



## POLICY

### DEALING WITH UNREASONABLY PERSISTENT COMPLAINANTS AND 'UNREASONABLE COMPLAINANT BEHAVIOUR

1. Reading Borough Council values all kinds of customer feedback and expressions of dissatisfaction are treated seriously and recognised as a way for the Council to identify and implement service improvements. The Council is also accountable for the proper use of public money and must ensure that that money is spent wisely and achieves value for complainants and the wider public.
2. Reading Borough Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them. As part of this service we do not normally limit the contact complainants have with the Council.
3. However there are a small number of complainants who, because of the frequency, nature and quality of their contact with the Council, hinder our consideration of theirs, or other people's, complaints. We refer to such complainants as 'unreasonably persistent complainants' and, exceptionally, we will take action to limit their contact with our offices.
4. The decision to restrict access to our offices will be taken by Directorate Complaints Officers in consultation with senior management, and will normally follow a prior warning to the complainant. Any restrictions imposed will be appropriate and proportionate. The options we are most likely to consider are:
  - requesting contact in a particular form (for example, letters only);
  - requiring contact to take place with a named officer;
  - restricting telephone calls to specified days and times; and/or
  - asking the complainants to enter into an agreement about their future contacts with us.
5. In all cases where we decide to treat someone as an unreasonably persistent complainant, we will write to tell the complainants why we believe their behaviour falls into that category, what action we are taking and the duration of that action. We will also tell them how they can challenge the decision if

they disagree with it. If we decide to carry on treating someone as an 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.

6. Where a complainant whose case is closed persists in communicating with us about it, we may decide to terminate contact with that complainant about the matter. 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 the file with no acknowledgement.
7. New complaints from people who have come under the unreasonably persistent complainant's policy will be treated on their merits.

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2<sup>nd</sup> version

# PROCEDURE ON DEALING WITH UNREASONABLY PERSISTENT COMPLAINANTS

## 1. INTRODUCTION

- 1.1 Generally, dealing with a complaint or request for information is a straightforward process, but in a minority of cases people pursue their complaints or requests in a way which can either impede the investigation of their complaint or can have significant resource issues for the Council. These actions can occur either while their complaint or request is being investigated, or once the investigation has been concluded.
- 1.2 This procedure aims to help Reading Borough Council staff manage unreasonably persistent complainants and requests, and unreasonable complainant behaviour. It is based on what the Ombudsmen would regard as good practice in dealing with these complainants, and what the Information Commissioner would regard as good practice in relation to vexatious or repeated requests.
- 1.3 It should be read in conjunction with the Reading corporate complaints procedure and the aggressive customer procedure.

## 2. DEFINITION OF AN UNREASONABLY PERSISTENT COMPLAINANT

- 2.1 The Local Government Ombudsman uses the following definition to identify complainants that fall into this category.

**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.**

- 2.2 It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many of the people who submit complaints to the Local 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 a quarter of the complaints they 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.
- 2.3 Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but may 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 the Council may be amicable but still place very heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.

- 2.4 Sometimes the situation between the Council 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 potentially this could move to 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. The Council has its own policies and procedures for dealing with unacceptable behaviour and protecting staff from harassment and harm, such as the Code of Practice on dealing with Aggressive Customers, and the Exclusion and Incident List Procedure. 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.**
- 2.5 This procedure covers behaviour which is unreasonable or vexatious, which may include one or two isolated incidents, as well as unreasonably persistent behaviour, which is usually an accumulation of incidents, behaviour or requests over a longer period.
- 2.6 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. The Council has a well-established complaints procedure which allows people to pursue their complaint through three stages, and on to the Ombudsman, if dissatisfied. If complaints procedures are operating properly, then responding to expressions of dissatisfaction and requests for information should not cause authorities particular problems.
- 2.7 The definition of an unreasonably persistent complainant includes an individual or company who has instructed a representative to communicate with the Council, as well as the representative himself/herself.

### **3. AIMS OF THIS POLICY AND PROCEDURE**

- 3.1 Having a policy on unreasonably persistent complainants and unreasonable complainant behaviour and corresponding guidance for staff on procedure will help the Council 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, in particular when these are subject to specific statutory procedures.

#### 4. ACTIONS AND BEHAVIOURS OF UNREASONABLE AND UNREASONABLY PERSISTENT COMPLAINANTS

4.1 The Local Government Ombudsman has issued Guidance on 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.

- Refusing to specify the grounds of a complaint, despite offers of assistance with this from a member of 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 various services in the authority at the same time, and possibly with a Member of Parliament / a councillor / the Standards Committee / 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 excessive emails either to an individual Councillor or Council officer or to numerous Councillors and council staff, writing lengthy complex letters or e-mails every few days and expecting immediate or unreasonable 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, whilst not following the three-stage complaints procedure.
- Combinations of some or all of these.

4.2 The Information Commissioner has also issued Guidance on **vexatious or repeated requests**. Deciding on whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, the following questions should be considered:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

4.3 To judge a complaint as vexatious it should be possible to make a relatively strong argument under more than one of the above headings. The questions are likely to overlap, and the weight placed on each of them will depend on the circumstances.

## 5. IDENTIFYING UNREASONABLY PERSISTENT OR VEXATIOUS COMPLAINANTS

5.1 The Directorate Complaints Officer for the service relevant to the complaint, in consultation with the Head of Legal Services, will decide:

- whether the policy will be applied to a complainant
- what restrictions will be placed on contacts and for how long
- which officers/members are to be informed that contact with a named complainant is being restricted and why

5.2 The Monitoring Officer or Head of Legal Services will decide whether restrictions can be lifted or should continue upon reviewing the case within in a set time period.

## 6. RECORD KEEPING

6.1 Where the Complaints Officer decides to apply this procedure, s/he will record this fact on the Council's complaints system (Front Office) and will forward the information about the complainant and the case/s to the Head of

Legal Services for centralised record keeping. This should include copies of all related correspondence.

- 6.2 Some or all of this information may be obtained by the complainant via a Data Subject Access request or under the Freedom of Information entitlements.
- 6.3 The Head of Legal Services will enter details onto a local database which may be used for reporting to CMT and/ or Councillors. To access this information in the future, a request must be made to the Head of Legal Services.

Fair Processing Notice: We may process data that we hold on the database to third parties, upon request. We will only process your name, and never your contact details. However, you can apply to have your name removed from the database, if a reasonable time has elapsed since your name was put on the database.

- 6.4 The Council will report each year to Scrutiny on the numbers of complainants to whom such a policy has been applied in that year and the kinds of restrictions which have been imposed.

## **7. CONSIDERATIONS PRIOR TO TAKING ACTION UNDER THE POLICY AND PROCEDURE**

- 7.1 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. If in effect the complainant is simply refusing to take no for an answer, the Council has the option of ending all communication with the complainant, and where appropriate referring the complaint to the Ombudsman. However, where the complaint is ongoing there needs to be some continuing contact with the complainant.

- 7.2 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 the Complaints Officer and Head of Legal Services must 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.

- 7.3 If the Complaints Officer and Head of Legal Services are satisfied on these points, they will 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 Council knows nothing about the complainant which would make this unadvisable, 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 service is being contacted by an unreasonably persistent complainant:
  - The Complaints Officer will liaise with fellow Complaints Officer(s) about how to deal with the complaint, and agree a key officer to co-ordinate the response(s);
  - Any cases of disagreement will be referred to the Head of Legal Services to determine.
- If the complainant is a tenant, the relevant Neighbourhood Housing Manager will be designated to provide a response
- If the complainant has special needs, an advocate might be helpful to both parties: the Complaints Officer should consider offering to help the complainant find an independent one. In the case of complaints made under the statutory complaints procedures for children and adults, offers of help will be made in line with those procedures.
- Where the complaint relates to one service area, the Complaints Officer will ask the Head of Service to designate a key officer or Senior Manager to investigate and provide a response
- If the complaint relates to Customer Services, the Head of Customer Services will complete the investigation and provide a response
- If the complaint is about a Councillor, it will be referred to the Monitoring Officer who will consider whether the complaint should be taken forward under the Council's Councillor Complaints Procedure, and referred to the local Assessment Sub-Committee of the authority's Standards Committee.
- Before applying any restrictions the Complaints Officer, in conjunction with the Head of Legal Services, must 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.

## 8. OPTIONS FOR ACTION

- 8.1 The precise nature of the action to be taken in relation to an unreasonable or unreasonably persistent complainant must be appropriate and proportionate to the nature and frequency of the complainant's contacts with the Council at that time. The following list is a 'menu' of possible options for managing a complainant's involvement with 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).
- Restricting the number of letters or emails that the complainant can send on any complaint, or restricting the number of letters / emails to which the Council will respond.
- 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. Nevertheless the Complaints Officer and Head of Service will designate an officer in the service complained about to read future correspondence.

## **9. INFORMING THE COMPLAINANT OF THE DECISION**

9.1 If a decision is taken to apply the policy, the Complaints Officer will 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.

9.2 The Complaints Officer will enclose with the letter a copy of this policy and procedure.

9.3 A Complaints Officer will provide a copy of the correspondence to the Head of Legal Services for the central records. The Complaints Officer must keep adequate records of all contacts with unreasonable and unreasonably persistent complainants and provide copies to the Head of Legal Services, 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.

## **10. DEALING WITH NEW COMPLAINTS FROM A PERSISTENT COMPLAINANT**

10.1 When unreasonable and unreasonably persistent complainants make complaints about new issues these should be treated on their merits, and the Complaints Officer, in consultation with the Head of Legal Services, must decide on whether any restrictions which have been applied before are still appropriate and necessary.

## **11. REVIEWING ANY RESTRICTIONS ON PERSISTENT COMPLAINANTS**

11.1 Complainants have the right to challenge the decision on any restrictions to be applied under this policy and they should request for this review to be take place within 10 working days of the initial notification being sent. Such requests should be made or forwarded to the Monitoring Officer, who will review the case to determine whether:

- a decision was right to invoke the policy and/or
- any particular restrictions applied are justified;

11.2 The Monitoring Officer will aim to complete the review within two months. On completing the review, the Monitoring Officer will write to advise the complainant of the outcome and, if restrictions are to continue to be applied, when these will next be reviewed.

11.3 The Complaints Officer and Head of Legal Services will review any restrictions in six months, or when there has been any further contact from the complainant if sooner. If a complainant to whom the Council has decided the policy will apply has no contact with the Council within the six month period, the Complaints Officer and Head of Legal Services will review the position and take a decision on whether any restrictions placed on the complainant's contacts should be cancelled. The outcome of this review will be noted on Front Office and the Head of Legal Services' central record. If the restrictions are cancelled, urgent consideration will be given to re-introducing the restrictions if the behaviour which led to the original decision re-commences.

11.4 In each case where the review has led to a decision to lift the restrictions, all the documentation relating to the restriction under this procedure will be retained for two years from the date of the review, and then destroyed.

## **12. REFERRING UNREASONABLE AND UNREASONABLY PERSISTENT COMPLAINANTS TO THE LOCAL GOVERNMENT OMBUDSMEN**

- 12.1 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.
- 12.2 A complainant who has been identified as 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.

JGP

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