

Walsall Council's Unreasonable, Unreasonably Persistent and Vexatious Complaints Procedure and Guidance

1. Purpose

- 1.1 This procedure and guidance relates to how the Council manages unreasonable, unreasonably persistent and vexatious complainants and applies to all council services.
- 1.2 It has been developed in line with the most recent guidance from the Local Government Ombudsman which can be found at the following link <https://www.lgo.org.uk/information-centre/reports/guidance-notes/guidance-on-managing-unreasonable-complainant-behaviour>.
- 1.3 This procedure covers all complaints made to the Council about Council services including those related to Freedom of Information, Environmental Information and requests made under the Data Protection Act. It covers both corporate and statutory complaints and links to all those procedures. It can also apply to complaints about Elected Members.
- 1.4 This is a refresh of the procedure and guidance presented and agreed at Standards Committee in April 2018 in light of changes to the way services operate, in particular work of the Proud Customer Access Management (CAM) workstream, and the Proud Promise to:
 - Improve outcomes and customer experience
 - Improve employee satisfaction and engagement
 - Improve service efficiency and performance
- 1.5 This procedure includes reference to the Customer Relationship Management (CRM) system that has been implemented to, amongst other customer facing processes and services, administer customer complaints, compliments and comments.

2. Defining unreasonable, unreasonably persistent and vexatious complaint behaviour?

- 2.1 The Council wants to deal with complainants in a way which is open, fair and proportionate while ensuring that other service users, officers and the Council as a whole suffer no detriment.
- 2.2 All complainants have the right to have their concerns investigated in line with the relevant complaint's procedure – either the Council's corporate complaints procedure, or in the case of Adults and Children's Social Care complaints, the appropriate statutory process, when appropriate.
- 2.3 It should be noted that raising a complaint about a Council service does not in itself constitute unreasonably persistent behaviour and neither do complainants

who escalate through all stages of the relevant complaints procedure or those who express criticism about the complaints process itself.

- 2.4 In most cases, dealing with complaints is a straightforward process which is resolved via the appropriate procedure; in a minority of cases people pursue their complaints in a way that is unreasonable. The complainant may behave unacceptably or be unreasonably persistent or vexatious in the way they pursue their complaint. This can impede investigating their complaint (or complaints by others) and can have significant resource issues for the Council. This behaviour may occur at any time before, during or after a complaint has been investigated. This behaviour can also have a significant detrimental impact upon those dealing with such complaints and the council has a duty to safeguard the wellbeing of its employees.
- 2.5 Sanctions may be specific to a single issue, with no restrictions placed on the complainant's access to other Council services or to raise other issues with the service concerned, including making formal complaints about new or unrelated issues.
- 2.6 In other cases, a complainant may exhibit unreasonable, unreasonably persistent or vexatious behaviour in respect of a range of services or functions, in which case restrictions may need to relate to, for example, the whole of a directorate, a specific range of services, or to the Council generally.
- 2.7 The Council follows the Local Government and Social Care Ombudsman's (LGSCO) definition and the identified characteristics for unreasonable or unreasonably persistent complainants:

“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”.

- 2.8 Examples of unreasonably persistent behaviour which fall under this definition are set out in the [LGSCO guidance](#) and include:
 - a. Refusing to specify the grounds of a complaint, despite offers of help or assistance from the Council.
 - b. Refusing to cooperate with the complaints investigation process.
 - c. Refusing to accept that certain issues are not within the scope of a complaints procedure.
 - d. Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
 - e. Making unjustified complaints about staff who are trying to deal with the issues, and seeking to have them replaced.
 - f. Changing the basis of the complaint as the investigation proceeds.
 - g. Denying or changing statements he or she made at an earlier stage.
 - h. Introducing trivial or irrelevant new information at a later stage.
 - i. Raising many detailed but unimportant questions, and insisting they are all answered.
 - j. Submitting falsified documents from themselves or others.

- k. Adopting a 'scatter gun' approach: pursuing parallel complaints on the same issue through a variety of routes e.g. Member of Parliament, Councillor(s), local police, solicitors, the Ombudsman.
- l. 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.
- m. Submitting repeat complaints with minor additions/variations that the complainant insists make these 'new' complaints.
- n. Refusing to accept the decision; repeatedly arguing points with no new evidence.

Note that the list above is not exhaustive, nor does one single characteristic on its own imply that the person will be considered as being in this category.

2.9 Other examples not specifically referenced by the Ombudsman are:

- Attempting to use the complaints procedure to pursue a personal vendetta against an employee or team.
- Refusing to accept information provided, not confirming why or how the information provided is unsatisfactory.
- Raising at a late stage in the process, significant new information which was in the customer's possession when he or she first submitted a complaint.
- Lodging large numbers of complaints in batches via the CRM system over a period of time, resulting in multiple related complaints being at different stages of a complaints procedure and refusing to consider consolidation of these to facilitate an effective and timely resolution.
- Refusing to accept that not all issues are within the remit of a complaints procedure or demanding outcomes which the complaints procedure cannot in itself provide such as changes to council records, the overturning of court decisions, the dismissal or criminal prosecution of staff.
- Electronically recording meetings, telephone calls and conversations without the prior knowledge and consent of the other persons involved.

2.10 The Council will also take steps to protect all staff from members of the public who are behaving in a way which is considered abusive and/or vexatious. This may include physical or verbal abuse and could include the following (again, this list is not exhaustive):

- Speaking to a member of staff in a derogatory manner which causes offence.
- Swearing, either verbally or in writing despite being asked to refrain from using such language.
- Using threatening language towards Council staff which provokes fear.
- Using social media in an inappropriate way to publicise complaint issues or to post aggressive, threatening or inappropriate messages about their complaint or about Council staff.
- Attempting to make contact with Council officers outside of the work context, for example via social media or face to face.

3. Managing unreasonable, unreasonably persistent and vexatious complainant behaviour

- 3.1 This procedure may be invoked if the Council considers that a complainant has behaved in a manner which is deemed unreasonable, unreasonably persistent or vexatious. The Council may take any actions that it considers to be reasonable and proportionate in the circumstances.
- 3.2 The expectation is that all evidence is added to the complaint file on CRM, for example emails directly to officers or team account, correspondence received and logs of telephone calls etc. This is the responsibility of the service area the customer is engaging with.
- 3.3 In appropriate circumstances, the first step may be for the service area to write to the complainant indicating that their behaviour is considered to be unreasonable, unreasonably persistent or vexatious in relation to their current complaint(s), and to advise if that behaviour persists the Council will invoke the current procedure and implement appropriate restrictions. In some cases, a meeting with the complainant may be helpful to talk through the Council's concerns, and to explore if there is a more effective way for their concerns or complaints to be dealt with. In the first instance services should approach the Corporate Assurance Team (CAT) to discuss their concerns.
- 3.4 Before taking a decision to invoke this procedure, CAT will work with the service to consider and check:
 - Whether the customer is engaging with any other services and behaving in an unreasonable way. If so, the evidence from all services should be collated so it informs an agreed and co-ordinated approach. The lead service should also be agreed whilst having due regard to the Council's Complaints Procedure.
 - If the customer is receiving support from social services and has any special needs or circumstances that should be considered, if the behaviours demonstrated have indicated that such an enquiry would be appropriate.
- 3.5 When evidence has been collated by the service and the checks outlined in 3.3 completed by CAT, the service and CAT meet with the service Director for a formal review of the evidence. The discussion with the Director should include consideration of the impact of the customer's behaviour on staff and staff wellbeing. The service Director will decide whether it is appropriate to engage with Legal Services to invoke this procedure. The outcome of the discussion with the service Director should be recorded by the service and included in the information provided to Legal Services.
- 3.6 Legal Services will review the evidence collated by services and consider the reasons presented for this procedure to be invoked. Legal Services will then meet with all services involved and CAT. If Legal Services believe there is sufficient evidence, they will proceed and agree with the service and CAT the type of action to be taken. CAT will record the outcome of the discussion with Legal Services and the agreed next steps.
- 3.7 Any restrictions to contact with the Council will be appropriate and proportionate to the nature of the complainant's behaviour at that time. The list below gives examples of the types of restriction which may be used. It is important to

remember that any restrictions must be subject to regular and scheduled review and not impede the complainants' right to access services:

- Placing time limits on telephone conversations and duration of personal contacts.
- Restricting the number of telephone calls that will be taken (for example one call on one specified morning/afternoon of any week).
- Limiting the customer to a specific means of contact (telephone, letter, e-mail etc.).
- Requiring the customer to communicate only with one or more named employees, or via a specific phone number or email address.
- If a complaint is currently going through the Council's complaints procedure, asking the customer to enter into a written agreement about their future conduct in order for the complaint to be progressed.
- Requiring any personal contacts to take place in the presence of a second person.
- Refusing to register and process further complaints on the same matter, providing the customer with acknowledgements only to further letters or e-mails received after a particular point.
- Banning from or restricting access to some or all of the Council's premises.
- In extreme circumstances preventing all direct personal contact.

3.8 If Legal Services do not consider that there is sufficient evidence to invoke this procedure or believe there is alternative action the service should initially take, they will discuss this with the relevant service. This procedure can only be invoked with the agreement of Legal Services. Their independent review and advice is based on experience of the evidence that is necessary should a case progress to court action.

4. Implementing Restrictions

4.1 When the decision has been taken to make a complainant subject to this procedure, Legal Services will write to the complainant to explain:

- why this decision has been taken
- what action the Council will be taking
- the duration of that action
- the review process of this procedure
- the right of the complainant to contact the Local Government Ombudsman if they wish to challenge the decision to make them subject to this procedure.

4.2 The CAT will inform the Customer Experience Centre (CXC) team and any other appropriate services of the details regarding the customer this procedure has been invoked against, the restrictions applied and when they will be reviewed. A marker will be placed on the complainant's account within the CRM system to indicate this procedure is in place and for complaint handlers to contact CAT for further information if required.

- 4.3 Any restriction(s) imposed on the complainant's contact with the Council should be appropriate and proportionate and the complainant will be advised of the period of time the restriction will be in place for. In most cases restrictions will apply for six months initially before being formally reviewed.
- 4.4 If a customer ignores the restrictions set out in the correspondence from Legal Services, the service should continue to collate evidence. This can be supported by the CAT who will offer advice if the situation becomes unmanageable. The evidence will be presented to Legal Services who will, if necessary and appropriate, pursue the application of restrictions via Court proceedings.

5 Review Process

- 5.1 As noted above, the application of this procedure and any restrictions are for a specified period of time and must be reviewed. The CAT will contact the Service two weeks prior to the review date to remind of the review date and ask for an update regarding the customer's behaviour. A meeting will then be convened with the service, CAT and Legal Services for the formal review to take place within the last week of the date for review. The review will include consideration of any pertinent information available from the CRM system and any changes to the circumstances of the customer the Council is aware of. There are three possible outcomes from the review:
 - a. The restrictions are removed.
 - b. The restrictions are amended and will be reviewed at a future point.
 - c. The period for the original restrictions is extended.
- 5.2 Following the review, Legal Services will write to the complainant to confirm that the review has been completed and to explain the outcome(s) of the review and the reasons for the outcome where applicable, for example if restrictions are extended or amended. This letter will include a reminder to the complainant that if they are dissatisfied with the decision, they can contact the Local Government and Social Care Ombudsman. The service that initiated the invoking of the procedure must ensure that the action being taken is appropriately shared with all internal relevant / interested parties.
- 5.3 In cases where it has been necessary to utilise Court proceedings the date within the Court judgement will be used as the basis for the review.
- 5.4 If, following the removal of any restrictions, a complainant exhibits behaviour deemed to be unreasonable or vexatious again, they will be subject to the procedure as set out in section 3 above.
- 5.5 In circumstances, where a complainant's behaviour justifies it, the Council reserves the right to consider formal legal proceedings to restrict access. In cases where there is a concern for the health, wellbeing or safety of staff, or of others, advice should be sought from Legal Services at an early stage, in relation to other possible restrictions which might be pursued, e.g. through the Courts.

- 5.6 Once this procedure has been invoked, the expectation is that all evidence is added to the complaint file on CRM, for example emails directly to officers or team account, correspondence received and logs of telephone calls etc. This is the responsibility of the service area the customer is engaging with.
- 5.7 Accurate records of decisions and actions taken will be maintained by the Corporate Assurance Team. The information held will be limited to the name of complainant, the reason for imposing restrictions, what the restrictions are, the dates the restrictions are in place from and to and will include any relevant complaint reference numbers.
- 5.8 The Subject Access rights of customers to information that the Council holds about them are not affected by any decisions to restrict contact, and services should note that information relating to the implementation of these procedures may be disclosable in this way.

6. Equalities

- 6.1 The Council is committed to respecting equality and diversity in everything it does. This procedure will not discriminate against somebody on the grounds of sex, age, ethnicity, disability, sexual orientation, or religious beliefs. Any action taken through this procedure must have due regard to this commitment. A practical example of this may be choosing not to restrict a person's contact with the Council to sending letters or email, where their particular circumstances may make this difficult or impossible.

7. Safeguarding Vulnerable Adults

- 7.1 There may be instances where a complainant exhibits behaviour that falls within the definitions provided as guidance in this procedure but there may be underlying extenuating circumstances for this behaviour. These may include, among others, mental health conditions, dementia, learning disability, or alcohol or drugs dependency.
- 7.2 As outlined in 3.3 above when considering if this procedure should be invoked the CAT will check if the customer is, or has been, in receipt of social care services. If the customer is not known to social services but is behaving in a way that raises concern about their safety or the safety of others, it may be appropriate to make a referral to Adult Safeguarding by emailing initialintake@walsall.gov.uk.

8. Safety of staff

- 8.1 The Council has a duty of care to all its employees and will take action where appropriate to safeguard staff and to protect and foster their wellbeing. This procedure reflects the Council's commitment to protect and safeguard its employees, and to take action where complainants' behaviour is unreasonable, unreasonably persistent or vexatious, or represents a threat to employees' safety or well-being. The Council will take legal action as appropriate to regulate the contact of complainants with the Council and its services.

- 8.2 Services should ensure that staff awareness of details relating to complainants subject to this procedure is maintained, that new staff are made aware, and that staff are provided with updates when restrictions are amended or withdrawn. Where this procedure has been invoked it will be marked on the customers CRM record. Should a staff member be concerned about a customer's behaviour they should check on CRM to see if the customer is currently subject to any restrictions.
- 8.3 Details should not be shared more widely than is appropriate, in line with the principles and practice of GDPR. Services should ensure that details relating to complainants subject to this procedure are treated strictly in confidence and not shared with staff or others who do not need to know.

DRAFT

Unreasonable, Unreasonably Persistent and Vexatious Complaints Procedure Diagram

