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Guidance on managing unreasonable complainant behaviour

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Introduction

In a minority of cases people pursue their complaints in a way that is unreasonable. They may behave unacceptably, or be unreasonably persistent in their contacts and submission of information. This can impede investigating their complaint (or complaints by others) and can have significant resource issues for organisations. These actions can occur either while their complaint is being investigated, or once an organisation has finished the complaint investigation.

This guidance note aims to help local authorities and other bodies within LGO's jurisdiction develop a proportionate approach when responding to unreasonable complainant behaviour, based on LGO's view of good practice in dealing with these complainants.

We hope it will be helpful to both officers and councillors. It should be read with our general guidance on Running a complaints system.

Definition

This guidance covers 'unreasonable complainant behaviour', which may include one or two isolated incidents, as well as 'unreasonably persistent behaviour', which is usually a build-up of incidents or behaviour over a longer period.

For us, 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.

We distinguish between 'persistent' complainants and 'unreasonably persistent' complainants. People bringing complaints to the LGO are 'persistent' because they feel the organisation has not dealt with their complaint properly and are not prepared to leave the matter there. Around 46% of the complaints we investigate in detail are upheld signalling that this persistence is frequently justified. And almost all complainants see themselves as pursuing justified complaints.

For example, criticising a complaints procedure when the standards set out are not met is not unreasonable. If complaints procedures are working properly, then responding to expressions of dissatisfaction and requests for information should not cause organisations particular problems.

However, some complainants may have justified complaints but may pursue them in inappropriate ways. Others may pursue complaints which appear to have no substance or which have already been investigated and determined. Their contacts with organisations may

be amicable but still place heavy demands on staff time, or they may be emotionally charged and distressing for all involved.

Situations can escalate, and sometimes complainants become abusive, offensive, threatening or otherwise behave unacceptably. In response an organisation may have to restrict access to its premises or staff, or accordance with its own procedures protecting their staff from harassment and harm.

This guidance covers behaviour which is unreasonable, which may include one or two isolated incidents, as well as unreasonably persistent behaviour, which is usually a build-up of incidents or behaviour over a longer period.

Why have a policy?

Organisations want to deal with complainants in ways that are open, fair and proportionate. A considered, policy-led approach helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. A policy that can be shared with complainants if they start to behave unreasonably can help in managing their expectations and their behaviour, as far as possible, while the substance of their complaint is addressed.

Examples of unreasonable actions and behaviours

These are some of the actions and behaviours which organisations often find problematic, which have come to the LGO's attention.

Single incidents may be unacceptable, but more often the difficulty is

caused by unreasonably persistent behaviour that is time consuming to manage and interferes with proper consideration of the complaint.

- Refusing to specify the grounds of a complaint, despite offers of help.
- Refusing to cooperate with the complaints investigation process.
- Refusing to accept that certain issues are not within the scope of a complaints procedure.
- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- Making unjustified complaints about staff who are trying to deal with the issues, and seeking to have them replaced.
- Changing the basis of the complaint as the investigation proceeds.
- Denying or changing statements he or she made at an earlier stage.
- Introducing trivial or irrelevant new information at a later stage.
- Raising many detailed but unimportant questions, and insisting they are all answered.
- Submitting falsified documents from themselves or others.
- Adopting a 'scatter gun' approach: pursuing parallel complaints on the same issue with various organisations.
- Making excessive demands on the time and resources of staff with lengthy phone calls, emails to numerous council staff, or detailed letters every few days, and expecting immediate responses.
- Submitting repeat complaints with minor additions/variations the complainant insists make these 'new' complaints.
- Refusing to accept the decision; repeatedly arguing points with no new evidence.

Your policy on managing unreasonable complainant behaviour

This 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 organisation
- information about the decision-making process: who decides
 - whether the policy will be applied to a complainant
 - what limits will be placed on contacts and for how long
 - whether limits 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
- what information is given to complainants when the policy is applied
- advice about who in your organisation is to be informed that contact with a named complainant is being restricted and why
- links with other organisational policies.

Consider whether your policy in this area properly aligns with your policies on such matters as equal opportunities, health and safety, staff welfare, harassment, codes of conduct for staff, disciplinary procedures, complaints policy, Freedom of Information requests, and so on.

Considerations prior to taking action under the policy

If your consideration of the complaint is ended you have the option of ending all communication with the complainant on the issue and, where appropriate, referring the complainant to the Ombudsman.

If the complaint is still under consideration steps may be necessary to manage the complainant's behaviour.

The decision to designate someone's behaviour as unreasonable, and restrict their access to you, could have serious consequences for the individual. So, you 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 organisation's view on the complaint.

When it is necessary to designate the complainant as behaving unreasonably, some of following steps may assist.

- Offering the complainant a meeting with an officer of appropriate seniority to explore scope for a resolution of the complaint and explain why their current behaviour is seen as unreasonable.
- Sharing your policy with the complainant and warning them that restrictive actions
- may need to be applied if their behaviour continues.
- Setting up a strategy meeting to agree a cross-departmental approach.
- Appointing a key officer to coordinate the organisation's response(s).

- Helping the complainant to find a suitable independent advocate especially if the complainant has different needs.

Options for action

Any actions taken should be proportionate to the nature and frequency of the complainant's current contacts. The following options may be suitable, taking the complainant's behaviour and circumstances into account. The objective is to manage the complainant's unreasonable behaviour in such a way that their complaint can be concluded quickly, without further distractions.

Options include:

- Placing limits on the number and duration of contacts with staff per week or month.
- Offering a restricted time slot for necessary calls.
- Limiting the complainant to one medium of contact (telephone, letter, email etc).
- 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 and in a suitable location.
- Refusing to register and process further complaints about the same matter.

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

Operating the policy

If a decision is taken to apply restricted access, write to the complainant with a copy of the policy to explain:

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

Keep adequate records to show:

- when a decision is taken not to apply the policy when a member of staff asks for this to be done, or
- when a decision is taken 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 this complainant through your complaints procedure for any reason, and
- 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 complaints about new issues are made, these should be treated on their merits. You should consider whether any restrictions previously applied are still appropriate and necessary.

Reviewing decisions to restrict access

When imposing a restriction on access, you should have a specified review date. Limits should be lifted and relationships returned to normal unless there are good grounds to extend them.

You should tell the complainant of the outcome of your review. If limits

are to continue, explain your reasons and state when the limits will next be reviewed.

Referring complainants to the LGO

Relations between organisations and complainants sometimes break down badly while 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 organisation's complaints procedure. In these circumstances, the LGO may, exceptionally, be prepared to consider complaints before complaints procedures have been exhausted.

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

Our own internal policy on managing unreasonable complainant behaviour is available separately.

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