

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

1. Introduction

- 1.1. Ealing Council is committed to dealing with all complaints equitably, comprehensively, and in a timely manner. The Council will make every effort to deal with its complainants consistently and fairly. However, there are certain situations where the behaviour of a complainant/customer will not be tolerated.
- 1.2. A complaint can be made using the online portal, in writing, via email, by telephone or in person. All complaints are managed through the council's CRM (Customer Relationship Management System)
- 1.3. 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 the Council. This can happen either while their complaint is being investigated, or once the Council has concluded the complaint.
- 1.4. Equally, the Council has a duty of care towards its staff. The impact on staff members, and the Council, of any unreasonably persistent complaints or unreasonable behaviour shall be considered when applying this policy. This policy and guidance should be read in conjunction with other Council policies including the Health and Safety Policy.
- 1.5. This policy and guidance cover all corporate complaints made to the Council. Adults and Children's Services have their own statutory complaints policy and procedure in which this policy should be referred to.
- 1.6. The aim of this policy is to help the Council deal with unreasonably persistent complaints and unreasonable complainant behaviour in ways that are demonstrably consistent and fair. It lets staff and customers 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.
- 1.7. 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 unreasonably persistent or unreasonably behaved.

- 1.8. 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 or unreasonably behaved.
- 1.9. The Council must also ensure that the appropriate route has been advised to complainants. The Council's complaint's policy reflects that where legal proceedings have been started or are threatened that the complaints policy will not apply. Nevertheless, where legal proceedings are threatened but not issued within a reasonable amount of time, but the complainant behaviour continues, this unreasonably persistent and unreasonable complainant behaviour policy can still apply.
- 1.10. Legal advice should be sought in specific cases and where formal legal steps to address the behaviour are considered necessary. For example, this may be in cases where there is possible defamation or serious and persistent harassment which would require an injunction or a criminal prosecution under the Protection from Harassment Act 1997. At the time of any conviction the council may also seek a restraining order against the perpetrator prohibiting any contact direct or indirect with named individuals being harassed. The police should be contacted immediately whenever there is an immediate threat to an individual's health and safety.

2. Definitions

- 2.1 We have adopted the Local Government Ombudsman's (LGO) definition of "*unreasonable complainant behaviour*" and "*unreasonably persistent behaviour*."
- 2.2 In summary unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with the council, hinder our consideration of their or other people's complaints or enquiries. The description 'unreasonably persistent' and 'unreasonable complainant behaviour' may apply separately or jointly to a particular complainant.
- 2.3 Unreasonable complainant behaviour may include one or two isolated incidents. Unreasonably persistent behaviour is usually a build-up of incidents or behaviour over a longer period.

- 2.4 The context of the complaint, the complainant and the Council will be relevant factors to consider when determining what is a reasonable action to take. 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 behaviour

- 3.1 We do not expect staff to tolerate threatening or abusive behaviour by complainants and we will take action to protect staff from such behaviour. If staff experience threatening or abusive behaviour, they must report the incident to their manager. It is the responsibility of the manager to ensure that an incident form is completed with the member of staff (insert link) with the appropriate investigation carried out as required.
- 3.2 The manager should check with Health and Safety to see if the complainant is already known and consider whether it is appropriate to send a warning letter to the complainant regarding their behaviour. This must be agreed and signed by the appropriate Director/Assistant Director. Please see attached template letters to be used. **(Insert letter)**
- 3.3 If it is considered that the complainant could or does pose a risk to the health and/or safety of an employee, then the complainant should be added to the Cautionary Contact Database (CCD). The manager should complete the relevant form to be authorised by the relevant Director or their representative for the complainant to be added to the CCD. This step may be taken at any stage of the process described in this document.
- 3.4 Where the behaviour threatens the safety and welfare of staff, other options must 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 warning of that action. The CCD policy will outline examples of behaviour which may require police intervention.
- 3.5 Once a complaint has been added to either the CRM or the CCD, steps will be taken to ensure all relevant systems are updated to ensure any staff dealing with customer contact can identify the actions and restrictions that have taken place.

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 Managers should check the CRM or contact the Director of Customer and Transactional Services to see if the complainant is already known to have restrictions in place.
- 4.3 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, consideration should be given to offering the complainant a meeting with an officer of appropriate seniority. Sometimes meetings can dispel misunderstandings and move matters to a resolution.
- 4.4 The Council will always consider whether any proposed action is proportionate and necessary.
- 4.5 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 are proportionate and necessary be applied, the relevant Strategic Director/Assistant Director must be satisfied:
- The complaint has been investigated properly in accordance with the Council's relevant procedure for investigating complaints
 - Any decision that has been reached is a reasonable one
 - Communications with the complainant have been adequate, clear, and timely
 - Has consideration been given to the possibility of mental health problems, learning disabilities, or personality disorders?
 - The complainant is not providing any significant new information that might affect the authority's view on the complaint.
- 4.6 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 on that matter and where appropriate referring the complainant to the Ombudsman.
- 4.7 In any case where there is evidence, or grounds to suspect, that the complainant's behaviour arises because of a mental health condition, it is essential that regard is had to Appendix 2 before any further steps are taken.

4.8 When considering pursuing action under this policy the Council shall consider what action is appropriate balanced against the rights of the individual. When considering what action might be necessary and proportionate the Council must meet its legal duties under the Equality Act 2010 and related legislation. An Equality Act analysis is recommended to be carried out. See Appendix 2.

4.9 In summary the Council when exercising its functions must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- The general equality duty covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- Evidence of an impairment which could restrict the use of a particular communications medium must be considered and may alter a decision.

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

5.1 Immediate consideration should be given by the service manager whether the Council officer originally involved in the complaint/s, or the subject of the complaint/s, should be expected to continue in any direct role with the complainant. The impact on the Council officer, the complainant and the complaint shall all be considered.

5.2 Following this, the service manager will consult with the relevant Director/Assistant Director responsible for the service area prior to issuing a warning to the complainant. The service manager will contact the complainant by phone, in writing or by email to explain why this behaviour is causing concern (see attached template letter). The service manager will explain the actions that the Council may take if the behaviour does not change.

- 5.3 If the disruptive behaviour continues, the relevant Director/ Assistant Director will issue a letter to the complainant advising them that their contact with the Council may be restricted.
- 5.4 Any decision to restrict will be made by the relevant Director/ Assistant Director.
- 5.5 The relevant Director/Assistant Director will keep the Director of Customer and Transactional Services informed of any decisions made and ensure that the decision is recorded on the CRM with all relevant information recorded.
- 5.6 Any restriction that is imposed on the complainant's contact will be necessary and proportionate and the complainant will be advised of the period the restriction will be in place for. The Director should consider what period is appropriate, however, in most cases a relatively short period no longer than 6 months should be adequate. In more serious cases an extended period may be considered, but in all cases, there must be a specified review date, and restrictions should never be open-ended. In such cases the restrictions would be reviewed on a quarterly basis. The review date should be recorded on the CRM which will remind the service when the review is due.
- 5.7 Restrictions will be tailored as necessary 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/ friend acting on their behalf
 - Banning the complainant from communicating with the council by email / telephone
 - Limiting or regulating the complainant's use of the council's services e.g., libraries or leisure centres
 - Banning the complainant from accessing any council building except by appointment
 - Requiring contact to take place with one named member of staff only
 - Restricting telephone calls to specified days / times / duration
 - Requiring any personal contact to take place in the presence of an appropriate witness
 - Technical diverts of emails to the one designated point of contact

if restrictions are ignored. Contact IT support to action

- 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 to ensure essential services are delivered)

5.8 When the decision has been taken to apply this policy to a complainant, the Director or their representative 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.

5.9 The Director will enclose a copy of this policy in the letter to the complainant.

5.10 The fact that a complainant is judged to have behaved unreasonably or is being unreasonably persistent, and restrictions have been imposed on him or her, will be recorded by the appropriate Assistant Director or Director in the CRM.

5.11 Where a complainant continues to behave in a way which is unacceptable, the Director in consultation with the Strategic Director, may decide to refuse all contact with the complainant and stop any investigation into his or her complaint, it may be appropriate to take legal advice at this point.

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 Director/ Assistant Director in charge of the relevant service will, following consultation with the Director of Customer and Transactional Services, decide whether any restrictions which have been applied before are still appropriate and necessary in relation to the new complaint. The Council does not support a “blanket policy” of ignoring genuine service requests or complaints where they are founded. All contact received must be reviewed and actioned where appropriate.

7. Review

- 7.1 The status of a complainant judged to be unreasonably behaved or unreasonably persistent will be reviewed by relevant Director in consultation with the Director of Customer and Transactional Services 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 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 Director can decide to refer the complainant directly to the Ombudsman who 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 the appropriate service manager of the details of the case and the action that has been taken. These records must include, as a minimum, all correspondence to the complainant warning of, imposing, or reviewing restrictions. Where relevant, the records must also contain any Equality Act assessment carried out.
- 9.2 The relevant service Director will ensure that the CRM is updated with the restriction information to ensure that all officers dealing with complaints are aware of the restriction in place:
- 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 departments were advised

Appendix 1

Unreasonably persistent complaints and unreasonable complainant behaviour includes what is listed below. The 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:

1. Have insufficient or no grounds for their complaint and be making the complaint only to annoy (or for reasons that the complainant does not admit or make obvious)
2. Refuse to specify the grounds of a complaint despite offers of assistance
3. Refuse to co-operate with the complaints investigation process while still wishing their complaint to be resolved
4. 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 ticket and planning appeals)
5. 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)
6. Insist on the complaint 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)
7. Make what appears to be groundless complaints about the staff dealing with the complaints, and seek to have them dismissed or replaced
8. Make an unreasonable number of contacts, by any means in relation to a specific complaint or complaints
9. 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 complainant who insists on immediate responses to numerous, frequent and/or complex letters, telephone calls or emails)
10. 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 using offensive and racist language
11. 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
12. Introduce trivial or irrelevant new information whilst the complaint is being investigated and expect this to be considered and commented on
13. Change the substance or basis of the complaint without

reasonable justification whilst the complaint is being addressed

14. 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
15. 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 councillors of this and other councils, the council's independent auditor, the police, solicitors, and the Local Government Ombudsman
16. 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
17. Make the same complaint repeatedly, 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
18. Persistently approach the council through different routes about the same issue
19. Persist in seeking an outcome which we have explained is unrealistic for legal or policy (or other valid) reasons
20. Complain about or challenge an issue based on a historic and irreversible decision or incident
21. Introduction of trivial or irrelevant new information and expecting it to be considered and commented on, or raising large numbers of detailed but unimportant questions and insisting they are all fully answered.
22. Making excessive demands on the time and resources of staff whilst the complaint is being investigated e.g., excessive telephoning or sending e-mails to numerous Council staff, writing lengthy complex letters every few days and expecting immediate responses.

Appendix 2

In some cases, unreasonable behaviour may be, either in whole or in part, a manifestation of a complainant's mental health conditions. For example, someone with paranoid personality disorder or paranoid schizophrenia may persistently accuse the Council and/or Council staff of persecuting them where there is no rational basis for this.

Not every mental health condition will necessarily amount to a disability. However, it is important that staff are alive to the possibility of this. Where disability is either known or suspected, any actions taken by the Council must comply with the Equality Act 2010 ("the Act"), and so this will need special consideration.

This appendix sets out some key principles from the Act, and some considerations for staff deciding how to treat a complainant who is or may be disabled.

Key principles

Disability is defined in section 6 of the Act as a physical or mental impairment which has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities.

Under section 15 of the Act, the Council may not treat a complainant unfavourably because of something arising in consequence of their disability unless this is a proportionate means of achieving a legitimate aim. For the avoidance of doubt, the Council considers that protecting staff from threatening or abusive behaviour and preventing complainants from hindering consideration of their own or other peoples' complaints & enquiries, will always be legitimate aims. However, it is important to ensure that lesser steps to achieve this are considered before more extreme ones.

Under section 20 of the Act, the Council will have to consider whether anything in this policy could amount to a practice which would put a disabled person at a disadvantage compared to a person who is not disabled, and if so, to take reasonable steps to avoid that disadvantage. For the avoidance of doubt, it will never be reasonable to allow someone to harass or threaten Council staff, or to hinder consideration of their own or other peoples' complaints and enquiries. However, depending on the circumstances, there may be modifications to this policy which are appropriate in some cases.

Section 149 of the Act, the "Public Sector Equality Duty" ("PSED") states that:

(1) A public authority must, in the exercise of its functions, have due regard to the needs to:

(a) eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act;

- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (3) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include steps to take account of disabled persons' disabilities.

The PSED (Public Sector Equality Duty) requires the Council to have “due regard” to the above needs. It is for the decision-maker to decide in each case how to implement that. However, it is important to make sure that this is done genuinely, with an open mind, and documented.

Practical steps

In some cases, it may be either known or obvious that a complainant is disabled. However, in many cases, it may not be clear. The decision-maker should consider what inquiries can be made. Depending on the complainant, it may be possible to ask them directly. Social Services can also be approached to find out whether this person is known to them.

Consideration should be given to whether a complainant can be signposted to relevant support services.

In some instances, a complainant's behaviour, caused by mental health conditions, may be so extreme that it could cast doubt on whether they have capacity to comply with any restrictions and conduct their own correspondence with the Council. In such a case, advice should be sought from Social Services and/or Legal Services, as specialist input will be required.