been made to investigate the complaint
- Every reasonable effort has been made to communicate with the customer
- The customer is not now providing any significant new information that might affect the Council's view of the complaint

## **a) Prior warning**

When the Council considers that the customer is unreasonably persistent in pursuing complaints or otherwise is acting unreasonably a risk assessment will be completed in line with health and safety policies and, if it is concluded that the behaviour is unacceptable/unreasonable, the Service Manager will write to tell the customer why they find the customer's behaviour unreasonable and/or unacceptable and ask them to change the behaviour.

## **b) Decision to restrict or terminate contact with the Council**

If unreasonable behaviour continues, the Place Manager will review the case

When making decisions on how to manage the unreasonably persistent customer or unreasonable behaviour of a complainant, all relevant factors should be taken into account to ensure that action taken is appropriate and proportionate to the nature and frequency of the customer's contacts with the authority at that time.

Due consideration should be given to the customer's health, including any related illnesses or disabilities that may be impacting on behaviour (for example, dementia, learning disability, mental illnesses etc).

If the customer has not responded appropriately to the prior warning letter a decision may be made to restrict contact with the Council. The customer will be notified in writing (or alternative formats appropriate to the individual) why it is believed their behaviour falls into the category of unreasonably persistent and/or unreasonable behaviour.

The customer will be notified what action will be taken and the duration of that action, as well as what the customer can do to have the decision reviewed.

The following is a list of possible options for managing a customer's involvement with the Council from which one or more might be chosen and applied, if warranted. Any action taken should be appropriate and proportionate. It is not an exhaustive list and often the specific circumstances of the individual case will be relevant in deciding what might be appropriate action:

- Placing limits on the number and duration of contacts with staff per week or month
- Offering a restricted timeslot for necessary calls
- Limiting the customer to one medium of contact (telephone, letter, email etc)
- Requiring the customer to communicate only with one named member of staff
- Requiring any personal contact to take place in the presence of a witness and in a suitable location
- Refuse to register further complaints about the same matter
- Where a customer's behaviour is unreasonable and threatens the safety and/or welfare of members, staff, or our partners the Council may decide to terminate contact with the customer
- Other action may be taken, for example reporting the matter to the police or taking legal action. Where such action is necessary the Council need not give prior warning

Where a decision on the complaint has been made, the customer can be informed that future correspondence will be read and placed on the file but not acknowledged, unless it contains material new information. A designated officer who will read future correspondence should be identified.

Where following restriction of access being implemented a customer continues to behave in a way that is unacceptable or where the behaviour is so extreme that it threatens the immediate safety and welfare of members, staff or our partners, the Council may:

1. Terminate contact
2. Temporarily or permanently restrict/not allow access to the Council offices
3. Report the matter to the police
4. Take legal action

**c) Reviewing the decision to restrict contact**

When imposing a restriction on access there will be a specified review date, usually 6 months from the initial decision. The review will be carried out by an Executive Manager or a Place Manager. Restrictions should be lifted and the relationship returned to normal unless there are good grounds to extend the restrictions.

The customer will be informed of the outcome of the review. If the restrictions are to continue, the customer should be given the reasons and told when the restrictions will next be reviewed.

**d) Referral to the Local Government and Social Care Ombudsman**

Relationships between organisations and customers sometimes break down badly when complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances there may be nothing to gain from following through all stages of the Council's Complaints procedure. In these circumstances, the Ombudsman may, exceptionally, be prepared to consider complaints before complaints procedures have been exhausted – if the request is made by both sides to the dispute.

A customer who has been treated as behaving unreasonably may make a complaint to the Ombudsman about it. The Ombudsman is unlikely to be critical of the Council's action if it can show that it acted proportionately, reasonably and in accordance with its adopted policy.

**e) Appeals against decisions**

Customers must be informed in writing when the Council wishes to apply this policy and given information on how to appeal the decision.

The appeal will be heard by an Executive Manager Place Manager who has not previously been involved with the case.

The Executive/Place Manager will write to the customer with their decision which will be final.

A customer who is dealt with under this policy will be informed of their right to contact the Local Government and Social Care Ombudsman if they feel the Council has not acted correctly in the administration of the complaint.

**f) New complaints**

New complaints from customers who have been subject to this policy will be dealt with on their merits. 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 complaints.

Once the complaint has been considered, a risk assessment will also be carried out based on past and current knowledge of the customer's behaviour and the likelihood of re-occurrence of any unacceptable behaviour.

Any decision not to pursue a new complaint must be clearly recorded on the complaints database.

#### **g) Recording actions and contacts with the customer**

Any decision to apply this policy must be notified to the Statutory Information Officer and recorded on the Council's complaints database

The Statutory Information Officer will keep adequate records to show:

- When a decision is taken not to apply the policy when a member, member of staff or partner asks for this to be done. The relevant individual will be informed of the decision
- When a decision is taken to make an exception to the policy
- When a decision is taken not to put a further complaint from such a customer through the complaints procedure for any reason
- When a decision is taken not to respond to further correspondence, the Executive Manager or Service Manager will make sure that any further letters, faxes or emails from the customer are checked to ensure that any significant new information is picked up and addressed
- Any future contacts with the customer must be recorded

### **5. Confidentiality**

Complaints made to the Council will be treated in confidence.

The Executive Manager or Place Manager will arrange that the details of unreasonably persistent complainants and/ or unreasonable customer behaviour is only passed to those Council staff, members and partner organisations who need to know in order to implement the policy or to protect staff safety. The customer's details will also be recorded on the Cautionary Contact List.

Confidentiality cannot, however, be guaranteed where a vulnerable person is considered to be at risk and safeguarding procedures apply. In these circumstances, the Council may have to share the information with other departments within the Council or other external agencies.

Customers who make their complaints public in the media may forfeit their right to anonymity and the right to confidentiality.

## **Section 2 – VEXATIOUS REQUESTS**

### **6. Definition of Vexatious Behaviour**

A vexatious request is: 'a request that is likely to cause distress, disruption, and irritation without any proper or justified cause'.

A vexatious request may include one or two individual requests for information, or may form part of a wider pattern of vexatious behaviour. For example, if there is a wider dispute or it is the latest in a lengthy series of overlapping requests.

Examples of vexatious requests are:

- Abusive or aggressive language used by the requester
- Excessive burden is placed on us in dealing with the request
- Targeted correspondence towards one individual against whom they have some personal enmity
- Unreasonable persistent requests relating to matters which have already been dealt with
- The request makes completely unsubstantiated accusations against the authority or specific individuals
- The requester takes an unreasonably entrenched position, rejecting attempts to assist and advice out of hand and shows no willingness to engage with us.
- The requester makes frequent or overlapping requests
- The requester's intention and purpose is to deliberately to cause annoyance
- The requester has adopted a "scattergun" approach
- The request relates to a trivial matter and it is not proportionate to deal with the request.
- The requester is abusing their rights of access to information by abusing the legislation to vent anger or harass and annoy members, staff or partners
- The information requested affects the individual and has already been resolved by us or by independent investigation
- The request is made for the sole purpose of the amusement of the requester.

**a) Designation of vexatious and decision to refuse to provide requested information**

In some cases it will be obvious to the Council that a request is vexatious, for instance the tone or content of the request is so objectionable that it would be unreasonable to expect the Council to tolerate it. In these circumstances we will consider making a decision that we will refuse the request under Section 14(1) Freedom of Information Act 2000 (or under the Environmental Information Regulations where relevant).

In other cases it will not be so obvious then we will take into account if the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. To assess this we will objectively judge the evidence of the impact on us and weigh this against any evidence about the purpose and value of the request.

However, we will not automatically refuse a request simply because it is made in the context of a dispute or if it forms part of a series of requests.

We will consider each request for information on its own merits and we will not automatically refuse a request because the individual may have caused problems in the past. We will ensure that we consider whether the request (and not the requester) is vexatious

We will consider whether or not a more conciliatory approach will help before issuing a refusal notice.

Where the request is considered to be vexatious we may make the decision not to provide the information. We will issue a refusal notice to the requester.

The decision to classify a request as vexatious and to refuse the request will be taken by the Executive Manager or Place Manager in consultation with the relevant Service Manager.

A refusal notice setting out why the Council is refusing the request will be issued by the Statutory Information Officer, unless we have already given the requester a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one.

**b) Application for Review**

A Requester may request a review of the decision to classify a request as vexatious and to issue a refusal notice. Such review will be carried out by an Executive Manager or Place Manager who has not previously been involved in the matter.

A requester who has been dealt with under this policy will be informed of their right to contact the Information Commissioner if they feel the Council has not acted correctly in dealing with their request.

**c) Recording Actions**

Any decisions to apply this policy to the request must be notified to the Statutory Information Officer and recorded on the Council's information requests data base.

**7. Responsibility for the procedures**

Overall responsibility for the Policy for Dealing with **UNREASONABLY PERSISTENT COMPLAINTS AND CUSTOMER BEHAVIOUR AND VEXATIOUS REQUESTS** will lie with the Statutory Information Group.

The administration of the Policy for Dealing with Unreasonable Customer Behaviour and Vexatious Requests lies with the Statutory Information Officer.