Appendix 2



**Management of unreasonable actions by complainants policy**

Hertsmere Borough Council 2024

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**Contents**

1. Introduction 3
2. Aim of the policy 3
3. Definitions 3

4 Recording interactions by members of the public 4

1. Preventing unreasonable actions 6
2. Managing unreasonable actions 7
3. Decision to restrict contact 8
4. Reviews………………………………………………………………………………….……...8
5. Considering the impact of restrictions on others 9
6. Restrictions on contact……………………………………………………………………...…9
7. Dealing with further communication………………………………………………………….10
8. Signposting to the Ombudsman………………………………………………………………10
9. **Introduction**

1.1 Dealing with a complaint should be a straightforward process, but in a minority of cases, people pursue their complaints in a way which can either impede the investigation of their complaint or can have significant resource issues for the council. This can happen either while their complaint is being investigated, or once the council has finished dealing with the complaint.

1.2 We are committed to dealing with all complaints equitably, comprehensively, and in a timely manner.

1.3 We will not normally limit the contact which complainants have with council staff or offices.

1.4 We do not expect staff to tolerate unacceptable behaviour by complainants or any customer and in addition to the application of this policy the Council will also apply its policy on the Management of Abusive Behaviour at Work where appropriate in individual cases.

1.5 We will take action to protect staff from such unacceptable behaviour. If a complainant behaves in a way that is unreasonable and / or unreasonably persistent~~,~~ we will follow this policy.

1.6 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 unreasonable and / or unreasonably persistent complainant.

1.7 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 unreasonable and / or unreasonably persistent.

1. **Aim of this policy**

2.1 The aim of this policy is to ensure while overall all complainants are dealt with in ways which are demonstrably consistent, fair and reasonable, persistent and unreasonable complainants are not wasting council resources.

1. **Definitions**

3.1 We have used the Local Government and Social Care Ombudsman’s (LGO) definition of unreasonable actions. Unreasonable actions are those which, because of the nature or frequency of contact with an organisation, hinder the organisation’s delivery of services or consideration of complaints.

3.2 It is important that the circumstances of each complaint and complainant are taken into account. There is no universal measure for when actions may be classed as unreasonable.

3.3 Some unreasonable actions emerge over time as complainants become more persistent in pursuit of their complaint. It should be recognised that many complainants act in a legitimate but persistent manner in order to pursue their complaint. Therefore, it is important to recognise the difference between “persistent” and “unreasonably persistent” actions.

3.4 We will consider whether there are any underlying explanations for unreasonable actions. This could be due to unmet communication or support needs and so it is important that organisations have regard to their duty to make reasonable adjustments under the Equality Act 2010.

3.5 There is no exhaustive list of actions that be unreasonable as each case should be judged based on its circumstances. The following are examples of actions which may be considered unreasonable:

* Being abusive, threatening or acting in a manner intended to intimidate staff. This includes any use of racist, sexist, homophobic or other discriminatory language.
* Putting, or threatening to put information on social media or websites which includes personal information of an organisation’s employees without their consent and/or making defamatory statements about employees online.
* Making excessive demands on the time and resources of staff with lengthy phone calls, emails to numerous council staff, or detailed correspondence every few days or more often, and expecting immediate responses.
* Submitting repeat contacts or complaints with minor additions/variations which the complainant insists make these ‘new’ complaints.
* Refusing to specify the grounds of a complaint, despite offers of help.
* Refusing to cooperate with the complaints investigation process. For example, failing to provide information requested that is important for the investigation.
* Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
* Making unjustified complaints about staff who are trying to deal with the issues, and seeking to have them replaced.
* Frequently changing the basis of the complaint as the investigation proceeds.
* Raising many detailed but unimportant questions, and insisting they are all answered.
* Providing false information and/ or submitting falsified documents from themselves or others.
* Adopting a 'scatter gun' approach: pursuing parallel complaints or contact about the same issue with various organisations.

1. **Recording interactions by members of the public**

4.1 Modern technology now allows individuals to record interactions with organisations more easily than at any time in the past. This includes the ability to live broadcast interactions in public and private spaces. Sometimes this can be done without an organisation’s knowledge and staff may be understandably concerned about what a person may do with a recording.

4.2 We will not automatically refuse to allow members of the public to record interactions. It is important to acknowledge that organisations routinely record their interactions with the public for training and monitoring purposes. Complainants should not be prevented from making their own recording in order to have a clear record of matters that were discussed. We would expect complainants to advise staff members if they intended to record any interactions and the purpose for doing so.

4.3 Having a recording of a meeting or telephone call can be helpful to people with certain disabilities who may struggle to recollect details of what was said or be unable to read or process written records about any interactions.

4.4 Sometimes members of the public will record interactions with organisations covertly and with good reason. This could include where a member of staff is suspected of abusing someone in their care. The Local Government and Social Care Ombudsman will consider covert recordings as part of their consideration of complaints on the basis that it can be shared with the organisation and any individuals concerned for comment. Organisations should consider taking a similar approach when considering complaints.

4.5 However, a small number of people will misuse technology and act in a way that is unreasonable. This may include:

* Recording interactions with an organisation without good reason.
* Putting recordings online without the consent of those being recorded.
* Live broadcasting interactions with an organisation without their consent.
* Manipulating or editing recordings.

Staff members who operate in public areas will be given advice on what action to take if they become aware they are being recorded as they carry out their job.

1. **Preventing unreasonable actions**

5.1 In most cases unreasonable actions can be prevented by ensuring people can access services and the information they need easily. We will try to ensure information about our services can be accessed in a range of different ways and that they provide a range of channels for people to use to contact them.

5.2 Our initial interaction with a complainant is probably one of the most important contacts. The way we begin this interaction can significantly affect how the complainant interacts with us subsequently. A complainant, who feels that they have been listened to, understood, treated fairly and with respect and who has been given a thorough explanation of the complaints process and what is likely to happen with their complaint is more likely to respond positively to us and the complaints process than if they were not given this information.

5.3 Unreasonable actions can also be an indication of an unmet communication or support need. Not all disabilities are visible and therefore we will ask everyone who contacts our service whether they need to make any changes to how they deliver their service, such as the way they communicate with them. This allows individuals an opportunity to tell them if they need any reasonable adjustments under the Equality Act 2010.

5.4 Where an individual’s actions are considered unreasonable, it may be appropriate to speak with other teams, departments and external bodies (e.g. mental health services) involved to share information for the purposes of safeguarding their welfare and exploring other ways in which they can be supported through inter or cross-organisational working.

5.5 Staff members are empowered to warn individuals of the consequences of their actions in the first instance. This may help the complainant to reflect on their actions and provide an opportunity for them to modify it. Staff members should also take immediate action in response to unreasonable actions such as terminating phone calls, asking someone to leave the premises or pausing communications. Any immediate steps should be followed by either an informal warning about future conduct or consideration of further action under the organisation’s unreasonable actions policy.

1. **Managing unreasonable actions**

6.1 We will deal with service users and complainants in ways that are open, fair and proportionate. A considered, policy-led approach helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. Policies will be shared with service users and complainants if they start to act unreasonably. This can help in managing their expectations and their actions, as far as possible, while the substance of their complaint is addressed.

**6.2 Informal warnings**

6.3 Staff are empowered to give informal warnings to individuals who act in an unreasonable way. This gives individuals an opportunity to modify their actions. Should individuals continue to act in an unreasonable way then the matter should be escalated for further consideration.

In the majority of cases an informal warning should be given before further action is taken.

**6.4 Formal warning**

6.5 If an individual has failed to adhere to any informal warning from staff then Heads of Service should consider issuing the individual with a formal warning based on evidence. Heads of Service should consider any evidence staff have gathered and reach their own conclusion on whether a formal warning is necessary or whether other actions may resolve the cause of any unreasonable actions. This may include:

* Exploring whether the individual requires any reasonable adjustments under the Equality Act 2010.
* Offering to meet or speak with the individual to understand any concerns that may be causing them to act in an unreasonable way.
* Offering mediation if the individual requires ongoing services from the organisation.

Any formal warning should be given in writing, where appropriate, and should explain:

* Actions the organisation considers unreasonable;
* Examples of actions considered unreasonable;
* A time period within which future actions will be monitored and when / how / by whom any restrictions on contact or other actions will be reviewed;
* Consequences of failing to address their actions;
* A check on whether the individual requires any reasonable adjustments under the Equality Act 2010; and
* Details of the organisation’s complaints process if the person is unhappy with their warning.

1. **Decision to restrict contact**

7.1 The decision to restrict contact with an individual will be a last resort after attempts at reconciliation and warnings have been exhausted. However, we recognise that in serious cases it may be appropriate to restrict an individual’s contact with an organisation without warnings being given.

7.2 Given the seriousness of the decision to restrict a person’s contact, Heads of Service are best placed to reach such a decision given the size and structure of the organisation.

7.3 Any decision to restrict contact will be given in writing, where appropriate (and with regard to any agreed reasonable adjustments), and should explain:

* Actions the organisation considers unreasonable;
* Examples of actions considered unreasonable;
* A time period within which future actions will be monitored; and when / how / by whom any restrictions on contact or other actions will be reviewed;
* Consequences of failing to address their actions;
* Confirmation the organisation has considered the individual’s rights under human rights and equality act legislation; and
* Details of the organisation’s complaints process **or**details of the Ombudsman if the complaint process has been exhausted.

1. **Reviews**

8.1 The decision to restrict contact will be reviewed at the end of the time period within which we said we would monitor future actions. The time period will depend on the actions of the individual and any previous decisions to restrict contact. However, restrictions should be reviewed at least every 12 months.

8.2 When we review restrictions placed on an individual we will write to them to advise them of our decision. If restrictions are to remain in place the we will explain the reasons. If restrictions are lifted we may choose to warn the individual about their future conduct.

1. **Considering the impact of restrictions on others**

9.1 We are conscious of the impact restrictions may have on others when reaching a decision on what restrictions are appropriate and mitigate against this.

This could include:

* Requiring an individual subject to restrictions to be accompanied by another person (e.g. family member or social worker) when visiting.
* Putting in place alternative visiting arrangements, such as meeting outdoors or at another venue, so long as this is suitable for the person being visited.
* Facilitating video calls where there is a risk to staff or others in allowing a person to be physically present in the building.

1. **Restrictions on contact**

**10.1** We will not take a blanket approach to restricting contact with services. In most cases it will be sufficient to restrict access to the service subject to unreasonable actions. However, where their unreasonable actions pose a significant risk to staff members or relate to a number of different service areas it may be appropriate to consider organisation wide restrictions on contact.

Restrictions may include:

* Restricting contact to an individual named officer or generic inbox.
* Placing correspondence on file without acknowledgement or reply.
* Restricting access to certain buildings or premises controlled by the organisation.
* Restricting contact to written contact only (having regard to any agreed reasonable adjustments).
* Restricting the length and frequency of telephone calls.
* Restricting access to discretionary services.

Restrictions should be tailored and proportionate to address the unreasonable actions found in each case.

10.2 We are able to withdraw mandatory services towards individuals on grounds of unreasonable actions in certain limited circumstances (e.g. homelessness). Withdrawal, of a mandatory service is a serious step and we will have regard to wider human rights and equality duties when reaching such a decision.

1. **Dealing with further communication**

11.1Where we decide to place correspondence on file without acknowledgement or reply we will still review the contents to ensure it does not contain significant new information or raise any safeguarding concerns. There is no need to advise the individual that their correspondence contains no new information as this may encourage further unwanted communication.

1. **Signposting to the Ombudsman**

12.1 We will consider complaints before signposting individuals to the Ombudsman, even where they are acting in an unreasonable way. In most cases it should be possible to progress a complaint through local processes and manage any unreasonable actions using our unreasonable actions policy. Once we the signposted the individual to the Ombudsman it is reasonable to expect them to contact us directly.