

Tonbridge & Malling Borough Council

Draft policy on unreasonable or unreasonably persistent complainants

Tonbridge & Malling Borough Council recognises that sometimes things can go wrong and someone may have cause to complain. Complaints are important as we can learn from them and improve our services. We deal with complaints fairly, impartially, objectively, professionally and in confidence. We do our best to solve problems and make sure they don't happen again. Where a complaint is justified we apologise and take corrective action.

We are also accountable for the proper use of public money and must ensure that money is spent wisely and achieves value for all residents of the borough, including complainants. We have therefore adopted a clearly defined complaints procedure. In order to respond professionally and with high quality customer care to the full range of complaints, our complaints procedure has three stages:

- **Stage 1** covers the entirely, or reasonably, straightforward complaints.
- **Stage 2** covers those complaints where the complainant remains dissatisfied after Stage 1 or where the complaint concerns a very complex matter.
- **Stage 3** covers those complaints where the complainant remains dissatisfied after Stage 2 or where the complaint concerns a very serious matter.

If still not satisfied after stage 3, complainants may take their complaint to the Local Government Ombudsman, an independent national service that investigates complaints against councils. However, the Ombudsman requires that complainants first try to solve their complaint through the Council's own complaints procedure. As part of this service, we do not normally limit the contact complainants have with our offices.

However, there are a small number of complainants who, because of the frequency of their contact with our offices, or for some other reason, hinder our consideration of their or other people's complaints. We refer to such complainants as 'unreasonable or unreasonably persistent complainants'. Operation of this policy will be guided by the Ombudsman's own guidance note, which is included as Annex 1. Examples of actions and behaviours of unreasonable or unreasonably persistent complainants that might activate this policy are shown on pages 2-3 of Annex 1. The decision to categorise someone as an unreasonable or unreasonably persistent complainant will be taken by the Chief Executive or, in his absence, by the Duty Director. This will normally follow a prior warning to the complainant

The options we are most likely to consider are:

- requesting contact in a particular form (for example, letters 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 contacts with us.

Exceptionally, we will take legal action to restrict their access to Council premises.

In all cases where we decide to treat someone as an unreasonable or 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. If we decide to carry on treating someone as an unreasonable or 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 file without acknowledgement.

New complaints from people who have come under the unreasonable or unreasonably persistent complainants' policy in the past will be treated on their own merits.

The Council's identification and management of each unreasonable or unreasonably persistent complainant will be recorded having close regard to the Ombudsman's guidance and using the report template in Annex 2.

Local Government
OMBUDSMAN

Guidance note on ‘unreasonably persistent’ complainants and ‘unreasonable complainant behaviour’

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Introduction

Generally, dealing with a complaint is a straight-forward process, but in a minority of cases people pursue their complaints in a way which can either impede the investigation of their complaint or can have significant resource issues for authorities. These actions can occur either while their complaint is being investigated, or once an authority has concluded the complaint investigation.

This guidance note aims to help local authorities formulate policies on unreasonably persistent complainants and unreasonable complainant behaviour based on what the Ombudsmen would regard as good practice in dealing with these complainants. We hope it will be helpful to both officers and councillors when addressing such complaints.

It should be read in conjunction with our general guidance on *Running a complaints system*.

Definition

We use the terms 'unreasonable complainant behaviour' and 'unreasonably persistent complainants'.

For us, unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with an authority, hinder the authority's consideration of their, or other people's, complaints.

It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many of the people who submit complaints to the Ombudsmen are 'persistent' on the entirely reasonable basis that they feel the authority has not dealt with their complaint properly and are not prepared to leave the matter there. The fact that approximately 26% of the complaints we investigate conclude either by report or by local settlement indicates that this persistence is frequently justified. And almost all complainants see themselves as pursuing justified complaints.

Unreasonable and unreasonably persistent complainants may have justified complaints or grievances 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 authorities may be amicable but still place very heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.

Sometimes the situation between a local authority and a complainant can escalate and the behaviour moves from being unreasonable and unreasonably persistent to behaviour which is unacceptable, for example, abusive, offensive or threatening. Such complainants are in a very small minority, but sometimes an authority finds itself in the position of having to restrict access to council premises or even having to resort to legal action to address such behaviour, for example, in the form of anti-social behaviour orders or injunctions. Authorities will have their own policies and procedures for dealing with unacceptable behaviour and protecting their staff from harassment and harm. These are well established. **This guidance does not address these issues of health and safety, but sits alongside existing policies as a means of addressing the full spectrum of behaviours which an authority might have to address.**

This guidance covers behaviour which is unreasonable, which 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.

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

Why have a policy?

Having a policy on unreasonably persistent complainants and unreasonable complainant behaviour and corresponding guidance for staff on procedure should help authorities deal with complainants in ways which are demonstrably consistent and fair. It also helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. In the absence of such guidance staff are likely to have greater problems with unreasonable and unreasonably persistent complainants. In addition, it provides a yardstick against which performance can be assessed for monitoring purposes.

Actions and behaviours of unreasonable and unreasonably persistent complainants

These are some of the actions and behaviours of unreasonable and unreasonably persistent complainants which authorities often find problematic. It is by no means an exhaustive list and local factors will vary, but they are examples that frequently come to our attention.

- Refusing to specify the grounds of a complaint, despite offers of assistance with this from the authority's 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 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.
- 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.

- 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.
- 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.

Elements of a policy/procedure on unreasonable and unreasonably persistent complainants

A policy document or procedural note issued with it could include:

- examples of the main kinds of 'trigger' actions/behaviours which may cause the policy to be invoked (see above);
- a list of the options for action open to the authority;
- information about the decision-making process: who decides
 - whether the policy will be applied to a complainant
 - what restrictions will be placed on contacts and for how long
 - whether restrictions can be lifted or should continue;
- details of complainants' rights of review/appeal against
 - a decision to invoke the policy and/or
 - any particular restrictions applied;
- guidance on the nature of the records to be kept;
- details of the information to be given to complainants to whom it has been decided the policy should apply;
- advice about which officers/members of the authority are to be informed that contact with a named complainant is being restricted and why, and who will have access to that information on request;
- details of when and by whom such a decision should be reviewed; and
- guidance on how the policy may link in with other authority policies and procedures (for example equal opportunities, health and safety, staff welfare, harassment, codes of conduct for staff, disciplinary procedures, as well as the authority's complaints policy, Freedom of Information requests), and how it should be monitored.

Authorities could also consider producing annual returns showing the numbers of complainants to whom such a policy has been applied in that year and the kinds of restrictions which have been imposed.

Considerations prior to taking action under the policy

Different considerations will apply depending on whether the investigation of the complaint is ongoing or whether it has been 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 authority has the option of ending all communication with the complainant, and where appropriate referring the complainant to the Ombudsman. However, where the complaint is ongoing there needs 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. Before deciding whether the policy should be applied authorities should be satisfied that:

- the complaint is being or has been investigated properly;
- any decision reached on it is the right one;
- communications with the complainant have been adequate; and
- the complainant is not now providing any significant new information that might affect the authority's view on the complaint.

If the authority is satisfied on these points it should consider whether further action is necessary prior to taking the decision to designate the complainant as unreasonable or unreasonably persistent. Examples might be:

- If no meeting has taken place between the complainant and an officer/officers, and provided that the authority knows nothing about the complainant which would make this inadvisable, consider offering the complainant a meeting with an officer of appropriate seniority. Sometimes such meetings can dispel misunderstandings and move matters towards a resolution.
- If more than one department is being contacted by an unreasonably persistent complainant, consider:
 - setting up a strategy meeting to agree a cross-departmental approach; and
 - designating a key officer to co-ordinate the authority's response(s).
- If the complainant has special needs, an advocate might be helpful to both parties: consider offering to help the complainant find an independent one.
- Before applying any restrictions give the complainant a warning that if his/her actions continue the authority may decide to treat him/her as a unreasonably persistent complainant, and explain why.

Options for action

The precise nature of the action an authority 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 authority at that time. The following list is a 'menu' of possible options for managing a complainant's involvement with an authority 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.
- Requiring any personal contacts to take place in the presence of a witness.
- Refusing to register and process further complaints about the same matter.
- Where a decision on the complaint has been made, providing the complainant with acknowledgements only 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 future correspondence.

Operating the policy

If a decision is taken to apply the policy, write to inform the complainant that:

- the decision has been taken;
- what it means for his or her contacts with the authority;
- how long any restrictions will last; and
- what the complainant can do to have the decision reviewed.

Enclose with the letter a copy of the policy.

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

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

When unreasonable and unreasonably persistent complainants make complaints about new issues these should be treated on their merits, and decisions will need to be taken on whether any restrictions which have been applied before are still appropriate and necessary.

Reviews of decisions to restrict a complainant's contacts or the authority's responses to them should be taken by an officer senior to the person who made the original decision. When reviews are carried out, the authority should 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 the authority has decided the policy will apply has no

contact with the authority 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 authority's records. 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.

Referring unreasonable and unreasonably persistent complainants to the Local Government Ombudsmen

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. Decisions by councils to refer such cases to the Ombudsmen should be confirmed in writing by the Chief Executive.

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.

Our own internal policies on 'unacceptable behaviour' and on 'unreasonably persistent complainants' are available separately.

Application of Tonbridge & Malling Borough Council's policy on unreasonable or unreasonably persistent complainants

Report template

1 Identification of complainant

1.1 <Enter details>

2 Considerations prior to taking action under this policy

2.1 <Enter details>

3 Operating the policy

3.1 <Enter details>

4 Referring the case to Local Government Ombudsman

4.1 <Enter details>