

# **GUIDANCE ON UNREASONABLY PERSISTENT AND/OR VEXATIOUS COMPLAINANTS**

## **1. INTRODUCTION**

- 1.1 Complaints about Thanet District Council are processed in accordance with the Local Government Ombudsman's guidance on good practice. During this process, Council staff will inevitably come into contact with a small number of complainants who take up an unwarranted amount of Council resources, which could otherwise be spent on Council priorities, or those who impede the investigation of their complaint.
- 1.2 Whilst the Council endeavours to respond with patience and sympathy to the needs of all complainants, there are times where there is nothing further that can be reasonably done to assist or to rectify a real or perceived problem. The aim of this guidance is to identify situations where the complainant could be considered unreasonably persistent and/or vexatious and how to respond to such situations.
- 1.3 This document also reflects the guidance note on unreasonably persistent and unreasonable complainant behaviour, issued by the Local Government Ombudsman in January 2007 and the guidance note on vexatious and repeated requests by the Information Commissioner.
- 1.4 Careful judgement and discretion must be used in applying the criteria to identify potential unreasonably persistent and/or vexatious complainants and in deciding what action to take in specific cases.
- 1.5 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. Also, some complainants may have a mental health disability and there is a need to be sensitive in circumstances of that kind.
- 1.6 The term 'complaint' in this document includes requests made under the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations - reference to the complaints procedure is, where relevant, to be interpreted as meaning requests under those acts.

## **2. DEFINITION OF UNREASONABLE COMPLAINANT BEHAVIOUR**

- 2.1 The definition of unreasonably persistent behaviour is 'done repeatedly or as a habit'. The term vexatious is recognised in law and means 'denoting an action or the bringer of an action that is brought without sufficient grounds for winning, purely to cause annoyance to the defendant'. For the purpose of this document,

the following definition of unreasonably persistent and/or vexatious complainants will be used:

The repeated and/or obsessive pursuit of:

- (i) unreasonable complaints and/or unrealistic outcomes; and/or
- (ii) reasonable complaints in an unreasonable manner.

It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many of the people who submit complaints to the Ombudsmen are 'persistent' on the entirely reasonable basis that they feel the authority has not dealt with their complaint properly and are not prepared to leave the matter there. The fact that approximately 26% of the complaints the Ombudsman investigates conclude either by report or by local settlement indicates that this persistence is frequently justified. And almost all complainants see themselves as pursuing justified complaints. It must be remembered, therefore, that customers must not be declared unreasonably persistent and / or vexatious simply because they are chasing a response to a query or complaint. The Council's corporate standard of a response within ten days should negate the need for un-necessary customer contact, but the complainant must not be penalised for urging a reply.

Unreasonably persistent complainants may have justified complaints or grievances but are pursuing them in inappropriate ways, or they may be intent on pursuing complaints which appear to 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 time, or they may be very emotionally charged and distressing for all involved.

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. Such complainants are in a very small minority, but sometimes the Council may find itself in the position of having to restrict access to council premises or even having to resort to legal action to address such behaviour, for example, in the form of anti-social behaviour orders or injunctions.

This guidance does not address the issues of health and safety, but sits alongside existing Council policies as a means of addressing the full spectrum of behaviours which the Council might have to address.

2.2 Complainants may be deemed to be unreasonably persistent and/or vexatious as a result of their behaviour where current or previous contact with them shows that they have met one or more of the following criteria:

2.2.1 Persisting in pursuing a complaint where the Council's complaints procedure has been fully and properly implemented and exhausted, including the Local Government Ombudsman.

2.2.2 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.

- 2.2.3 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.
- 2.2.4 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 to do so by staff.
- 2.2.5 Complainants focus on a trivial matter to an extent, which is out of proportion to its significance, and continue to focus on this point. It should be recognised that determining what is trivial can be subjective and careful judgement must be used in applying the criterion.
- 2.2.6 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 and/or elected Members. 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.
- 2.2.7 Complainants have harassed or been abusive or verbally aggressive or 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.
- 2.2.8 Complainants are known to have electronically recorded meetings or conversations without the prior knowledge and consent of the other parties involved. It may be necessary to explain to a complainant at the outset of any investigation into their complaint(s) that such behaviour is unacceptable and can, in some circumstances, be illegal.
- 2.2.9 Complainants changing the basis of the complaint as the investigation proceeds and/or denying statements that he or she made at an earlier stage.
- 2.2.10 Complainants refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved.
- 2.2.11 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.

- 2.2.12 Complainant insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure, or with good practice.
  - 2.2.13 Complainant making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced.
  - 2.2.14 Complainant introducing trivial or irrelevant new information which the complainant expects to be taken into account and commented on, or raising large numbers of detailed but unimportant questions and insisting they are all fully answered.
  - 2.2.15 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/the Standards Board/local police/solicitors/the Ombudsman.
  - 2.2.16 Combinations of some or all of these.
- 2.3 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 to HR and to the police, where appropriate.
- 2.4 Raising legitimate queries or criticisms of a complaints procedure as it progresses, for example if agreed timescales are not met, should not in itself lead to someone being regarded as an unreasonably persistent complainant. 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. If complaints procedures are operating properly, then responding to expressions of dissatisfaction and requests for information should not cause the Council a particular problem.

### **3. DEALING WITH UNREASONABLE COMPLAINANT BEHAVIOUR**

- 3.1 Service Managers / Directors should deal with potentially unreasonable complainants in one or more of the following ways:
  - 3.1.2 Once it is clear that a complainant meets any one of the criteria in section 2 (above), it may be appropriate to inform them in writing that they are at risk of being classified as unreasonably persistent and/or vexatious. A copy of this guidance note should be sent to them and they should be advised to take account of the criteria in any future dealings with Council staff. In some cases it may be appropriate at this point to copy this notification to others involved in the complaint and to suggest that complainants seek advice in taking their complaint further.
  - 3.1.3 Try to resolve matters by drawing up a signed agreement with the complainant setting out a code of behaviour for the parties involved if the

Council is to continue dealing with the complaint. If this agreement were breached, consideration would then be given to implementing other actions as outlined below.

- 3.1.4 Decline further contact with the complainant either in person, by telephone, fax, letter or electronically – or any combination of these – provided that one form of contact is maintained. Alternatively, further contact could be restricted to liaison through a third party.
- 3.1.5 Notify complainants in writing that the service manager / Director has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. Complainants should be notified that correspondence is at an end and that further communications will be acknowledged but not answered.
- 3.1.6 Inform complainants that if appropriate, the Council reserves the right to refer the behaviour of unreasonable or vexatious complaints to the police.
- 3.1.7 In exceptional circumstances, consideration can be given to the possibility of obtaining a High Court injunction to prevent the complainant harassing, threatening or distressing named or individual council employees.

Service areas may seek advice from the Legal team at any stage of the process detailed under clause 3.

#### **4. UNREASONABLY PERSISTENT AND/OR VEXATIOUS STATUS**

If the complainant fails to comply with any arrangement in clause 3 and/or persists in their unreasonable behaviour as set out in clause 2, the case should then be passed onto to the Head of Legal and Democratic Services or his/her nominated officer, giving clear and detailed reasons as to why the complainant is considered to be unreasonably persistent and/or vexatious. If agreed by the Head of Legal and Democratic Services, the complainant should be informed in writing, that any further contact should be through the Head of Legal and Democratic Services or his/her nominated officer. The complainant should also be informed that any course of action taken as a result only relates to contact with the Council over their specific complaint(s). It does not, and is not intended to, have any impact on any other dealings between the Council and the complainant on other unrelated issues.

- 4.1 The Head of Legal and Democratic Services, or his/her nominated officer, will have ultimate responsibility for identifying complainants as unreasonably persistent and/or vexatious, in accordance with the above criteria. He/she or his/her nominated officer will decide what action to take and will implement such action and notify complainants promptly in writing the reasons why they have been classified as unreasonably persistent and/or vexatious and the action to be taken.
- 4.2 This notification must be copied promptly for the information of others already involved in the complaint. A record must be kept, for future reference, of the

reasons why a complainant has been classified as unreasonably persistent and/or vexatious and the action taken.

## **5. WITHDRAWING UNREASONABLY PERSISTENT AND/OR VEXATIOUS STATUS**

- 5.1 Once complainants have been classified as unreasonably persistent and/or vexatious, such status will continue to apply for a period of six months, at the end of which period, it will be reviewed by the Head of Legal and Democratic Services, or his/her nominated officer. It will either be re-imposed for a further period of six months, and all relevant parties informed or it will be withdrawn. However this status can also be withdrawn at any time if, for example, complainants subsequently demonstrate a more reasonable approach. If they submit a further complaint, relating to a new matter, the normal complaints procedures would apply. If, however, the complainant re-submits the original complaint(s) at any time, then unreasonably persistent and/or vexatious status will automatically resume.
- 5.2 Where unreasonably persistent and/or vexatious status is withdrawn, normal contact with complainants and application of the complaints procedures will be resumed.

## **6. REVIEW PROCESS**

- 6.1 If the complainant is unhappy about the decision to place their name on the unreasonably persistent and/or vexatious complainants list, they may write to the Head of Legal and Democratic Services to review the decision setting out any reasons why, in writing, within 14 working days of them receiving written notification of the decision.
- 6.2 If, after the complainant has received a decision in writing following the review with which they do not agree or feel is unreasonable, they may refer the matter to the Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH.
- 6.3 The existence and operation of this procedure will be reviewed, shared with and explained to all relevant staff.

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*NB: These guidance notes have incorporated comments received from the Overview and Scrutiny Panel (27 Jan 09).*