

Draft Persistent or vexatious complaints and complainants policy

June 2015

Rachel-Marie Wilson
Corporate Complaints and FOI Officer

Contents

Contents	2
1. Introduction	3
2. Definition of unreasonable and unreasonably persistent complainants	3
3. Examples of unreasonable actions and behaviours.....	4
4. Vexatious Complainants	4
5. Managing persistent complainants	6
6. Deciding to restrict complainant contact	6
8. Appealing a decision to restrict contact	7
9. Recording and reviewing decisions	7
10. Record keeping.....	7

DRAFT

1. Introduction

- 1.1. Complaints about Portsmouth City Council are processed in accordance with the corporate complaints policy. 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 contact and submission of information; they can 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 unreasonable or unreasonably 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 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 councillors. Guidance on how to proceed with a complaint about a councillor can be found on www.portsmouth.gov.uk

2. Definition of unreasonable and unreasonably persistent complainants

- 2.1. *It is important to distinguish between 'persistent' complainants and 'unreasonably persistent' complainants. People pursuing their complaint are 'persistent' because they feel the council has not dealt with their complaint properly and are not prepared to leave the matter.*
- 2.2. *Unreasonable and unreasonably persistent complainants are those complainants who, because of the nature or frequency of their contacts with the council, hinder the council's consideration of their or other people's complaints.*
- 2.3. Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but are pursuing them in inappropriate ways. Others may pursue complaints which appear to have no substance or which have already been investigated and determined. Their contact with the council may be amicable but still place heavy demands on staff time, or they may be very emotionally charged and this can be 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.
- 2.5. *Very occasionally complainants also act deceitfully by forging documents, making covert recordings of meetings, adopting false identities and so on. Such behaviour is unacceptable and managing it can become a distraction from consideration of the original substance of the complaint.*

3. Examples of unreasonable actions and behaviours

3.1. *These are some of the actions and behaviours which can be problematic. 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 assistance.*
- *Refusing to co-operate with the complaints investigation process.*
- *Refusing to accept that certain issues are not within the scope of the 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 numerous, detailed but unimportant questions; insisting they are all answered.*
- *Covertly recording meetings and conversations.*
- *Submitting falsified documents from themselves or others.*
- *Adopting a 'scatter gun' approach: pursuing parallel complaints on the same issue through a variety of channels.*
- *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 that the complainant insists make these 'new' complaints.*
- *Refusing to accept the decision; repeatedly arguing points with no new evidence.*

4. Vexatious Complainants

4.1. Someone who causes or is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

4.2. 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 appears 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/ local police/solicitors/the Ombudsman.
- Combination of some or all of these.

4.3. 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.

5. Managing persistent complainants

- 5.1. If a complainant's persistence adversely affects the council's ability to do its work and provide a service to others, the council may need to manage their unacceptable behaviour by restricting their contact.
- 5.2. Any restrictions applied will be appropriate and proportionate to the nature of the complainant's contacts with the council at that time, such as:
- 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).
 - 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.
- 5.3. Wherever possible the council will seek to apply restrictions in a way which will allow a complaint to progress to completion through the complaints process.

6. Deciding to restrict complainant contact

- 6.1. Before making any decision to restrict contact the complainant will be warned that, if the specified behaviour or actions continue, it will consider applying some or all of the restrictions set out at 5.2.
- 6.2. Decisions about applying this policy will only be taken after careful consideration of the situation by the head of service.
- 6.3. The head of service 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
 - *the complainant is not now providing any significant new information that might affect the council's view on the complaint.*
- 6.4. 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.
- 6.5. Where this policy is applied the complainant will be sent a copy of the policy and told in writing why:
- a decision has been made to restrict future contact;
 - any restricted contact arrangements:
 - the length of time that these restrictions will be in place, and

- what they can do to have the decision reviewed.

7. Considerations prior to taking action under the policy

7.1 When it is necessary to designate the complainant as behaving unreasonably the following actions may be deemed appropriate;

- *Offering the complainant a meeting with an officer of appropriate seniority to explore the scope for a resolution of the complaint and explain why their current behaviour is seen as unreasonable.*
- *Sharing the 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-service approach.*
- *Designating a key officer to co-ordinate the council's response(s).*
- *Helping the complainant to find a suitable independent advocate, especially if the complainant has different needs.*

8. Appealing a decision to restrict contact

8.1. A complainant can appeal a decision to restrict contact. The appeal will be considered by a strategic director or head of service 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.

9. Recording and reviewing decisions

- 10.1 When it is decided to restrict contact, a note will be sent to all services involved and a record made on the persons file and any relevant computer records.
- 10.2 Any further correspondence from the complainant will still be read to pick up any significant new information.
- 10.3 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.
- 10.4 A decision to restrict contact may be reconsidered if the complainant demonstrates a more acceptable approach.
- 10.5 *The decision to impose a restriction will be reviewed by the date advised to the complainant. Restrictions should be lifted and relationships returned to normal unless there are good grounds to extend the restrictions. The complainant will be informed of the outcome of the review.*
- 10.6 *If restrictions are to continue the complainant will be advised of the reasons and when the restrictions will next be reviewed.*

10. Record keeping

- 11.1 *Adequate records will be retained by the appropriate service manager of the details of the case and the action that has been taken.*
- 11.2 *The corporate complaints service must be advised:*

- *The name and address of each complainant who is treated as abusive, vexatious or persistent;*
- *When the restriction came into force and the end date;*
- *What the restrictions are;*
- *When the customer and departments were advised, and*
- *The results of any review(s).*

DRAFT