

Standards Committee – 24 April 2018

Refresh of Vexatious and Unreasonably Persistent Complainant Procedure

Summary of report:

Members, when considering the Local Government Ombudsman's 2016/17 annual review at your meeting of 2 October 2017, asked about procedures for dealing with vexatious or unreasonable complainants.

The present arrangements have been in place since 2012, and were developed at that time, in line with guidance provided by the Local Government Ombudsman, to provide guidance to Council services in cases where a complainant may be considered to be unreasonable, unreasonably persistent or vexatious in their behaviour or approach.

The procedure is currently under review, and attached to this report Members will find the current draft of a revised set of procedures and guidance. Committee is invited to consider and comment upon these draft procedures.

Recommendation

Committee is recommended to note the contents of this report, and is invited to comment upon the present draft procedures.

1.0 Background

1.1 Complaints about Walsall Council and the services it provides are processed in accordance with the Council's corporate complaints procedures and, where appropriate, the statutory arrangements for Children's and Adult Social Care services. The Council seeks to follow good practice in its complaint handling, including guidance from the Local Government Ombudsman. The principle that underpins this procedure is the belief that the Council is here only to serve our customers. Where the Council has failed to do something, or to do something right for a customer steps must be taken to rectify this situation and prevent it happening again in the future.

1.2 In a small minority of cases, residents or service users may pursue their complaints with the Council in a way that is unreasonable. They may behave unacceptably, or be unreasonably persistent in their contacts with and submission of information to the Council. This can impede the investigation of their complaint (or of complaints by others) and can have significant resource issues for the Council, and for its services. These actions can occur either while a complaint is being investigated, or after the Council has completed its investigation of the matter and the complaint has exhausted local complaints procedures.

1.3 The Council wants to deal with complainants in ways that are open, fair and proportionate. A considered, policy-led approach to the issues relating to unreasonable, unreasonably persistent or vexatious complainants helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. Having a procedure that can be shared with complainants if they start to behave unreasonably can help in managing their expectations and their behaviour, as far as possible, while the substance of their complaint is addressed.

1.4 The present procedure and guidance relating to unreasonable, unreasonably persistent or vexatious complainants, available on the Council's intranet Inside Walsall, was developed in 2012. As part of a wider review of the Council's arrangements for complaint handling, officers have begun a review of this procedure, ensuring that it

- remains in line with guidance from the Local Government Ombudsman available on the LGO website,
- continues to meet the needs of council services,
- addresses concern about staff wellbeing and ensures that details about complainants who are considered to be unreasonable, unreasonably persistent or vexatious and, in particular, to be abusive, offensive, threatening, are shared with those who need to be aware
- is fair to complainants ensuring that complaints are addressed, that access to the council and its services is maintained, and that any sanctions imposed are implemented openly and are kept under reviewed.

2.0 Resource and legal considerations:

2.1 The Council is required by statute to have complaints procedures in relation to social care services in accordance with relevant statute.

It is expected, including by the Local Government Ombudsman, that councils will have effective arrangements for addressing issues caused by unreasonable, unreasonably persistent or vexatious complainants.

3.0 Performance and Risk Management issues:

3.1 Complaints provide a valuable source of information about the performance of council services.

3.2 These procedures seek to ensure that both staff and service users are aware of what is expected of them, what options for action are available, and what sanctions can be introduced in cases where a complainant exhibits unreasonable, unreasonably persistent or vexatious behaviour. These procedures can help in managing complainants' expectations and behaviour, as far as possible, while the substance of their complaint is addressed.

4.0 Equality Implications:

4.1 It is important that the Council's complaints procedures are delivered, and that complaints are processed, fairly and in an open and transparent manner. In relation to procedures relating to unreasonable, unreasonably persistent or vexatious complainants, councils must ensure that such procedures take into account the possibility of underlying extenuating circumstances for this behaviour, and, where sanctions are introduced restricting a complainant's means of accessing Council service points to ensure that those are appropriate for the individual concerned.

5.0 Consultation:

5.1 There will be further discussion with directorates on the refreshing of these procedures.

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Unreasonable, Unreasonably Persistent and Vexatious Complaints Procedure and Guidance

Complaints about Walsall Council and the services it provides are processed in accordance with the council's corporate complaints procedures and, where appropriate, the statutory arrangements for Children's and Adult Social Care services. The council seeks to follow good practice in its council handling, including guidance from the Local Government Ombudsman. The principle that underpins this procedure is the belief that the Council is here only to serve our customers. Where the Council has failed to do something, or to do something right for a customer steps must be taken to rectify this situation and prevent it happening again in the future.

However, in a minority of cases people may pursue their complaints in a way that is unreasonable. They may behave unacceptably, or be unreasonably persistent in their contacts with and submission of information to the Council. This can impede the investigation of their complaint (or of complaints by others) and can have significant resource issues for the Council, and for its services. These actions can occur either while a complaint is being investigated, or after the Council has completed its investigation of the matter and the complaint has exhausted local complaints procedures.

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.

This procedure has been prepared by the Corporate Assurance Team, from whom further advice and assistance on this matter is available.

Purpose

The council wants to deal with complainants in ways that are open, fair and proportionate. A considered, policy-led approach to these issues helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. Having a procedure that can be shared with complainants if they start to behave unreasonably can help in managing their expectations and their behaviour, as far as possible, while the substance of their complaint is addressed.

Definitions

This procedure and guidance covers 'unreasonable complainant behaviour', which may sometimes comprise only one or two isolated incidents, as well as 'unreasonably persistent behaviour', which is usually a build-up of incidents or behaviour over a longer period. Unreasonable and unreasonably persistent complainants are those complainants who, because of the nature or frequency of their contacts with the council, hinder the council's consideration

of their, or other people's, complaints, and can affect the ability of staff to provide a quality service to residents and service users generally.

It is important to distinguish between 'persistent' complainants and 'unreasonably persistent' complainants. People bringing complaints may need to be 'persistent' if they believe the council has not dealt with their complaint or concern properly and are not prepared to leave the matter there. When complaints are investigated, internally or via the Ombudsman, there will be cases when persistence is found to be may be justified.

However, some complainants who may have justifiable complaints may still pursue those complaints in inappropriate ways.

Others may pursue complaints which appear to have no substance or which have already been investigated and determined. Although in many cases their contact with the council may be amicable they may still place heavy demands on staff time, or their contact may represent an undue burden on staff, in terms of time or frequency, or because contact may be emotionally charged and distressing for all involved.

Situations can escalate, and sometimes complainants can become abusive, offensive, threatening or otherwise behave unacceptably; this can include comments made verbally or in written form including comments made on social media. In response the council may have to restrict access to its premises or staff, insist on specific contact arrangements or take other action in accordance with these or other procedures e.g. those protecting staff from harassment and harm.

Vexatious behaviour in the context of this procedure and the council's complaints handling arrangements relates to circumstances such as where someone by making a complaint or complaints to the council is not doing so in order to resolve a matter, but to cause inconvenience or annoyance to the council or its staff, or simply to generate extra work for the service, to cause expense, or to tie up staff in dealing with such enquiries.

Some individuals that staff may consider to be unreasonable, unreasonably persistent or vexatious complainants may be behaving in such a way because of a specific circumstance or difficulty. Where this is indicated, any concerns that staff may have about a complainant's vulnerability should be taken fully into account, prior to reaching a decision on the use of this procedure. Where appropriate, consideration should be given to the use of an advocate.

Examples of unreasonable, unreasonably persistent and vexatious actions and behaviours

As noted above, this procedure and guidance covers behaviour which may include only one or two isolated incidents as well as behaviour over a longer period including an accumulation of incidents or complaint activity. This behaviour, and the nature and frequency of contact with the council, may

hinder the council's ability to consider and to address an individual's complaint(s), or the complaints of others.

Examples of such behaviour have been listed by the Ombudsman and may 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, 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.

Other examples include:

- o) Attempting to use the complaints procedure to pursue a personal vendetta against an employee or team.
- p) Making unnecessarily excessive and burdensome demands on the time and resources of Council staff whilst a complaint is being looked into.
- q) Refusing to accept information provided, not confirming why or how the information provided is unsatisfactory.
- r) 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.
- s) Lodging large numbers of complaints in batches 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 effective resolution.

- t) Refusing to accept that issues are not within the remit of a complaints procedure or demanding outcomes which the complaint procedure cannot in itself provide such as the overturning of court decisions, dismissal or criminal prosecution of staff.
- u) Electronically recording meetings, telephone calls and conversations without the prior knowledge and consent of the other persons involved.

This list is not exhaustive and other behaviour may fall within the scope of this procedure and guidance.

It should be noted that the fact that an individual has made unreasonable or unreasonably persistent complaints on one issue, or at some time in the past on the same issue, should not lead to an automatic assumption that a new complaint must be treated as unreasonable or unreasonably persistent. Each complaint must be considered on its own merits, and (where appropriate) a decision made as to whether it is unreasonable or genuine.

Managing unreasonable etc. complainant behaviour – implementing restrictions to contact

Any restrictions to contact with the Council must be agreed by the relevant Executive Director(s) and will be appropriate and proportionate to the nature of the complainant's contacts with the council 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:

- 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.
- Closing the investigation into a complaint prior to its conclusion.
- 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.

If a directorate or service considers that a complainant is exhibiting unreasonable, unreasonably persistent or vexatious behavior in relation to their complaint(s) or concern(s) about that directorate or service, and believes that this procedure should be involved, they should contact the Corporate Assurance Team in the first instance.

The Assurance Team will work with the relevant Head of Service and/or Executive Director to determine next steps appropriate and proportionate to the nature of the complainant's contacts with the council at that time.

In appropriate circumstances, the first step may be for the Head of Service or Executive Director 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 that if that behaviour persists the council will invoke the current procedure and introduce restrictions. In appropriate 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 other cases, or where the initial warning has not had the necessary impact, and it is considered appropriate to invoke the procedure and designate the complainant as unreasonable, unreasonably persistent or vexatious, the Assurance Team will check with other directorates whether the complainant is exhibiting similar behaviour in relation to other council services. If that proves to be the case, and it is appropriate, joint action will be taken. In all other cases, the relevant Head of Service or Executive Director will write to the complainant to set out in detail the sanction that the council is applying, giving reasons, advising how the complainant can appeal against the sanction (including by reference to the Ombudsman), and setting out timescales for the next review of the sanction.

Depending on the circumstances, sanctions may be specific to a single issue, the subject of the individual's complaint or complaints, with no restrictions on the complainant's access to other services or to raise other issues with the service concerned. In other circumstances, a complainant may exhibit unreasonable, unreasonably persistent or vexatious behaviour in respect of a range of services, in which case sanctions may need to relate to (for example) the whole of a directorate, a specific range of services or service points, or very occasionally to the council generally.

In all relevant cases, the complainant must be advised as to his/her continuing ability to access council buildings to undertaken routine business e.g. to pay bills, visit a library or swimming baths, go to the tip, to attend council meetings etc.. **There should never be a blanket ban on contact with the council.**

Also all arrangements should be for specified period of time, which must be reviewed and may be extended in appropriate cases. When arrangements have been reviewed, the customer should be advised of the outcome including reasons for the arrangements being maintained or amended, or to say that the arrangements have been lifted.

In extreme circumstances the Council reserves the right to consider formal legal avenues to restrict access. In cases where there is a concern for the safety of staff, or of others, advice should also be sought from Legal Services at an early stage, in relation to other possible restrictions which might be pursued, e.g. through the courts.

Also, in cases where the Head of Service or Executive Director has written to a complainant to introduce restrictions, and the behaviour persists, advice should be sought from the Assurance Team and from Legal Services as to further steps that may be appropriate, which may include reference to court action.

It is important that adequate and accurate records are kept of any actions taken and that these are stored on the relevant complaint file. 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 discloseable in this way.

Equalities

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 not restricting a person's contact with the council to the use of letters or email, where their individual circumstances may make this difficult or impossible.

Safeguarding Vulnerable Adults

There may be instances where a complainant exhibits behaviour that falls within the definitions set out in this guidance note 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.

Where the service area believes this is the case then in such circumstances it may not always be appropriate to implement the procedure as described, as to do so might have a negative impact on the complainant. Where the service concerned believes that behaviour may be related to an underlying condition, the Head of Service must consult the Executive Director for Adult Social Care, prior to any action being taken.

Safety of staff

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. The

council will take legal action as appropriate to regulate the contact of individuals with the council and its services.

In all cases where sanctions are implemented, and also in cases where the Head of Service or Executive Director has written to an individual to give a 'final warning' before formally invoking these procedures, appropriate details should be shared with the team or service affected, and with service points which may be called or visited by the individual concerned (e.g. First Stop Shop, switchboard), so that staff are aware of the sanctions and can advise the individual accordingly. Details should not be shared more widely than is appropriate – mindful of the individual's data protection rights.

In cases where an individual has used threatening language, or has exhibited violent behaviour, it is important that details are shared with service points and with those who may come into contact with the individual concerned (face to face, or on the phone).

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