

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. 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 finished dealing with the complaint.

1.2 This policy and guidance covers all Corporate complaints made to Ealing Council. Adults and Children’s Services have their own statutory complaints policy and procedure.

1.3 The aim of this policy is to help the Council deal with unreasonably persistent complaints and unreasonable complainant behaviour in ways that are 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.

1.4 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.

1.5 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.

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 our consideration of their or other people's complaints. The description 'unreasonably persistent' and 'unreasonable complainant behaviour' 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 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 suffer from such behaviour they should report the incident to their service manager. If it is considered that the complainant could or does pose a risk to the health and/or safety of an employee then the Cautionary Contact Database (CCD) form must be completed and authorised by the relevant Director. This step may be taken at any stage of the process described in this document.

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, 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.

4.3 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 relevant Director must be satisfied:

- The complaint has been investigated properly
- Any decision that has been reached is the right one
- Communications with the complainant have been adequate
- The complaint is not providing any significant new information that might affect the authority's view on the complaint

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 service manager will consult with the relevant Director responsible for the service area prior to issuing a warning to the complainant. The service manager will contact the complainant either by phone, in writing or by email to explain why this behaviour is causing concern. The service manager will explain the actions that the Council may take if the behaviour does not change.

5.2 If the disruptive behaviour continues, the relevant Director 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 relevant Director

5.4 The relevant Director will keep the Director of Customer Services informed of any decisions made and provide any relevant information for the Director of Customer Services to keep on file.

5.5 Any restriction that is imposed on the complainant's 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 Director should consider what period is appropriate, however, in most cases a relatively short period eg 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.

5.6 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 eg solicitor/ councillor/ friend acting on their behalf
- Banning the complainant from communicating with the council by email
- Limiting or regulating the complainant's use of the council's services eg 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
- 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)

5.7 When the decision has been taken to apply this policy to a complainant, the Director 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.

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

5.9 Where a complainant continues to behave in a way which is unacceptable, the Director in consultation with the Executive Director, may decide to refuse all contact with the complainant and stop any investigation into his or 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 Director in charge of the relevant service will in consultation with the Director of Customer Services 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 or her, will be recorded by the Director of Customer Services.

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 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 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 the appropriate service manager of the details of the case and the action that has been taken. The Director of Customer Services will retain a record of:

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- 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

9.2 The Cabinet Member for Customer and Community Services will be provided with an annual report giving information about customers who have been designated as unreasonably behaved or unreasonably persistent as per this policy.

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:

- 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 to 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 (eg parking ticket 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 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)
- make what appear to be groundless complaints about the staff dealing with the 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 complainant 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 councillors of this and other councils, the council's 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