

KENNET DISTRICT COUNCIL POLICY ON ‘UNREASONABLY PERSISTENT’ COMPLAINANTS AND ‘UNREASONABLE COMPLAINANT BEHAVIOUR’

Introduction

Generally dealing with a complaint is a straight-forward process, but in a minority of cases people pursue their complaint in a way which can either impede the investigation of their complaint or can have significant resource issues for authorities. These actions can occur either while their complaint is being investigated, or once an authority has concluded the complaint investigation.

This guidance note sets out what the Council considers to be an unreasonable or persistent complainant and what will be viewed as unreasonable behaviour, based on advice provided by the Local Government Ombudsman.

Definitions

The meaning attributed to the term ‘unreasonably persistent complainant’ is: -

a complainant who, because of the frequency and/or nature of his or her contacts with an authority, hinders the authority’s consideration of their, or other people’s complaints. It also includes complainants who repeatedly refuse to accept the outcome of the Council or Ombudsman’s investigation and continue to press for a different outcome.

‘Unreasonable complainant behaviour’ can cover many actions, or even non co-operation on the part of the complainant but usually embraces: -

actions by a complainant which go beyond the bounds of normal, civil and timely contact or correspondence with the Council, including an expectation that the Council will give priority to a complaint, irrespective

of its nature or the impact such action would have on other services or customers.

It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many of the people who submit complaints to the Council 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 and almost all complainants see themselves as pursuing justified complaints.

Unreasonable and 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.

Some unreasonable and unreasonably persistent complainants pursue their complaints in ways which are unacceptable, by, for example, being abusive, offensive or threatening.

This policy note covers behaviour which is unreasonable, which may include one or two isolated incidents, as well as unreasonably persistent behaviour, which is usually an accumulation of incidents or behaviours over a longer period.

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

Why have a policy?

Having a policy enables staff to deal with complainants in ways which are demonstrably consistent and fair. It also helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. In the absence of such guidance staff may have greater problems with unreasonable and unreasonably persistent complainants.

Actions and behaviours of unreasonable and unreasonably persistent complainants

These are some of the actions and behaviours of unreasonable and unreasonably persistent complainants which authorities often find problematic:

- Refusing to specify the grounds of a complaint, despite offers of assistance with this from the authority's staff
- Refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved
- 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. i.e. Insisting the Council provides a solution to a problem where the responsibility for resolving the matter is clearly outside the remit of the Council
- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice
- Making what appears to be groundless complaints about staff dealing with the complaints, and seeking to have them replaced
- Changing the basis of the complaint as the investigation proceeds and/or denying statements he/she made at an earlier stage
- 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

- Electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved
- 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
- Making unnecessarily excessive demands on the time and resources of staff whilst a complaint is being looked into, by, for example, excessive telephoning or sending e-mails to numerous council staff, writing lengthy complex letters every few days and expecting immediate responses
- Submitting repeated complaints, after complaints processes have been completed, essentially about the same issues, with additions/variations which the complainant insists make these 'new' complaints which should be put through the full complaints procedure
- Refusing to accept the decision – repeatedly arguing the point and complaining about the decision
- Combinations of some or all of these.

Options for action

Once a decision has been made that someone is exhibiting 'unreasonable complainant behaviour' or is 'unreasonably persistent' the action the Council decides to take should be appropriate and proportionate to the nature and frequency of the complainant's contacts with the Council at that time. The following list is a 'menu' of options that the Council will use to managing an unreasonable complainant's contacts from which one or more may be chosen or applied.: -

- Placing time limits on telephone conversations and 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 complainant to one medium of contact (telephone, letter, e-mail etc) and/or requiring the complainant to communicate only with one named member of staff
- Requiring any personal contacts to take place in the presence of a witness
- Refusing to register and process further complaints about the same matter
- Where a decision on the complaint has been made, providing the complainant with acknowledgements only of letters, faxes, or e-mails, or ultimately informing the complainant that future correspondence will be read and placed on the file but not acknowledged. (A designated officer will be identified who will read future correspondence.

It is important to stress here that because a person has been identified as an unreasonable or persistent complainant does not mean that they cannot provide the Council with new information about their complaint or complain about fresh issues. ***The Council must consider all submissions*** and decide if they contain new or material information or if a new substantive complaint is being made and act accordingly.

The decision making process

Having set out a number of options for action it is now necessary to set out who will decide: -

1. Whether the policy will be applied to a complainant
2. What restrictions will be placed on contacts and for how long

3. Whether restrictions can be lifted or should continue

and details of complainants' rights of review/appeal against: -

4. A decision to invoke the policy and/or
5. Any particular restrictions applied

6.

1. & 2. Whether the policy will be applied and the restrictions

The decision to apply the policy and the appropriate restrictions to be imposed and duration will be made by a Service Manager in consultation with his or her Director, or by a Director.

3. Lifting the restrictions

The decision to lift the restrictions after the set period will be made by Service Managers

4 & 5 Appeals against the decision to impose restrictions and the nature of the restrictions

Appeals will be considered by a Director who was not involved in the original decision to apply the policy or impose specific restrictions.

Before applying any restrictions the Council should write or e-mail the complainant giving warning that if his/her actions continue the Council may decide to treat him/her as an unreasonably persistent complainant, and explain why.

The nature of the records to be kept

A record of the decision to apply the policy, the restrictions to be imposed and the duration will be maintained by the relevant Director. Any information on subsequent requests for 'review' will also be held along with the decisions.

Details of the information to be given to complainants to whom it has been decided the policy should apply

If a decision is taken to apply the policy the Council will write to inform the complainant that:

- The decision has been taken
- What it means for his/her contacts with the authority
- How long any restrictions will last, and
- What the complainant can do to have the decision reviewed.

A copy of this Policy Note will be enclosed with the letter.

Who in the Council will be informed of the decision

All officers and Members who have experienced unreasonable complainant behaviour in respect of a specific complaint shall be informed of the decision to impose contact restrictions and what those restrictions are.

Other officers or Members who have a legitimate reason for being given details of the action taken will be provided with that information. There may be a case, for example, where a complainant tries to circumvent the restrictions by contacting additional members of staff or Members who have not previously been involved in the matter.

If the Council is approached by **the press** it will explain the nature of the action it has taken and why.

Considerations prior to taking action under the policy

Different consideration will apply depending on whether the investigation of the complaint is ongoing or whether it has been concluded. To some extent the latter is easier to deal with. It is in effect the complainant simply refusing to take no for an answer, and the authority has the option of ending all communication with the complainant, and where appropriate referring the complaint to the Ombudsman. However, where the complaint is ongoing

there needs to be some continuing contact with the complainant.

The decision to designate someone as an unreasonable or unreasonably persistent complainant is onerous and could have serious consequences for the individual. Before deciding whether the policy should be applied the Council should be satisfied that:

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

Other considerations/options

If the Council is satisfied on the points set out above, there are a number of options available prior to taking the decision to designate the complainant as unreasonable or unreasonably persistent.

For example:

- If no meeting has taken place between the complainant and an officer/officers, and provided that the Council knows nothing about the complainant which would make this inadvisable, consideration can be given to offering the complainant a meeting with an officer of appropriate seniority. Sometimes such meetings can dispel misunderstandings and move matters towards a resolution. Clearly the nature of the unreasonable behaviour has to be taken into account and the Council can decide that a meeting is inappropriate
- If more than one department is being contacted by an unreasonably persistent complainant the Council may wish to set up a strategy meeting to agree a cross-departmental approach

- If more than one department is being contacted, considerations should be given to designating a key officer to co-ordinate the authority's response(s)
- If the Council knows a complainant has special needs, consideration should be given to offering to help the complainant find an independent advocate

Operating the policy

If a decision is taken to apply the policy the Council will keep adequate records of all contacts with unreasonable and unreasonably persistent complainants.

- e.g. when a decision is taken not to apply the policy when a member of staff asks for this to be done, or to make an exception to the policy once it has been applied, or
- when a decision is taken not to put a further complaint from such a complainant through its complaints procedure for any reason, or
- when a decision is taken not to respond to further correspondence, make sure any further letters, faxes or e-mails from the complainant are checked to pick up any significant new information.

When unreasonable and unreasonably persistent complainants make complaints about new issues these should be treated on their merits, and decisions will need to be taken on whether any restrictions which have been applied before are still appropriate and necessary.

Reviews of decisions to restrict a complainant's contacts or the authority's responses to them should be taken by a Director who has not previously been involved in the case. When reviews are carried out, the Council should write to advise the complainant of the outcome and, if restrictions are to continue to

be applied, when these will next be reviewed.

Arrangements should be put in place for a check to be made in, say, six months on whether there has been any further contact from the complainant. If a complainant to whom the Council has decided the policy will apply has no contact with the authority within that period, the position should be reviewed and a decision taken on whether any restrictions placed on the complainant's contacts should be cancelled. The outcome of this review should be noted on the Council's records. If the restrictions are cancelled, urgent consideration should be given to re-introducing the restrictions if the behaviour which led to the original decisions recommences.

Referring unreasonable and unreasonably persistent complainants to the Local Government Ombudsmen

In some cases relations between the Council and unreasonable and unreasonably persistent complainants will break down while complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances the Ombudsmen may be prepared to consider complaints before the Council's own complaints procedures have been exhausted.

To expand on this, it may also be obvious to the Council from an early stage that it will not be able to resolve a particular complaint locally and that by asking a complainant to follow the Council's formal complaints procedure will only delay resolution. In these circumstances it is acceptable to refer the complainant to the Ombudsman, thus avoiding unnecessary delay and frustration. The ombudsman should of course be made aware of this decision.