

POLICY AND PROCEDURE: PERSISTENT, VEXATIOUS OR ABUSIVE COMPLAINTS

PURPOSE: The aim of this policy is to contribute to the overall aim of dealing with all complainants in ways which are demonstrably consistent, fair and reasonable.

SCOPE:

- This policy identifies situations where a complainant, either individually or as part of a group, or a group of complainants, might be considered to be persistent or vexatious.
- In this policy the term complainant includes those making both informal or formal complaints.
- In this policy the term persistent means 'done repeatedly or as a habit'.
- For the purpose of this policy the following definitions of persistent or vexatious complainants will be used:
 - The repeated and/or obsessive pursuit of:
 - a. unreasonable complaints and/or unrealistic outcomes; and/or
 - b. reasonable complaints in an unreasonable manner.
- The term vexatious is recognised in law and means 'denoting an action or the bringer of an action that is brought without sufficient grounds for winning, purely to cause annoyance to the defendant'.
- The term complaint in this policy includes requests made under the Freedom of Information Act 2000 and the Data Protection Act 1998. It includes persistent enquiries which do not specifically mention the FOIA.
- Raising of 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 a vexatious or 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 vexatious or unreasonably persistent.

POLICY: Persistent or vexatious complaints can be a problem for Council staff and members. The difficulty in handling such complainants is that they are time consuming and wasteful of resources in terms of Officer and Member time. While the Council endeavours to respond with patience and sympathy to the needs of all

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complainants there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

PROCEDURE:

1. The Process

1.1 The overall process is as follows:

- Establish whether the individual has the characteristics of a persistent, vexatious or abusive complainant (Section 2 and Appendix 1)).
- Decide whether the Clerk/Council has taken all reasonable steps to satisfy the complainant (Section 3 and Appendix 2).
- Reach a decision on whether to designate an individual as a persistent, vexatious or abusive complainant (Section 4).

1.2 Advice on what to do if the complainant persists is given in Section 5 and Appendix 3.

1.3 The Clerk will ensure that proper records are kept of the case and the action which has been taken (Section 2.3). Full Council will be told that a member of the public has been designated as a persistent or vexatious complainant (Section 5.2).

2. Establish whether a complainant has persistent, vexatious or abusive characteristics

2.1 A persistent complainant may exhibit *one or more* of the behaviours outlined in **Appendix 1**.

2.2 A persistent complainant is likely to start by being dissatisfied with the level of service delivery and persist in demanding levels of service from the Council. It is for the Clerk to decide whether or not the service received has been reasonable. Any relevant guidelines or service standards or legislative requirements will be considered by the Clerk.

2.3 If the Clerk considers that further investigation is unjustified due to the persistent nature of the complaint, consideration should be given to whether this policy should be applied to that individual. At that point the Clerk should ensure that proper record keeping is put in place and the individual should be warned that the Council will not necessarily respond to further service requests and given a copy of this policy.

3. Decide whether the Clerk/Council has taken all reasonable steps to satisfy the complainant

3.1 If the complainant persists with requests for service, then **Appendix 2** outlines considerations for determining if this policy should be applied. The Council must ensure that the points in Appendix 2 have been satisfactorily addressed.

3.2 The council must avoid the danger is that their complaint, even if meritorious, is treated without a significant degree of seriousness and consideration, which compounds their complaint and leads to criticism of the Council.

4. Designation of an individual as a persistent, vexatious or abusive complainant

4.1 If circumstances permit, before deciding to apply restrictions, the Clerk should convene a meeting of a *Complaints Panel*¹ in order to consider the application of this policy to the individual.

4.2 In serious cases where appropriate action is clear, this may not be necessary i.e. a persistent complainant exhibits threatening or abusive behaviour. Where the behaviour is so extreme or it threatens the immediate safety and welfare of staff, other options will be considered e.g. reporting of the matter to the police or taking legal action. In such cases, the complainant may not be given prior warning of that action.

4.3 If the Complaints Panel decides that the nature of the complaint is persistent in nature, the complainant should receive a written warning from the Clerk that, if specified behaviour or actions continue, the Council will apply some or all of the actions set out in *Options for Action (Appendix 3)* and the reasons for doing so. A copy of this policy should be sent with the letter.

5. Action if the behaviour continues

5.1 If the complainant continues to pursue their complaint, the Clerk should respond to the complainant that the policy has now been applied and what it means for their contacts with the Council, how long any restriction will last and what the complainant

¹ The Complaints Panel will consist of 3 councillors (selected by the Clerk) who have played no part in dealing with the information request or complaint.

can do to have the decision reviewed. A copy of this policy should be sent with the letter.

5.2 The Full Council shall be notified at this point that a member of the public has been designated as a persistent or vexatious complainant.

5.3 If the complainant still continues to complain, the Council should state that the matter is now at an end and that the Council will not enter into any further communication unless it relates to a fresh complaint unrelated to the current complaint.

5.4 If the complaints continue then the Council should send a response stating that there is nothing more that can be added to the Council's letter set out in 4.2 above.

5.5 If contact continues, the Council should decline to comment further.

5.6 When a decision has been taken not to comment further, any future letters or e-mails from the complainant should be read to pick up any significant new information. **New** complaints from individuals who have come under this policy will be treated on their merits. The Clerk, Chair of Council and Chair of the Complaints Panel will decide whether any restrictions that have been applied are still appropriate and necessary in relation to the new complaint.

5.7 The status of a complaint judged to be unreasonably persistent or vexatious will be reviewed by the Clerk, Chair of Council and Chair of the Complaints Panel after 3 months and at the end of every subsequent 3 months during which the policy is to apply. The complainant will be informed of the result of the review if the decision to apply this policy has been changed or extended.

Document Approval:



(Chair to Melbourn Parish Council)

Date of Parish Council meeting: 24 April 2017

Review Policy: Every 12 months

APPENDIX 1

EXAMPLES OF PERSISTENT, VEXATIOUS AND ABUSIVE BEHAVIOUR

1. Using obscene, racist, abusive, offensive, unreasonable or threatening language in written correspondence.
2. Seek to coerce or intimidate staff, or abusing or distressing them by the language and tone of telephone communications.
3. Threatening or aggressive or abusive behaviour in direct personal contacts with staff.
4. Threatening, abusive or violent behaviour or actions directed at other people involved in the events which gave rise to the complaint.
5. Refusing to specify the grounds of a complaint, despite offers of assistance with this from the Council's staff.
6. Attempting to use the complaints procedure to pursue a personal vendetta against a member or officer of the Council.
7. Refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved.
8. 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, or that they are not within the power of the Council to investigate, change or influence.
9. Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
10. Making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced by a senior officer or with a person named by the complainant.
11. Changing the basis of the complaint as the investigation proceeds and/or denying statements he or she made at an earlier stage.
12. Refusal to accept information provided, for no apparently good reason.
13. Making statements the complainant knows are not true or persuading others to do so.

14. Supplying manufactured “evidence” or other information the complainant knows/believes is incorrect.
15. Lodging numbers of complaints in batches over a period of time, resulting in related complaints being in different stages of the complaints procedure.
16. Demanding outcomes, which the complaint procedure cannot in itself provide (for example dismissal or criminal prosecution of staff, or actions which would be illegal or infringe the rights of others).
17. 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.
18. Electronically recording private meetings and conversations without the prior knowledge and consent of the other persons involved.
19. Adopting a 'scattergun' approach: pursuing a complaint or complaints with the Parish Council and, at the same time, with a Member of Parliament/a District or County councillor, the Monitoring Officer of SCDC or local police or solicitors.
20. 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 emails to numerous council staff, writing lengthy complex letters every few days and expecting immediate responses.
21. Submitting repeat 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.
22. Using the vehicle of valid new complaints to resurrect issues, which were included in previous complaints.
23. Refusing to accept the decision – repeatedly arguing the point and complaining about the decision.
24. Persistence in sending letters/emails which demand responses, or making telephones calls or seeking interviews with staff, long after the Council has closed the investigation into a complaint.
25. Combinations of some or all of these.

APPENDIX 2

HAS THE COUNCIL TAKEN ALL NECESSARY STEPS?

1. 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, authorities should be satisfied that:

(a) the Clerk and/or Council has communicated clearly and consistently. State actions must have been completed except where an explanation for a different course of action has been given to the complainant.

(b) the complaint is being or has been investigated properly via the complaints procedure. If the complainant asks the same question due to failure by the Council to adequately answer the question this cannot be considered as a persistent complaint.

(c) any decision reached on it is the right one and all evidence placed on file will corroborate action taken via the unreasonable persistent complaints policy, for example details of any abusive phone calls (or other Appendix 1 examples). All file notes should be comprehensive and objective containing date/time/telephone call/meeting/officer.

(d) communications with the complainant have been adequate.

(e) the complainant is not now providing any significant new information that might affect the authority's view on the complaint.

2. Even if these points are satisfied consideration should be given to whether further action is necessary prior to taking the decision to designate the complainant as unreasonably persistent. Examples might be:

(a) No meeting has taken place between the complainant and the Clerk. Such meetings may dispel misunderstandings and move matters towards a resolution.

(b) If the complainant has special needs, an advocate might be helpful to both parties.

(c) Before applying any restrictions the complainant should be given a warning that if his/her actions continue the Council may decide to treat him/her as an unreasonably persistent complainant, and an explanation why given.

APPENDIX 3

OPTIONS FOR ACTION

1. Any restrictions applied to a complainant should be appropriate and proportionate to the nature of their contacts with the Council at that time.
2. In deciding which options to apply, the Complaints Committee should be particularly careful to balance the rights of the individual at all times with the needs of the Council.
3. The following list provides options for managing a complainant's involvement with the Council from which one or more might be chosen and applied, *if warranted*:
 - a) placing time limits on telephone conversations and personal contacts.
 - b) restricting the number of telephone calls that will be taken (for example one call on one specified morning/afternoon of any week)
 - c) limiting the complainant to one medium of contact (telephone, letter, email etc).
 - d) requiring the complainant to communicate only with a named member of staff.
 - e) requiring any personal contacts to take place in the presence of a witness.
 - f) closing the investigation into a complaint.
 - g) providing the complainant with acknowledgements only of further letters or e-mails received after a particular point.
 - h) banning a complainant from some or all of an authority's premises.
 - i) the threat or commencement of civil proceedings in the courts (for harassment, defamation etc).
 - j) asking the complainant to enter into a written agreement about their future conduct if the complaint is to be progressed.
 - k) in cases where the Council believes the complainant has committed a criminal offence (for example, assault on staff or criminal damage), where assault is threatened, or where the complainant refuses repeated requests to leave the authority's premises, the involvement of the police.