

Scarborough Borough Council Policy for dealing with ‘unreasonably persistent’ and ‘unreasonable’ complaint behaviour

Introduction

Generally, dealing with a complaint is a straight-forward process, but in a minority of cases people pursue complaints in a way which can either impede the investigation of their complaint or can have significant resource issues for the Council. In accordance with Local Government Ombudsman guidance the Council defines such behaviour as ‘*unreasonably persistent*’ or ‘*unreasonable*’.

This behaviour can occur:

- while a complaint is being investigated;
- once the Council has concluded its complaint investigation

In addition, the complainant does not have to have either used, or be in the process of pursuing a complaint through the Council’s Complaints Policy to be considered to be behaving in an unreasonably persistent or unreasonable manner.

If, having been made aware of this Policy, a complainant is designated as being unreasonable or unreasonably persistent, the complainant would be advised in writing that:

- their access to officers and Members of the Council would be suitably restricted;
- what those restrictions would be;
- that any decision would be reviewed after 6 months;
- that any decision to designate a complainant as unreasonable or unreasonably persistent would be shared with all officers and Members of the Council

Reason for having a Policy

Having a policy on unreasonably persistent complainants and unreasonable complainant behaviour and corresponding Guidance Notes for staff and Members helps the Council to deal with complainants in ways which are demonstrably consistent and fair.

The policy assists staff and Members to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. In addition, the policy provides a yardstick against which performance can be assessed for monitoring purposes.

Principles of this policy

The Council is committed to dealing with all complaints fairly, comprehensively, and as efficiently as possible.

The Council will not normally limit the contact which complainants have with staff or its Members. However, the Council does not expect its staff or Members to tolerate unacceptable behaviour by complainants or any customer.

This policy links with other policies and approaches of the Council where relevant. These include; the Council's Complaints Policy, Bullying and Harassment policies, relevant sections from the Health and Safety at Work policies, specifically relating to Violence at Work, the Equality and Diversity Policy, Data Protection and Freedom of Information. Other policy links will be established as and when necessary.

Definitions

Unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with the Council, hinder consideration of their, or other peoples, complaints.

It is important to differentiate between '*persistent*' and '*unreasonably persistent*' complainants. The Council defines '*persistent complainants*' as those who feel that the Council has not dealt with, or is not dealing with the complaint properly and is not prepared to leave the matter there. '*Unreasonably persistent complainants*' may have a justified complaint but be pursuing it in an unreasonable or inappropriate way. Alternatively, they may be intent on pursuing complaints which appear to have no substance or which have already been investigated and settled.

In both instances contacts with the Council may be amicable but still place very heavy demands on staff or Member time, or they may be very emotionally charged and distressing for all involved.

Actions and behaviours of unreasonable and unreasonably persistent complainants

Listed below are some of the actions and behaviours of unreasonable and unreasonably persistent complainants based on those defined by the Local Government Ombudsman. The list is not an exhaustive list and will on occasion need to be reviewed to take account of differing factors and new legislative requirements¹.

- Refusing to specify the grounds of a complaint, despite offers of assistance from staff or Members.
- 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.

¹ The Local Government and Public Involvement in Health Act 2007, contains a section known as 'Councillor Call For Action'; whereby ward councillors can present certain items to Scrutiny Committees on behalf of their constituents. Detailed guidance is expected. Similarly, the government is currently consulting on giving Petitions a legislative footing.

- Insisting on the complaint being dealt with in ways which are incompatible with the Council's adopted Complaints Procedure or with good practice.
- Making what appear to be groundless complaints about the staff or Members dealing with the complaint, and seeking to have them replaced.
- Changing the basis of the complaint as the investigation proceeds and/or denying statements the complainant may have made at an earlier stage.
- Refusing to use the Council's Complaints Policy despite being advised to do so whilst still persisting with their previous actions.
- Introducing 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 Council's independent auditor/the Standards Board/local police/solicitors/the Ombudsman.
- Making unnecessarily excessive demands on the time and resources of staff or Members whilst a complaint is being looked into, by for example excessive telephoning or sending emails to numerous Council staff or Members, writing lengthy complex letters every few days and expecting immediate responses.
- Submitting repeat complaints after the 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.
- Alleging that the Council's policies and procedures are being applied in a discriminatory or biased fashion without good reason or evidence.
- Alleging that the complainant is being discriminated against on the grounds of disability, race, age, gender, sexual orientation or religion without good reason or evidence.
- Using bullying, physical or psychological threats as a means to gain leverage with an officer or Member.

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. However, where the

complaint is ongoing the Council will need to continue some 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 the Council will first satisfy itself 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 appropriate; and
- the complainant is not now providing any significant new information that might affect the authority's view on the complaint.

If the Council is satisfied on these points it will consider whether further action is necessary prior to taking the decision to designate the complainant as unreasonable or unreasonably persistent. Examples of this include:

- If no meeting has taken place between the complainant and an officer/officers, and provided that nothing is known about the complainant which would make this inadvisable², the Council will consider offering the complainant a meeting with an officer of appropriate seniority.
- If more than one service area is being contacted by an unreasonably persistent complainant, the Council will 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, the Council will consider offering the services of an advocate, such as an Elected Member, or will provide advice as to how the complainant might find an independent one.
- Before applying any restrictions the Council will give the complainant a warning that if his/her actions continue the authority may decide to treat him/her as an unreasonably persistent complainant, and explain why.

In all instances, the Council will refer to this policy and the accompanying Guidance Notes when taking its decision.

This policy will be reviewed annually or upon the enactment of impacting legislation.

² E.g. there are concerns under relevant Council policies such as Violence at Work, Bullying or Harassment etc.