

**VEXATIOUS AND UNREASONABLE
COMPLAINANTS POLICY
& PROCEDURE**

March 2009

Vexatious and Unreasonable Complainants Policy & Procedure

1 Principles and Policy

- 1.2 Central Bedfordshire Council is committed to dealing with all complaints fairly and to providing a high quality service to those who complain.
- 1.3 This policy and procedure has been developed with reference to the Department of Health Statutory Guidance '*Learning from Complaints*' issued 2006. Reference to 'him' relates to him or her. This policy should be read in conjunction with any other relevant Council policies relating to exclusion of services or health and safety safe working.
- 1.4 There are policies and procedures in place that say what the Council will do when people complain or want to give feedback about services. They are:
 - The Council Customer Feedback Policy and Procedure covers Council services excluding Adults' and Children's Services.
 - The Children's Services and Adults' Social Care Statutory Feedback Procedures.
- 1.5 The Council is committed to promoting equality of opportunity for all people. It recognises that some people have concerns about making complaints for fear of losing a service if they 'rock the boat' or fear being treated unfavourably. Service users will not be harassed or victimised as a result of making a complaint.
- 1.6 Where a complainant's behaviour hinders the consideration of the complaint the Council will act to ensure that steps are taken to manage the complaint fairly and appropriately. Each case must be considered on its own merit.
- 1.7 The Council will take steps to protect staff that are subject to abusive, offensive or threatening behaviour.

2 Objectives of the Vexatious and Unreasonable Complainants Procedure

- 2.1 The majority of complaints are dealt with through the procedures without difficulty. However, the Vexatious and Unreasonable Complainants Policy & Procedure describes how the Council may deal with complaints effectively where the complainant acts unreasonably or is unreasonably persistent in pursuing complaints.
- 2.2 The objectives of the procedure are:
 - To ensure all staff understand the objectives and requirements of the Vexatious and Unreasonable Complaints Procedure

- To promote problem solving and to avoid apportioning blame. The emphasis should be on finding a solution.
- To satisfy those who complain or comment that they have been dealt with promptly, fairly, openly and honestly
- To resolve complaints quickly and as close to the point of service delivery as acceptable and appropriate

3 THE PROCEDURE

3.1 Prior Warning

3.2 When the Council considers that a person is acting in an unacceptable way a risk assessment will be completed and will write to tell him why it finds his behaviour unreasonable and/or unacceptable and ask him to change the behaviour. If the behaviour continues the Council may take steps to limit the contact with its offices and officers.

3.3 Decision to Restrict Access or Terminate Contact

3.4 Decisions to restrict access or terminate contact will be taken following a risk assessment. However, where there is an immediate risk to staff or offices the Council may make an on the spot decision to restrict access or terminate contact.

3.5 When making decisions on how to manage the vexatious or unreasonable behaviour of a complainant all relevant factors should be taken into account to ensure that action taken is appropriate and proportionate.

3.6 Complainants will also be told how they can challenge the decisions to apply the Vexatious and Unreasonable Complainants Policy & Procedure.

3.7 Restricting Access

3.8 If the complainant has not responded appropriately to the Prior Warning letter and a decision is made to restrict access the complainant will be notified in writing why it is believed his behaviour falls into the category of vexatious or unreasonable. He will be notified what action will be taken and the duration of that action.

3.9 Terminating Contact with a Customer/Complainant

3.10 Where a complainant persists in communicating with the Council on a case that is closed the Council may decide to terminate contact with the complainant. In such cases any new correspondence from the complainant will be reviewed for new evidence that affects the decision on the complaint. In the absence of any such evidence the Council will acknowledge it in writing or place it on the file without any acknowledgement.

- 3.11 Where a complainant's behaviour is unreasonable and threatens the safety and/or welfare of staff the Council may decide to terminate contact with the complainant.
- 3.12 Other action may be taken, for example reporting the matter to the police or taking legal action. Where such action is necessary the Council may not give a prior warning.
- 3.13 **New Complaints**
- 3.14 New complaints from people who have been subject to this policy will be dealt with on their merits. A risk assessment will be carried out based on past and current knowledge of the complainant's behaviour and the likelihood of re-occurrence of any unacceptable behaviour.
- 3.15 **Review**
- 3.16 All cases subject to a risk assessment under this policy will be reviewed 6 months following the initial risk assessment and the customer notified in writing of the outcome.

Staff Guidance for Dealing with Vexatious or Unreasonable Complainants Policy

1 Responding to Vexatious or Unreasonable Complainants

1.1 Complainants will usually be given access to the various stages of the relevant complaints procedure. This will ensure that complainants who are persistent with their complaint have had the opportunity of rigorous scrutiny of the issues of complaint. Persistent complainants and/or unreasonable complainants may be subject to the Vexatious and Unreasonable Complainants Policy & Procedure. Any decision to apply this policy to an individual must take into account that the complaints procedure is being fairly applied and every attempt has been made to communicate and address concerns about behaviour/conduct with the complainant.

2 Who is a Vexatious or Unreasonable Complainant?

2.1 Features of a vexatious or unreasonable complainant usually relate to the nature of a complainants contact with the Council that either through their frequency or nature of the contact hinders the consideration of the complaint or others' complaints. Behaviours **may** include:

- Where a person makes repeated complaints about the same subject (with minor differences) and does not accept the outcomes
- A complainant who seeks an unrealistic outcome and persists in their attempts to achieve the desired outcome
- A complainant who persists in raising unfounded complaints without substance or evidence beyond what is considered to be reasonable
- A complaint that relates to historical and irreversible decisions or incidents
- Where a person insists on using the complaints procedure where there is an alternative process that takes precedence
- Contact from a complainant that is frequent, lengthy and complicated
- Where a complainant is threatening, aggressive and/or abusive to staff when presenting his complaint
- A complainant changing the aspect of the complaint part way through an investigation or review of the complaint
- A complainant who does not cooperate with the complaints procedure whilst still wishing the complaint to be investigated or is inconsistent in their communications with the authority (this may include the making and breaking of contact with the authority)
- Excessive demands on the resources available whilst a complaint is being considered. For example excessive telephoning, lengthy and numerous emails, detailed complex letters demanding immediate responses.
- A complainant who contacts the Council through different routes to raise the same issue

- A complainant not accepting that the issue of complaint is not one that the Council is responsible for addressing
- Frivolous complaints

A complainant may display one or a combination of the above examples. The list is not exhaustive and each case must be considered on its own merit.

3 CONSIDERATIONS PRIOR TO TAKING ACTION UNDER THE POLICY

- 3.1 It is vital that all attempts are made to maintain effective communication and relationships with complainants. Before applying the policy the Council should be satisfied that the complaint is/has been addressed and the complaints procedure fairly applied and the complainant must be notified in writing of the concerns and include a warning of potential action the Council may take (with reference to this policy) if the problems persist.
- 3.2 The options available prior to taking action under this policy will depend on the status of the complaint and the circumstances of the individual case. The **designation of a complainant as unreasonable or vexatious should be a last resort and all other options should be explored** to manage the issues and ensure the complaint is addressed. A risk assessment will be completed on all cases where it is felt the complainant is unreasonable or vexatious. Ultimately the decision on whether the complainant is unreasonable or vexatious will be taken by the Customer Relations Manager.
- 3.3 Further action that could be taken to prevent the need for application of the policy could include:
 - Mediation
 - Conciliation meeting with a more senior manager
 - Referral to an advocate may be suitable to assist both parties.
 - Writing to the complainant detailing, with reasons why, that they do not constitute a person who may complain (for example, this could relate to an adult who does not have parental responsibility raising issues around a child and family that they are not involved in or we are not the authority responsible for the issue complained about)
 - Provide or offer consideration of the issue through another procedure (for example, an appeals process)

- Escalation to the next stage of the complaints procedure. However, *'Where the (Council) has attempted to move the complainant on to the next stage of the complaints procedure but the complainant has either refused or delayed such progression through excessive objection to the process rather than addressing the substantive issues of the complaint themselves, the (Council) should advise the complainant that this is causing delay and is unreasonable use of the complaints procedure.'*¹
- A strategy meeting with relevant staff to consider a coordinated approach and response to the complainant. This will be particularly relevant if the complaint crosses a number of services or agencies and communication is key.

Guidance in relation to Strategy Meetings

The Chair of the strategy meeting will be the Customer Relations Manager.

If the complaint is being handled at local resolution stage a representative of the service(s) area handling the complaints should also attend to present information highlighting the difficult, persistent or unreasonable aspect of the complainant.

If the complaint is being handled at investigation or review stage the Customer Relations Manager will invite relevant people to the meeting to share information highlighting the persistent or unreasonable aspect of the complainant. This may include the investigator or independent person.

The meeting will consider the complainants behaviour and any internal difficulties that have led to the convening of the meeting. This will include information relating to any abusive, threatening or other unreasonable behaviour that has been recorded in relation to the process of complaint handling.

4 APPLICATION OF THE POLICY

- 4.1 A risk assessment will determine if application of this policy is appropriate.
- 4.2 Where a member of staff dealing with a complaint is of the view that they are dealing with an unreasonable or vexatious complainant they must refer the matter to the Customer Relations Manager who will undertake a risk assessment.
- 4.3 Due consideration should be given to the individuals health including any related illnesses or disabilities that may be impacting on behaviour (for example, dementia, learning disability, personality disorder, Aspergers, mental illnesses such as schizophrenia, bi-polar).

¹ Department of Health 'Learning from Complaints' Guidance 2006

- 4.4 There may be circumstances that require an urgent decision and the Customer Relations Manager is not available. In these circumstances the Assistant Director of the service complained about will make a decision. The Customer Relations Manager will be notified of any decision.

5 ACTIONS THAT MAY BE TAKEN UNDER THIS POLICY

5.1 Ceasing Correspondence with a Complainant – No Further Action

5.1.1 If the complainant has had a response at any stage of the complaints procedure and remains dissatisfied they should be offered conciliation and escalation to the next stage of the complaints procedure or referral to the Local Government Ombudsman. If the complainant does not pursue the next stage but corresponds on the issue of complaint the correspondence should be considered. If it does not raise any significant new matters and presents no new information the complainant will be advised no further action will be taken.

5.1.2 If the complainant continues to correspond on the complaint matter and does not present any significant new matters or new information the correspondence should only be acknowledged (not acted upon). If the complainant persists they should be advised that the authority will cease to correspond on the matter.

6 Restricting Access and Termination of Contact

6.1 Any decision to restrict or terminate access will be made as a result of a risk assessment. Where there is an immediate risk to staff or offices a decision may need to be made there and then by the most appropriate manager available.

6.2 Restricted Access

6.2.1 Options include, but are not exclusive to, advising the complainant that:

- Contact with the Council should be in a specific form (for example, letters only); and/or
- Contact with the Council is limited to named officer(s) only. For example, Customer Relations for the complaints issues and another named officer in the service for any practice/care issues; and/or
- Face to face visits take place with two officers present
- Contact is restricted to specified days, times, duration; and/or

6.2.2 Wherever possible the complainant should be asked to enter into an agreement about his future contact with the Council. However, if the complainant is not in agreement this will not prevent restriction to access but the complainant must be informed clearly in writing – see ‘Written Notification’ below.

6.3 Termination of Contact

6.3.1 Prior warnings should have been given, wherever possible, that termination of contact could result from unreasonable and unacceptable behaviour. Where a complainant continues to behave in a way which is unacceptable, the Council may decide to terminate contact with the complainant and discontinue any investigation into the complaint. The complainant must be informed clearly in writing – see ‘Written Notification’ below.

6.3.2 Where the behaviour is so extreme that it threatens the immediate safety and welfare of staff, the Council should consider other options, for example reporting the matter to the Police or taking legal action. In such cases the Council may not give the complainant prior warning of that action.

6.4 Written Notification to Restrict or Terminate Access or Contact

6.4.1 Wherever possible the complainant will be advised of the nature of the behaviour that is deemed to be unreasonable or vexatious with a request to change the behaviour and a warning that should the identified behaviour continue then access will be restricted.

6.4.2 The complainant will be notified in writing of a decision to restrict or terminate access, this will include:

- What action will be taken
- If restricting contact inform him that non-compliance with the course of action proposed has the potential consequence of termination of contact
- The duration of the action and the review date.
- What the complainant can do seek review of the decision
- A copy of the policy
- If a decision is made to cease contact the written notification will state that any further correspondence that does not present significant new matters or new information will not necessarily be acknowledged, but will be kept on file.

7 New Complaints Received from an Unreasonable/Vexatious Complainant

- 7.1 Care must be taken when considering new correspondence or information from the complainant to ensure that any **new** complaint is picked up and addressed. Information should be monitored for any **significant new** information relating to the original complaint that was not available to the complainant at the time of making the original complaint. If such new information comes to light the manager responsible for considering the complaint should reconsider the issue and provide a further response.
- 7.2 In light of a new complaint or significant new information:
- If a risk assessment is in place this will be reviewed.
 - If there is no current risk assessment one will be carried out.
- 7.3 Any decision not to pursue a new complaint must be clearly recorded on the complaints database.

8 Referral to the Local Government Ombudsman

- 8.1 In extreme cases the relationship between the complainant and the Council may breakdown. In these cases the Council may consider the following actions:
- 8.1.1 Early Referral to the Local Government Ombudsman before all stages of the complaints procedure have been exhausted – there is scope for early referral for social care complaints. However, this can only be done with the agreement of the complainant. See staff guidance for Adults and/or Children's Services Complaints Procedure.
- 8.1.2 Explain in writing to the complainant that the Council cannot assist them further and inform them of their right to approach the Local Government Ombudsman. This may occur when the Council does not believe the complaints are substantively valid and cannot agree a way forward with the complainant (for example, the complainant makes allegations and states they have supporting evidence but consistently fails to produce the evidence).

9 RECORDING ACTIONS AND CONTACTS WITH THE COMPLAINANT

- 9.1 Any decision to apply this policy must be notified to the Customer Relations Manager and recorded on the complaints database.
- 9.2 Any future contacts with the complainant must be recorded.

- 9.3 If a member of staff has asked for application of this policy and the decision is made not to apply it the reasons must be recorded and the member of staff informed of the decision. Any decision not to apply this policy does not exclude any future requests being made if new information or evidence comes to light.

10 REVIEW OF DECISIONS TAKEN UNDER THIS POLICY

- 10.1 All cases will be reviewed 6 months after a decision to restrict or terminate contact has been made to ensure that action taken remains appropriate and proportionate.

11 APPEALS AGAINST DECISIONS

- 11.1 Complainants must be informed in writing of the Council's decision resulting from application of this policy and procedure. They should also be given information on how to appeal any decision.
- 11.2 An appeal will be heard by a review panel made up of 3 members of staff outside of the service area complained about. The panel will write to the complainant with their decision which will be final.
- 11.3 The Local Government Ombudsman has a role to examine complaints about the Council and this includes the administration of the complaints procedures and Council policies. Therefore, complainants who are dealt with under this policy and procedure should be given information on their right to contact the Local Government Ombudsman if they feel the Council has not acted correctly in the administration of the complaint.

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