

## Highworth Town Council

### Policy on dealing with ‘unreasonably persistent’ complaints and ‘unreasonable complainant behaviour’

#### **1. Introduction**

- 1.1 Highworth Town Council is committed to dealing with all complaints equitably, comprehensively, and in a timely manner. Usually dealing with complaints is a straightforward process, but in a minority of cases complainants pursue their cases in a way that can impede the investigation of their complaint or have significant resource issues for Highworth Town Council. This can happen either while their complaint is being investigated, or once the Council has finished dealing with the complaint.
- 1.2 The aim of this policy is to help Highworth Town Council deal with unreasonably persistent complaints and unreasonable complainant behaviour in ways that are consistent and fair. It lets staff, customers and the public know what we consider to be unreasonable complainant behaviour. It sets out what is expected of staff when they are confronted by such behaviour, what options are available, and who can authorise the options.
- 1.3 Raising legitimate queries or criticisms of the progress of a complaint, for example if agreed timescales are not met, should not in itself lead to someone being regarded as an unreasonable persistent or unreasonably behaved.
- 1.4 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 labeled unreasonably persistent or unreasonably behaved.

#### **2. Definitions**

- 2.1 We have adopted the Local Government Ombudsman’s (LGO) definition of “unreasonable complainant behaviour” and “unreasonable persistent complaints”.
- 2.2 In summary unreasonably persistent complaints and unreasonable complainant behaviour occur in situations where complainants who, because of the frequency or nature of their contacts with The Council, hinder its consideration of their or other peoples complaints. The description ‘unreasonably persistent’ and unreasonable complainant behavior’ may apply separately or jointly to a particular complainant.
- 2.3 Examples include the way or frequency that complainants raise their complaint with staff, or how complainants respond when informed of our decision about the complaint. Appendix 1 lists a range of situations The Council may consider to be examples of unreasonably persistent complaints or unreasonable behaviour.

#### **3. Threatening or abusive behavior**

- 3.1 We do not expect staff to tolerate threatening or abusive behavior by complainants and we will take action to protect staff from such behaviour.
- 3.2 Where the behaviour is so extreme that it threatens the safety and welfare of staff, other options may also be considered, for example reporting the matter to the police or taking legal action. In cases of imminent risk, we may not give the complainant prior warning of that action.

#### **4. Considerations to be made before taking action to restrict access**

- 4.1 All complainants have the right to have their complaint investigated. Staff should ensure that the complaints procedure has been exhausted – ended at a point that is appropriate to each case – and the complainant notified as such. It should be ensured that no material element has been overlooked or inadequately addressed.
- 4.2 If no meeting has taken place between the complainant and officers, and provided The Council knows nothing about the complainant that would make this inadvisable, considerations should be given to offering the complainant a meeting with The Town Clerk. Sometimes meetings can dispel misunderstandings and move matters to a resolution.
- 4.3 The decision to designate someone as falling within the definitions of the policy should not be taken lightly as it could have serious consequences for the individual. Before deciding that restrictions be applied, the Town Clerk must be satisfied that:
- The complaint has been investigated properly
  - Any decision that has been reached is the right one
  - Communications with the complainant have been adequate
  - The Complainant is not providing any significant new information that might affect the authorities view on the complainant.
- 4.4 If these conditions have been satisfied and 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 complainant to the Ombudsman.

#### **5. Options for action in response to unreasonably persistent complaints or unreasonable complainant behaviour**

- 5.1 In the first instance the Town Clerk will contact the complaint either by phone, in writing or email to explain why this behaviour is causing concern. The Town Clerk will explain the actions that Highworth Town Council may take if the behaviour does not change.
- 5.2 If the disruptive behaviour continues, the Town Clerk will issue a letter to the complainant advising them that their contact with The Council may be restricted.
- 5.3 Any decision to restrict will be made by the Town Clerk.
- 5.4 Any restriction that is imposed on the complainants contact will be appropriate and proportionate and the complainant will be advised of the period of time the restriction will be in place for. The Town Clerk should consider what period is appropriate; however in most cases a relatively short period e.g. 3 to 6 months should be adequate. In more serious cases an extended period may be considered, in such cases the restrictions would be reviewed on a quarterly basis.
- 5.5 Restrictions will be tailored to deal with the individual circumstances of the complainant and may include:
- Banning the complainant from making contact by telephone except through a third party e.g. solicitor/Councillor/ or friend acting on their behalf
  - Banning the complainant from communicating with the council by email
  - Banning the complainant from accessing any council building except by appointment
  - Restricting calls to specified days/times/duration
  - Informing the complainant that further contact on the matter of the complaint will not be acknowledged or replied to. (In this case, a designated member of staff should be identified who will read future correspondence)

5.6 When the decision has been taken to apply this policy to a complainant, the Town Clerk will write a decision letter to the complainant explaining:

- Why we have taken the decision
- What action we are taking
- The duration of that action
- The review process of this policy, and
- The right of the complainant to contact the Local Government Ombudsman about the fact that they have been treated as a vexatious/persistent complainant.

5.7 The Town Clerk will enclose a copy of this policy in the letter to the complainant.

5.8 Where a complainant continues to behave in a way which is unacceptable, the Town Clerk may decide to refuse all contact with the complainant and stop any investigation into his/her complaint.

## **6. New complaints from unreasonably persistent or unreasonable complainants**

6.1 New complaints from people who have come under this policy will be treated on their merits. The Town Clerk will decide whether any restrictions which have been applied before are still appropriate and necessary in relation to the new complaint. We do not support a “blanket policy” of ignoring genuine service requests or complaints where they are founded.

6.2 The fact that a complainant is judged to have behaved unreasonably or is being unreasonably persistent, and restrictions have been imposed on him/her will be recorded.

## **7. Review**

7.1 The status of a complainant judged to be unreasonably behaved or unreasonably persistent will be reviewed by the Town Clerk in consultation with the Full Council after three months and at the end of every subsequent three months within the period during which the policy is to apply.

7.2 The complainant will be informed of the result of this review if the decision to apply this policy them has been changed or extended.

## **8. Referring unreasonably persistent or unreasonable complainants to the Local Government Ombudsman.**

8.1 In some cases, relations between the Council and unreasonably persistent or unreasonable complainants may break down completely while complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances, there may be little purpose in following all the stages of the complaints procedure. Where this occurs the Ombudsman may be prepared to consider a complaint before the procedure has run its course.

## **9. Record Keeping**

9.1 Adequate records will be retained by Highworth Town Council, details of the case and the actions that have been taken. Highworth Town Council will retain a record of:

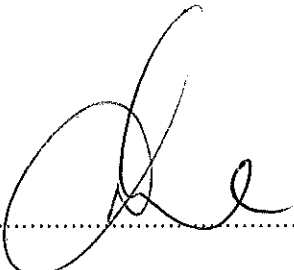
- The name and address of each customer who is treated as unreasonably behaved or unreasonably persistent
- When the restriction came into force and ends
- What the restrictions are
- When the customer and Full Council were advised

## Appendix 1

Unreasonably persistent complaints and unreasonable complainant behaviour includes what is listed below. This list is not exhaustive, nor does one single feature on its own necessarily imply that the person will be considered as being in this category. It may include:

- Have insufficient or no grounds for their complaint and be making the complaint only to annoy (or for reasons that he or she does not admit or make obvious)
- Refuse to specify the grounds of a complaint despite offers of assistance
- Refuse to co-operate with the complaints investigation process while still wishing their complaint be resolved
- Refuse to accept that issues are not within the remit of the complaints policy and procedure despite having been provided with information about the scope of the policy and procedure (e.g. parking tickets and planning appeals)
- Refuse to accept that issues are not within the power of the Council to investigate, change or influence (examples could be a complaint about a private car park, or something that is the responsibility of another organisation)
- Insist on the complainant being dealt with in ways which are incompatible with the complaints procedure or with good practice (insisting, for instance, that there must not be any written record of the complaint)
- Make what appears to be groundless complaints about the staff dealing with complaints, and seek to have them dismissed or replaced
- Make an unreasonable number of contacts with us, by any means in relation to a specific complaint or complaints
- Make persistent and unreasonable demands or expectations of staff and/or the complaints process after the unreasonableness has been explained to the complainant (an example of this could be a complaint who insists on immediate responses to numerous, frequent and/or complex letters, faxes, telephone calls or emails)
- Harass or verbally abuse or otherwise seek to intimidate staff dealing with their complaint, in relation to their complaint by use of foul or inappropriate language or by the use of offensive and racist language
- Raise subsidiary or new issues whilst a complaint is being addressed that were not part of the complaint at the start of the complaint process
- Introduce trivial or irrelevant new information whilst the complaint is being investigated and expect this to be taken into account and commented on
- Change the substance or basis of the complaint without reasonable justification whilst the complaint is being addressed
- Deny statements he or she made at an earlier stage in the complaint process
- Electronically record meetings and conversations without the prior knowledge and consent of the other person involved
- Adopt an excessively 'scattergun' approach, for instance, pursuing a complaint or complaints not only with the council, but at the same time with a member of parliament, other councils, elected councils of this and other councils, the councils independent auditor, the standards board, the Police, Solicitors, and the Local Government Ombudsman
- Refuse to accept the outcome of the complaint process after its conclusion, repeatedly arguing the point, complaining about the outcome, and/or denying that an adequate response has been given

- Make the same complaint repeatedly, perhaps with minor differences, after the complaints procedure has been concluded, and insist that the minor differences make these 'new' complaints which should be put through the full complaints procedure
- Persistently approach the council through different routes about the same issue
- Persist in seeking an outcome which we have explained is unrealistic for legal or policy (or other valid) reasons
- Complain about or challenge an issue based on a historic and irreversible decision or incident
- Combine some or all of these features

Signed.....  ..... Print Name..... DAVID LANG.....

Position in Highworth Town Council..... TOWN CLERK.....

Date..... 11 July 2017.....

To be reviewed..... 2021.....

## Appendix 2

# Local Government & Social Care **OMBUDSMAN**

## **Guidance on managing unreasonable complainant behaviour**

### **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.

