

**Report to:** Standards Committee – 9 March 2009

**Report by:** Head of Customer Services

**Written by:** Carol Cunningham, Corporate Complaints Investigative Link Officer

## **Introduction of the Corporate Compensation Policy and the Persistent Complainants Policy**

### **1. Purpose of Report**

To bring to the attention of the Standards Committee the Corporate Compensation Policy and the Persistent Complainants Policy, which will enable best practice in complaint investigation and complaint management.

### **2. Recommendations**

- That the Standards Committee approve the Corporate Compensation Policy and the Persistent Complainants Policy for use across Portsmouth City Council.

### **3. Background**

In May 2005 the Policy and Review Topic Panel C reviewed the effectiveness of the Portsmouth City Council's complaints procedures. The panel made eighteen recommendations under the following five headings:

- Resourcing the corporate complaints process
- Policy and procedure
- Recording and monitoring complaints
- Staff awareness
- Service to the complainant

As a result, an updated complaints strategy was produced, and was approved by the Executive in June 2007.

One of the complaints strategy's objectives was to "improve consistency of complaints management across Portsmouth City Council, through improved corporate working". As part of this objective it was recommended that the corporate complaints leaflet and process would be revised and updated and both a persistent complainants policy and compensation policy introduced.

### **4. Consultation Undertaken**

The Strategic Directors Board, Internal Audit, Head of Legal Services and the Complaints Steering & Network Groups have approved these policies.

## **5. Key Points**

Both the Corporate Compensation Policy and the Persistent complainants Policy have been developed through the corporate complaints Steering and Network Groups.

### **Compensation Policy**

- The policy clearly defines where compensation can be considered. Usually the payment of compensation will only be considered where the investigation of the complaint finds that action taken on behalf of the authority amounts to or may amount to maladministration and that a person has been or may have been adversely affected by that action, although the policy also notes the exceptions to these rules.
- The calculation of compensation is based on the amount that the local Government Ombudsman would recommend.
- Services will now be able to deal with and authorise compensation payments up to £250.
- All payments of compensation will be recorded on the Corporate Complaints Database and a report will be provided to Heads of Service.
- Where appropriate, compensation payments will be used to reduce or clear an outstanding debt with Portsmouth City Council.
- The compensation policy will promote good practice in the speedy resolution of complaints.

### **Persistent Complainants Policy**

- The policy clearly defines the circumstances in which someone is considered to be a persistent complainer.
- The management of persistent complainers will enable staff to apply restrictions in a way that will allow a complaint to progress to completion through the complaints process.
- Restrictions will be appropriate and proportionate to the nature of the complainants contacts with the council.
- Decisions about applying the policy will be made through the Head of Service.
- Where the policy is put into effect the complainant will be advised in writing about the restrictions that have been applied and why this action has been taken.

- The complainant can appeal against this decision. The Head of Service or designated senior manager will deal with this appeal.
- All services involved with the complaint will be advised of any decision to restrict contact.
- Although restricting contact with the complainant, the policy does not prevent the complainant from making any new complaints.

## **6. Equality Impact Assessment**

These new policies have undergone an Equality Impact Assessment

## **7. City Solicitors Comments**

The City Solicitor is satisfied that it is within the Council's powers to approve the recommendations as set out.

## **8. Conclusion**

Members to approve the recommendations set out above

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Louise Wilders  
Head of Customer Services

Background list of documents: Customer Services file of papers

# **PORTSMOUTH CITY COUNCIL PERSISTENT COMPLAINANTS POLICY**

**October 2008**

**DEALING WITH PERSISTENT COMPLAINANTS POLICY**

## **1. INTRODUCTION**

- 1.1 Complaints about Portsmouth City Council are processed in accordance with the Complaints policy. Council staff inevitably come into contact with a small number of complainants who take up an unwarranted amount of Council resources or impede the investigation of their complaint. The aim of this policy is to identify situations where the complainant could be considered vexatious or persistent and how to deal with such situations.  
This guidance also reflects the “Guidance note on ‘unreasonably persistent’ complainants and ‘unreasonable complainant behaviour’ issued by the Local Government Ombudsman in January 2007.
- 1.2 It is important to distinguish between people who make a number of complaints because they really think things have gone wrong, and people who are simply being difficult. It must be recognised that complainants may sometimes act out of character at times of anxiety or distress and reasonable allowances should be made for this.
- 1.3 This policy does not apply to complaints in respect of Members. Guidance on how to proceed with a complaint about a Member can be found at <http://www.portsmouth.gov.uk/yourcouncil/8242.html>

## **2. DEFINITION OF PERSISTENT COMPLAINANTS**

- 2.1 Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but are 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.
- 2.2 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.
- 2.3 Complainants may be deemed to be vexatious as a result of their unreasonable behaviour where current or previous contact with them shows that they have met one or more of the following criteria:
- Persisting in pursuing a complaint where the Council’s Complaints Procedure has been fully and properly implemented and exhausted, including the Local Government Ombudsman.
  - The substance of a complaint is changed or new issues are raised persistently or complainants seek to prolong contact by unreasonably raising further concerns although care must be taken

not to disregard new issues, which differ significantly from the original complaint.

- Complainants are unwilling to accept documented evidence of facts or deny receipt of an adequate response despite correspondence specifically answering their questions/concerns. This could also extend to complainants who do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
- Complainants refuse to specify or do not clearly identify the precise issues or grounds they wish to be investigated despite reasonable efforts to help them.
- Complainants have, in the course of pursuing a registered complaint, had an excessive number of contacts (or unreasonably made multiple complaints) with the Council placing unreasonable demands on Council employees. Such contacts may be in person, by telephone, letter, fax or electronically. Discretion must be exercised in deciding how many contacts are required to qualify as excessive, using judgement based on the specific circumstances of each individual case.
- Complainants have harassed, been abusive, verbally aggressive, threatening or bullying on one or more occasions towards staff dealing with their complaint – directly or indirectly – or their families and /or associates. All incidents of harassment or aggression must be documented, dated and reported to the Line Manager.
- Complainants making unnecessarily excessive demands on the time and resources of the Council or its staff whilst a complaint is being looked into, by excessive telephoning or sending emails to numerous council staff, writing lengthy complex letters every few days and expecting immediate responses.
- Complainant 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.
- Complainant making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced.
- Complainant 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.
- Combination of some or all of these.

2.4 Complaints may be deemed to be vexatious in any situation where physical violence has been used or threatened towards staff or their families/associates at any time. This will cause personal contact with the complainant to be discontinued and the complaint will, thereafter, only be pursued through written communication. All such incidents should be documented and reported in accordance with the Violence at Work policy.

### **3. MANAGING PERSISTENT COMPLAINANTS**

- 3.1 If a complainant's persistence adversely affects our ability to do our work and provide a service to others, we may need to manage their unacceptable behaviour by restricting their contact with our offices.
- 3.2 Any restrictions applied will be appropriate and proportionate to the nature of the complainant's contacts with the council at that time. I.e.
- 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, e-mail etc)
  - Requiring a complainant to communicate only with a named employee.
  - Involving the police in cases where we believe the complainant has committed a criminal offence (for example, harassment, assault on staff or criminal damage), where assaults threatened, or where the complainant refuses repeated requests to leave council premises.
- 3.3 Wherever possible, we seek to apply restrictions in a way, which will allow a complaint to progress to completion through the complaints process.

### **4. DECIDING TO RESTRICT COMPLAINANT CONTACT**

- 4.1 Before making any decision to restrict contact, the complainant will, whenever possible, be warned that, if the specified behaviour or actions continue, we will consider apply some or all of the restrictions set above.
- 4.2 Decisions about applying this policy will only be taken after careful consideration of the situation by a manager or Head of Directorate.
- 4.3 He/she will consider whether:
- The complainant is raising legitimate concerns.
  - The complaint is or has been investigated properly.
  - Any decision reached is the right one.
  - Communications with the complainant have been adequate.
  - Any circumstances that relate to the complainants mental health, age, gender, sexual orientation, belief or disability have been considered.

- 4.4 In deciding which restrictions are appropriate, careful consideration will be given to balancing the rights of the individual with the need to ensure other complainants and employees do not suffer any disadvantage and the resources of the council are used effectively as possible.
- 4.5 Where this policy is applied the complainant will be told in writing why a decision has been made to restrict future contact, the restricted contact arrangements, if relevant, the length of time that these restrictions will be in place and what they can do to have the decision reviewed.

## **5. APPEALING A DECISION TO RESTRICT CONTACT**

- 5.1 A complainant can appeal a decision to restrict contact. The appeal will be considered by a Director or designated senior manager who has not been involved in the original decision. They will advise the complainant in writing whether the restricted contact arrangements still apply or a different course of action has been agreed.

## **6. RECORDING AND REVIEWING DECISIONS**

- 6.1 When it is decided to restrict contact, a note will be sent to all departments involved and a record made on the persons file and any relevant computer records.
- 6.2 Any further correspondence from the complainant will still be read to pick up any significant new information.
- 6.3 If the complainant makes any new complaints about new issues these will be treated on their merits and a decision will have to be made by the manager whether any restrictions, which have been applied before, are still appropriate or necessary.
- 6.4 A decision to restrict contact may be reconsidered if the complainant demonstrates a more acceptable approach.



# **PORTSMOUTH CITY COUNCIL CORPORATE COMPENSATION POLICY**

**March 2008**

**Tanya Cohman  
Housing Complaints Manager**

## **DRAFT**

### **PORTSMOUTH CITY COUNCIL**

#### **COMPENSATION POLICY**

##### **1. The principle of the policy**

The Local Government Act 2000 (Part V 92) gives clear powers to pay compensation where it is considered action taken by us (or on our behalf) amounts to, or may amount to, maladministration.

It is considered that the payment of compensation can provide benefit to:

- a customer adversely affected by maladministration that may arise from our actions or our failure to act; and
- all our customers by empowering officers to resolve complaints, at the earliest opportunity, without the costly intervention of the Ombudsman or the courts.

Where possible a remedy will be applied that puts the complainant back in the position that he or she would have been but for the maladministration arising from our action or lack of action. It is recognised that we need to consider the payment of compensation if the complainant has sustained loss or suffering.

The payment of compensation does not affect Portsmouth City Council's liability when dealing with any claims of negligence.

##### **2. The consideration of compensation**

The payment of compensation will be considered where the investigation of the complaint finds that:

- action taken on behalf of the authority amounts to or may amount to maladministration and
- a person has been or may have been adversely affected by that action.

##### **3. The calculation of compensation**

If it is agreed that compensation is due, any payments will be in line with the guidance issued by the Local Government Ombudsman and are subject to the council's financial regulations. Detailed advice on the calculation is available on the Local Government Ombudsman's Remedies: "Guidance on good practice".

##### **4. Authorisation of the payment of compensation**

The ability to authorise compensation payments will be strictly controlled and monitored. Section heads and service managers will be able to authorise payments up to £250. Service will finance compensation payments.

## **5. Monitoring the payment of compensation**

The amount of each compensation payment will be recorded onto the Corporate Complaints Database with following information:

- The authorising officer
- The reasons for payment
- How much compensation has been paid.

Each service will ensure that the information is recorded onto the database and will provide a report on a quarterly basis to section heads.

## **6. Exceptions to the compensation policy**

The compensation policy will only be applied to complaints handled by the Corporate Complaints Policy. The compensation policy does not apply to:

- Matters subject to current legal action
- Any settlement of court proceedings
- Disputes about matters covered by our insurance policies
- Any settlement of an insurance claim

## **7. Offsetting compensation against an outstanding debt**

Where appropriate the compensation will be used to reduce or clear an outstanding debt. Compensation will not be used to offset a debt where the complainant has a legitimate dispute about the debt or where the compensation payment is for a specific purpose (e.g. replace damaged possessions).

## **8. Alternative forms of compensation**

Where appropriate the guidance will promote the use of non-monetary remedies, provide advice relevant to service areas and promote good practice in the speedy resolution of complaints.

## **9. Statement to be included in all correspondence**

The following statement should be included in all correspondence that acknowledges a payment as compensation.

“The payment of compensation in this case should not be considered to an admission of legal liability on the part of the Council in the event that you may subsequently decide to take legal proceedings as a result of this complaint.”

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Tanya Cohman  
Complaints Project Officer