

# **West Sussex County Council**

## **Procedure and Guidance on Handling Unreasonably Persistent Complainants and Unacceptable Behaviour**

### **Introduction**

The aim of the County Council's complaints procedure is to provide our customers with a fair, objective and consistent process that will resolve the complaint as quickly as possible. If they remain dissatisfied with the response we will tell the customer how they can appeal against our decision and take matters further. However, the County Council also has an obligation to use resources efficiently and effectively and there may be occasions where the Council will decide that a complainant is demonstrating behaviour which is unreasonably persistent or unacceptable.

### **Aim of Guidance**

The aim of this guidance is:

- To provide definitions of unreasonably persistent complainants and unacceptable behaviour
- To provide a corporate approach to respond fairly to such behaviour
- To ensure that other service users, County Council staff or the County Council do not suffer any detriment from people making unreasonably persistent complaints or behaving in an unacceptable way
- To recognise the rights of complainants under the Human Rights Act 1998 and other relevant sources.

### **Section A – Handling Unreasonable or Unreasonably Persistent Complainants**

#### **1. Definition of an Unreasonable or Unreasonably Persistent Complainant**

For the purpose of this guidance, **unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with us, cause or are likely to cause excessive and disproportionate demands upon staff, elected Members, or resources or cause offence or distress.**

It is important to differentiate between 'persistent' and 'unreasonably persistent' complainants. Many of the people who submit complaints are 'persistent' on the entirely reasonable basis that they feel the County Council has not dealt with their complaint properly and are not prepared to leave the matter there.

Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but be pursuing them in inappropriate ways, or they may be intent on pursuing complaints which have no substance, or which have already been investigated and determined. Their contacts with the Council may be amicable but still place very heavy demands on staff and/or Member time.

Sometimes the person's behaviour is or becomes unacceptable, for example, abusive, offensive or threatening. This is dealt with at the end of this guidance.

For the purposes of this procedure, complainants may be deemed unreasonably persistent if they demonstrate one or more of the following behaviours:

- a) Continuing to pursue a complaint where the County Council's complaints procedure has been fully and properly implemented and exhausted, or where the substance of the complaint has been fully aired in another forum (including complaints panels). This includes seeking an unrealistic outcome for the complaint.
- b) Submitting repeat complaints, after complaints processes have been completed, about the same issues, or with additions/variations which the complainant insists make these 'new' complaints.
- c) Refusing to accept the complaint outcome – repeatedly arguing the point and complaining about the decision.
- d) Refusing to specify the grounds of a complaint, despite offers of assistance with this from the authority's staff.
- e) Refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved.
- f) Insisting on the complaint being dealt with in ways that are incompatible with the adopted complaints procedure or with good practice.
- g) Making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have the complaint dealt with by others or through a different route.
- h) Having an excessive number of contacts with County Council staff and/or Members while a complaint is being looked into – placing unreasonable demands on staff and/or Members, such as repeated or lengthy 'phone calls, requests for personal interviews or lengthy or frequent correspondence.
- i) Changing the substance of a complaint or continually raising new issues whilst the complaint is being investigated, or raising large numbers of detailed points and insisting they are all fully answered.
- j) Raising a very large number of complaints which, upon investigation cannot be substantiated.
- k) Adopting a 'scattergun' approach: pursuing a complaint or complaints with different internal and/or external persons or organisations at the same time or generating concurrent enquiries about the same matter.
- l) Denying receiving an adequate response in spite of correspondence specifically responding to their complaint.

## **2. Dealing with Unreasonably Persistent Complainants**

It is emphasised that this approach should be used only after all reasonable measures have been taken to try to resolve a complaint by following the West Sussex County Council complaints procedure. **The Customer Relations Manager or Complaints and Representations Manager should always be involved.**

A complainant may be identified as unreasonably persistent at any stage of the complaints procedure and action should be determined by the seriousness of the conduct **not** the stage it has reached in the complaints procedure. In exceptional cases the steps below may be combined.

### 3. Prior to taking action

Where officers and/or Members identify that they may be dealing with an unreasonably persistent complainant in accordance with the above criteria, the case should be referred as soon as possible to the Head of Service or Director relevant to the subject matter of the complaint. Before deciding whether the procedure should be applied the Head of Service or Director should be satisfied that:

- the complaint is being or has been investigated properly;
- any decision taken has been in accordance with the complaints policy;
- communications with the complainant have been appropriate; and
- the complainant is not now providing any significant new information that might affect the County Council's view on the complaint.

If satisfied on these points, he or she should consider whether further action is necessary prior to taking the decision to designate the complainant as unreasonable or unreasonably persistent. Examples might be:

- 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 unadvisable, consider offering the complainant a meeting with an officer of appropriate seniority. Sometimes such meetings can dispel misunderstandings and move matters towards a resolution.
- If more than one directorate is being contacted by an unreasonably persistent complainant, consider:
  - setting up a strategy meeting to agree a joint approach; and
  - designating a key officer to co-ordinate the County Council's response(s).
- If the complainant has special needs, an advocate might be helpful to both parties: consider offering to help the complainant find an independent one.

### 4. Action

**Step 1 - Warning** Before applying any restrictions give the complainant a warning that if his/her actions continue the Council may decide to treat him/her as an unreasonably persistent complainant and explain why. If, following the warning, the complainant ceases his/her actions then no further steps are necessary. If the complainant resumes or repeats his/her actions, then consideration should be given as to whether a reminder would be appropriate before moving to the next steps. The time-period between warning and resumption of the actions will be an important factor in these considerations.

**Step 2 – Designate as unreasonable and impose restrictions** The action to take in relation to an unreasonable or unreasonably persistent complainant should be appropriate and proportionate to the nature and frequency of behaviour. The following list is a 'menu' of possible options for managing a complainant's involvement from which one or more might be chosen and applied, **if warranted**. It is not exhaustive and often local factors will be relevant in deciding what might be appropriate action:

1. To withdraw or restrict contact with the complainant either in person, by telephone, by letter/e-mail or any combination of these. One form of contact must always be maintained with the complainant, although this may be restricted e.g. the complainant could be notified that telephone calls will be taken only at specific times of specific days and may be time-limited, that correspondence must be in writing, or that only a nominated staff member will deal with their calls in the future and any appointments must be made with that nominated member of staff.
2. To notify the person that no further action on the complaint (whether completed or not) will be taken. In appropriate cases this will be combined with 5 below.
3. To inform the person that contact will be made only through a legal or other representative nominated by the complainant
4. To inform the complainant that contact will not be made with their current representative where that person is the cause of concern.
5. To notify the complainant that they have the right to refer the matter to the Local Government Ombudsman's office (and to supply the relevant form) or other appellate body such as the Information Commissioner.

If, after due warning, the Head of Service or Director decides to designate the complainant as unreasonably persistent, inform the complainant clearly and promptly in writing:

- that the decision has been taken;
- the reasons for it;
- what it means for his or her contacts with the County Council;
- how long any restrictions will last; and

that they have the right to ask the Local Government and Social Care Ombudsman to consider the Council's decision and actions. The action taken and reasons should be documented in the relevant complaint file and circulated to any other officers and/or Members involved in the complaint. The Chief Executive and other potential contacts (such as Director's PA and Customer Service Centre Manager) should also be informed.

**Step 3 – Further restrictions and/or legal action** If the person continues to contact the County Council and it is clear that they will not accept the County Council's decision on the matter and all appropriate avenues of internal review or appeal have been exhausted, the Head of Service or Director should refer the case to the Chief Executive and Monitoring Officer. They will consider the evidence available and determine what further action to take. At this stage the Chief Executive and Monitoring Officer may decide:

To notify the person in writing that any correspondence received on the same matter will be read and filed but responded to only if the person provides significant, new information relating to their complaint, or raises new issues which, in the County Council's opinion, warrants a new investigation

In exceptional circumstances to take legal action.

The decision will be notified to the complainant in writing. This notification should be copied for information to officers and Members involved in the complaint or likely to be contacted by the complainant.

## **Record of Complainants**

It is the responsibility of the Customer Relations Team to maintain an up to date record of complainants who have been designated unreasonably persistent

## **Further Complaints**

Any further complaints or communication received from an unreasonable or unreasonably persistent complainant must be reviewed by the relevant officers to ensure that it does not contain fresh and relevant information about the original complaint, which would require a further review of the complaint, or a genuine new complaint that deserves a response.

## **5. Withdrawing Unreasonable or Unreasonably Persistent Status**

Once a complainant has been determined as unreasonable or unreasonably persistent there must be a plan to review by the officer taking the original decision to designate and to consider withdrawing this status if a complainant demonstrates a more reasonable approach, or if they submit a further complaint for which the normal complaints procedure would appear appropriate. Where this is the case, discussion will be held with the Chief Executive and Monitoring Officer and, subject to their approval, normal contact with the complainant will then be resumed. The complainant will be advised of this in writing.

## **6. Referring unreasonable and unreasonably persistent complainants to the Local Government and Social Care Ombudsman**

In some cases, relations between the County Council and complainants break down while complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances there is little purpose in following through all stages of the County Council's complaints procedure and, where this occurs, the Ombudsman may be prepared to consider complaints before complaints procedures have been exhausted. This is the case even in respect of statutory complaints procedures. If this option is being considered, the advice of the Customer Relations Manager or Complaints and Representations Manager must be sought.

A complainant who has been designated an unreasonably persistent complainant may make a complaint to the Ombudsman about the way in which he or she has been treated. The Ombudsman is unlikely to be critical of the County Council's action if it can show that the decision has been taken properly and fairly.

## **Section B – Handling Unacceptable Behaviour**

### **7. Definition of and Guidance on unacceptable behaviour**

The County Council does not expect its staff or members to tolerate behaviour by customers that is unacceptable and will take action to protect them from that behaviour. This is defined as:

**Conduct towards County Council staff, elected Members, or others acting on the County Council's behalf** (referred to in this document as

*representatives*) **which is abusive, offensive or threatening, or using or threatening the use of violence or harm to people or property.**

Such behaviour may include:

- harassing or being personally abusive or verbally aggressive towards the Council's representatives
- behaving aggressively or threateningly towards the Council's property, reputation or individual representatives
- targeting high numbers of e-mails or telephone calls to a particular representative or to several representatives, repeating demands or expecting immediate responses on the same or similar issues
- Using communications or social media to make repeated and unwarranted comments about the Council or its representatives so as to cause offence or distress or in order to damage the reputation of the representative or the Council.

Staff must document all instances of such behaviour and report it to their manager, who should assess the risks posed by the behaviour and ensure that any incident of abuse or aggression, including verbal abuse and threats, is reported using the online Incident Reporting Form.

Elected members should retain and document any instances of such behaviour and make the record available to an officer in Democratic Services who will access the Incident Reporting Form and will consider whether to escalate the matter to the Monitoring Officer.

Incidents of this type which take place via email or telephone may be in breach of s127 of the Communications Act 2003, which covers offensive and threatening messages sent over a "public" electronic communications network.

Whether in person or via `phone/email/letter/social media, where the behaviour is an immediate threat to the safety and welfare of staff, it should be reported to the Head of Service who may consider reporting the matter to the police or taking legal action through the Monitoring Officer. In such extreme cases, and after advice from the Monitoring Officer, the Service may choose not to give the complainant prior warning of such action. For members, any such immediate threats to their safety and welfare should be reported direct to the Monitoring Officer or to Democratic Services

It is important to be aware of the cumulative psychological impact of specifically targeted communications. Staff and members should be protected from this sort of harassment which can be personal and damaging. For staff, managers could consider intervening with the sender or re-allocating responsibility so that, in extreme cases, the staff affected can "Block Sender" from their Inbox. Managers should ensure that residents who are contacting the service in this way have had access to the complaints procedure in the first instance so that legitimate concerns can be addressed. Managers should also ensure that staff who are affected in this way are aware of the support available from the Employee Assistance Programme.

Options available to members in dealing with such harassment include blocking emails and referring residents to the Council's complaints procedure. Advice can

be provided by the Monitoring Officer or Democratic Services. Members are also able to access support through the Employee Assistance Programme (and information on this is available to members via the Mine – the Members' Information Network).

Where unacceptable behaviour occurs, the three-step approach outlined above for dealing with unreasonably persistent complainants will be applied. The same considerations and processes shall be used for informing the individual of the decision and for reviewing the decision. *See below for guidance on dealing with unacceptable behaviour during a telephone conversation.*

### **Dealing with unacceptable behaviour during a telephone conversation or other media**

When a caller swears/shouts/talks over/refuses to listen to advice, you should take the following steps:

First chance: "Please refrain from swearing/shouting at/talking over me. If you continue I will not be able to help you".

Second chance: "Please refrain from swearing/shouting at/talking over me. As I have said, if you continue I will not be able to help you and will have to terminate the call"

Third chance: "I am sorry but as you have continued to swear/shout at/talk over me I am not able to help you and I am now going to terminate this call"

*You should immediately document any calls ending in this fashion and refer these to the appropriate senior officer or (for members) Democratic Services.*

Staff and members should try to avoid engaging in further contact or communication with any person who has become abusive or offensive through email or through social media. If such contact persists inspite of discouragement the matter should be reported to a senior officer or, for members, to Democratic Services