

Royal Borough Windsor & Maidenhead
Policy for dealing with vexatious or unreasonable
complainant behaviour
Version 6 - April 2018

“The Royal Borough of Windsor & Maidenhead is a great place to live, work, play and do business supported by a modern, dynamic and successful Council”

Our vision is underpinned by four principles:

Putting residents first

Delivering value for money

Delivering together with our partners

Equipping ourselves for the future

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Frequently used acronyms

FTE	Full time equivalent
RBWM	Royal Borough of Windsor & Maidenhead

1. INTRODUCTION

- 1.1 Complaints about the Royal Borough of Windsor and Maidenhead are processed in accordance with the Local Government & Social Care Ombudsman's guidance 'Running a complaints system - Guidance on good practice'. During this process, Council staff inevitably come into contact with a small number of complainants who take up an unwarranted amount of Council resources or impede the investigation of their complaint. The aim of this policy is to identify situations where the complainant could be considered to be vexatious or to be acting unreasonably and to detail how to respond to such situations.
- 1.2 This policy reflects the Guidance note on 'unreasonably persistent and unreasonable complainant behaviour' issued by the Local Government & Social Care Ombudsman ('the Ombudsman') in January 2015.
- 1.3 Careful judgment and discretion must be used in applying the criteria to identify potential vexatious or unreasonable behaviour and in deciding what action to take in specific cases.
- 1.4 It must be recognised that complainants may sometimes act out of character at times of anxiety or distress and reasonable allowances should be made for this.
- 1.5 The policy does not replace any statutory guidance that may be in place for a Service for example Social Care or Education, it merely sits alongside to enhance the range of options available to the Royal Borough. This ensures that all residents are treated equally and a disproportionate amount of time and money is not spent dealing with an individual unreasonable/vexatious complainant.

2. DEFINITION OF UNREASONABLE COMPLAINANT BEHAVIOUR

- 2.1 People use the terms 'unreasonable complainant behaviour' and 'unreasonably persistent complainants'.

For the Royal Borough of Windsor and Maidenhead, vexatious, unreasonable and unreasonably persistent complainants are those contacts who, because of the frequency or nature of their contacts with the authority, hinder the authority's consideration of their, or other people's complaints.

- 2.2 It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many of the people who submit complaints to the Ombudsman are 'persistent' on an entirely reasonable basis because they feel the authority has not dealt with their complaint properly and are not prepared to leave the matter there. The fact that approximately 26% of the complaints the Ombudsman investigates conclude either by report or by local settlement indicates that this persistence is frequently justified. And almost all complainants see themselves as pursuing justified complaints.
- 2.3 Unreasonable 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 are often not, and in either case place very heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.

- 2.4 Sometimes the situation between the council and a complainant can escalate and the behaviour moves from being vexatious unreasonable and unreasonably persistent to behaviour which is unacceptable, for example, abusive, offensive or threatening. Such complainants are in a very small minority, but sometimes the authority finds itself in the position of having to restrict access to council premises or even having to resort to legal action to address such behaviour, for example, in the form of anti-social behaviour orders or injunctions, or applying other sanctions to manage unacceptable behaviour. This may include for example limiting future contact by letter, email or phone to a specific single point of contact. .

This policy does not address the issues of health and safety, but sits alongside the existing Council policy and guidance regarding violence at work, as a means of addressing the full spectrum of behaviours that the council might have to address.

This guidance covers behaviour that is unreasonable, which may include one or two isolated incidents, as well as unreasonably persistent behaviour, which is usually an accumulation of incidents or behaviour over a longer period. This may be across one or several service areas and will need to take due consideration of the respective time period over which contacts have been received.

- 2.5 Complainants may be deemed to be vexatious as a result of their unreasonable behaviour where current or previous contact with them shows that they have met one or more of the following criteria:
- 2.5.1 Persisting in pursuing a contact or enquiry or complaint where the Council's Complaints Procedure has been fully and properly implemented and exhausted, including the Ombudsman.
- 2.5.2 The substance of a complaint is changed or new issues are raised persistently or complainants seek to prolong contact by unreasonably raising further concerns, although care must be taken not to disregard new issues, which differ significantly from the original complaint.
- 2.5.3 Complainants are unwilling to accept documented evidence of facts or deny receipt of an adequate response despite correspondence specifically answering their questions / concerns. This could also extend to complainants who do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
- 2.5.4 Complainants refuse to specify or do not clearly identify the precise issues or grounds they wish to be investigated despite reasonable efforts to help them to do so by staff.
- 2.5.5 Complainants focus on a trivial matter to an extent, which is out of proportion with its significance, and continue to focus on this point. It should be recognised that determining what is trivial can be subjective and careful judgment must be used in applying the criterion.
- 2.5.6 Complainants have, in the course of pursuing a registered complaint, had an excessive number of contacts (or unreasonably made multiple complaints) with the council placing unreasonable demands on council resources. Such contacts can include: in person, by telephone, letter, fax or electronically (emails and social media). Discretion must be exercised in deciding how many contacts are required to qualify as excessive, using judgment based on the specific circumstances of each individual case. The council will respond in accordance with published timescales appropriate to the case.

- 2.5.7 Complainants have harassed or been abusive or verbally aggressive or threatening or bullying on one or more occasions towards staff dealing with their complaint – directly or indirectly – or their families and/or associates. All incidents of harassment or aggression must be documented, dated and reported to the Line Manager.
- 2.5.8 Complainants are known to have electronically recorded meetings or conversations without the prior knowledge and consent of the other parties involved. It may be necessary to explain to a complainant at the outset of any investigation into their complaint(s) that such behaviour is unacceptable and can, in some circumstances, be illegal, and do not have the Council's permission to use it should they make any such record.
- 2.5.9 Complainants making unnecessarily excessive demands on the time and resources of the Council or its 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.
- 2.5.10 Complainants refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved.
- 2.5.11 Complainant 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.
- 2.5.12 Complainant insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- 2.5.13 Complainant making what appears to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced.
- 2.5.14 Complainant 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.
- 2.5.15 Complainant adopting a 'scattergun' approach: pursuing a complaint or complaints with the authority and, at the same time, with a Member of Parliament and or a Councillor, and or the authority's independent person and or local police, solicitors or the Ombudsman.
- 2.5.16 Combinations of some or all of these, which may include contact at both Council buildings, or offsite and including home visits.
- 2.6 Complaints may be deemed to be vexatious in any situation where physical violence has been used or threatened towards staff or their families/associates at any time. This will cause personal contact with the complainant to be discontinued and the complaint will, thereafter, only be pursued through written communication. All such incidents should be documented and reported in accordance with Violence at Work Policy, also reporting where appropriate, to the police.
- 2.7 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. If complaints procedures are operating properly, then responding to

expressions of dissatisfaction and requests for information should not cause the Council particular problems.

3. DEALING WITH UNREASONABLE COMPLAINANTS

- 3.1 Once a complaint has been received by a service who consider the contact to be unreasonable, the relevant senior officers will consider if the behaviour is vexatious or unreasonable behaviour. A decision will be made on whether the contact is to be deemed vexatious or unreasonable behaviour or not. A warning letter may be issued which will provide an opportunity for the individual to modify their behaviour.
- 3.2 The complainant should be informed that any further contact should be through a nominated officer. The complainant(s) should be informed that any course of action taken as a result of the decision reached, only relates to contact with the council over their specific complaint(s). It does not, and is not intended to, have any impact on any other reasonable dealings between the council and the complainant(s) on other unrelated issues.
- 3.3 Heads of Service have the responsibility for identifying complainants as potentially acting in a vexatious or unreasonable manner. A referral will be made to the Monitoring Officer of the Council and in accordance with the above criteria, who will decide, what action will be taken in consultation with relevant Head of Service and Executive Director and will implement such action and arrange to notify the complainant(s) promptly in writing with the reasons why they have been classified as vexatious as a result of their unreasonable behaviour or unreasonably persistent behaviour and the action to be taken. This decision may be shared with partners and other services in the Royal Borough of Windsor and Maidenhead where appropriate.
- 3.4 This notification must be copied to the relevant Head of Service and Executive Director promptly. They will be responsible for ensuring others already involved in the complaint are aware of the decision. A record will be kept, for future reference, of the reasons why a complainant has been classified as vexatious and the action taken, the decision will be recorded on the Council's Vexatious and Unreasonable Behaviour Register. Where appropriate the relevant Head of Service or Executive Director will advise their Lead Member of the decision.
- 3.5 The Monitoring Officer, or their nominated officer, may decide to deal with vexatious complainants in a number of ways:
 - 3.5.1 Once it is clear that a complainant meets any one of the criteria in section 2, it may be appropriate to inform them in writing that they are at risk of being classified as vexatious. A copy of this policy should be sent to them and they should be advised to take account of the criteria in any future dealings with council staff.
 - 3.5.2 Attempt to resolve matters by drawing up a signed agreement with the complainant (if appropriate, involving the relevant Head of Service) setting out a code of behaviour for the parties involved if the council is to continue dealing with the complaint. If this agreement were breached consideration would then be given to implementing other actions as outlined below. This may include for example only one contact per specified period in relation to new issues, with further updates stipulated specific to each case.
 - 3.5.3 Decline further contact with the complainant either in person, by telephone, fax, letter or electronically – or any combination of these – provided that one form of contact is maintained. Alternatively, in extreme cases further contact could be restricted to liaison

through a third party, if costs are incurred by the complainant the council is not responsible.

- 3.5.4 Notify complainant(s) in writing that the Authority considers it has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. Complainant(s) should be notified that correspondence is at an end and that further communications will not be acknowledged or answered. This will not prevent the complainant going to the Ombudsman where the Royal Borough of Windsor and Maidenhead will cooperate in any investigation.
- 3.5.5 Inform complainants that if appropriate, the council reserves the right to refer the behaviour of unreasonable or vexatious complaints to the police.
- 3.5.6 In exceptional circumstances, consideration can be given to the possibility of obtaining a High Court injunction to prevent the complainant harassing, threatening or causing distress to named or individual council employees.
- 3.6 If a group of individuals are identified to be acting in a co-ordinated manner, so as to avoid any one individual being identified as acting in a vexatious or unreasonable manner, the Monitoring Officer will consider if a collective number of individuals on the group should be deemed as vexatious and be entered on to the register.

4. VEXATIOUS REGISTER PROCEDURE

- 4.1 If the complainant fails to comply with any arrangement in paragraph 3.5 and/or persists in their unreasonable behaviour as set out in paragraph 2.5 the complainant shall be considered to be vexatious and notified in writing by the Monitoring Officer, or their nominated officer.

5. WITHDRAWING VEXATIOUS STATUS

- 5.1 Once complainants have been classified as vexatious such status will continue to apply for a minimum period of six months, at the end of which period, it will be reviewed by the Monitoring Officer and the Head of Service who requested the status in the first place. The review will decide, either the status be continued for a further period of six months, and all relevant parties informed, or it will be withdrawn. However this status can also be withdrawn at any time if, for example, complainants subsequently demonstrate a more reasonable approach.
- 5.2 If a person on the Vexatious and Unreasonable Behaviour Register submits a further complaint, relating to a new matter(s), the normal complaints procedures would apply, within the terms of the status applied, ie contact only through a single point of contact, or is a specific format email only.
- 5.3 Where vexatious status is withdrawn, normal contact with complainants and application of the complaints procedures will be resumed.

6. REVIEW AND APPEAL PROCESS

- 6.1 If the vexatious complainant is unhappy about the decision to place their name on the

vexatious complainants register, they may write and their appeal review will be considered by the Managing Director, (or another Executive Director not involved in the decision up to that point). The request for a review of the decision, should set out in writing any reasons why they consider the decision unfair or wrong. Such requests should be within 15 working days of them having been notified of the council's decision in writing.

- 6.2 If after the vexatious complainant has received a decision in writing, following the review, with which they do not agree or still feel it is unreasonable, they may refer the matter to the Ombudsman, 10th Floor, Millbank Tower, Millbank, London SW1P 4QP.
- 6.3 The existence and operation of this procedure will be reviewed, shared with and explained to all relevant staff.

7. REFERENCES

- 7.1 Running a complaints system 'Guidance note on managing unreasonable complainant behaviour' :

<https://www.lgo.org.uk/information-centre/reports/advice-and-guidance/guidance-notes/guidance-on-managing-unreasonable-complainant-behaviour>

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