

Filey Town Council

Policy for dealing with abusive, persistent or vexatious complaints and complainants

1. Introduction

- 1.1 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 habitual or vexatious and ways of responding to these situations.
- 1.2 In this policy the term habitual means 'done repeatedly or as a habit'. 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'. For the purposes of this policy actions would also be included that, after due consideration, would appear to have been brought in order to cause major inconvenience or annoyance. This policy intends to assist in identifying and managing persons who are deemed to be disruptive to the council through pursuing an unreasonable course of conduct.
- 1.3 The term "complaint" in this policy includes requests made under the Freedom of Information Act 2000 and the Data Protection Act 1998 and reference to the Complaints Procedure is, where relevant, to be interpreted as meaning a request under those acts.
- 1.4 Habitual or vexatious complainants 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 complainants there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.
- 1.5 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; however, when the complainant continues to challenge when all avenues have been exhausted and refuses to accept decisions and/or answers, this would be deemed unreasonably persistent.
- 1.6 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.

2. Habitual or Vexatious Complainants

- 2.1 For the purpose of this policy the following definition of habitual or vexatious complainants will be used:
The repeated and/or obsessive pursuit of:
 (1) *unreasonable complaints and/or unrealistic outcomes; and/ or*
 (2) *reasonable complaints in an unreasonable manner*
- 2.2 Prior to considering its implementation the council will send a copy of this policy to the complainant to give them prior notification of its possible implementation.
- 2.3 Where complaints continue and have been identified as habitual or vexatious in accordance with the criteria set out in Section 3, the nominated group of councillors will seek the

agreement of full council to treat the complainant as a habitual or vexatious complainant and for the appropriate course of action to be taken. Section 4 details the options available for dealing with habitual or vexatious complaints.

- 2.4 The clerk on behalf of the council will notify complainants, in writing, of the reasons why their complaint has been treated as habitual or vexatious and the action that will be taken.
- 2.5 The status of the complainant will be kept under review. If a complainant subsequently demonstrates a more reasonable approach, then his status will be reviewed. In any case all such designations will be reviewed on a six monthly basis.

3. Definitions

- 3.1 The council defines unreasonably persistent and vexatious complainants as those complainants who, because of the frequency or nature of their contacts with the council, hinder the authority's consideration of their or other people's complaints. The description 'unreasonably persistent' and 'vexatious' may apply separately or jointly to a particular complainant.
- 3.2 Examples include the way in which, or frequency with which, complainants raise their complaint with staff or how complainants respond when informed of the council's decision about the complaint.
- 3.3 Features of an unreasonably persistent and/or vexatious complainant include the following examples. An unreasonably persistent and/or vexatious complainant may:
 - have insufficient or no grounds for their complaint and may be deemed as making the complaint only to annoy or to draw unwarranted attention to themselves (or for reasons that he or she does not admit or make obvious)
 - refuse to specify the grounds of a complaint despite offers of assistance
 - refuse to co-operate with the complaints investigation process while still wishing their complaint to be resolved
 - refuse to accept that issues are not within the remit of the complaints policy and procedure despite having been provided with information about the scope of the policy and procedure
 - refuse to accept that issues are not within the power of the Council to investigate, change or influence
 - insist on the complaint being dealt with in ways which are incompatible with the complaints procedure or with good practice (e.g. insisting that there must not be any written record of the complaint or demanding to be present at any disciplinary hearing)
 - make what appear to be groundless complaints about the staff dealing with the concerns, and seek to have them dismissed, disciplined or replaced
 - make an unreasonable number of contacts with the Council, by any means in relation to a specific complaint or complaints
 - make persistent and unreasonable demands or expectations of staff and/or the complaints process after the unreasonableness has been explained to the complainant (an example of this could be a complainant who insists on immediate written or verbal responses to questions, sends frequent and/or complex letters, faxes, emails or makes frequent telephone calls)

- harass, verbally abuse or otherwise seek to intimidate staff dealing with their complaint, in relation to their complaint by use of foul or inappropriate language or by the use of offensive and racist language
- raise subsidiary or new issues whilst a complaint is being addressed that were not part of the complaint at the start of the complaint process
- introduce trivial or irrelevant new information whilst the complaint is being investigated and expect this to be taken into account and commented on
- change the substance or basis of the complaint without reasonable justification whilst the complaint is being addressed
- deny statements he or she made at an earlier stage in the complaint process
- electronically record meetings and conversations without the prior knowledge and consent of the other person(s) involved
- adopts an excessively 'scattergun' approach: for instance, pursuing an unjustified or relatively trivial complaint or complaints not only with the council, but at the same time with, for example, a Member of Parliament, other councils, elected members of this and other councils, the council's external auditor, the Standards Board and local committee, the police or solicitors
- refuse to accept the outcome of the complaint process after its conclusion, repeatedly arguing the point, complaining about the outcome, and/or denying that an adequate response has been given
- make the same complaint repeatedly, perhaps with minor differences, after the complaints procedure has been concluded and insist that the minor differences make these 'new' complaints, which should be put through the full complaints procedure
- persistently approach the council through different routes about the same issue
- persist in seeking an outcome which the council has explained is unrealistic for legal or policy (or other valid) reasons
- refuse to accept documented evidence as factual
- complain about or challenge an issue based on an historic and/or an irreversible decision or incident
- combine some or all of these features

4. Guiding principles on limiting access

The council will limit the nature and scope of access in the following circumstances:

- where full access would be likely to compromise the council's obligations as an employer
- where full access would be likely to compromise any statutory obligations to which the council is subject
- where full access would be likely to be wasteful of the council's resources, whether through excessive contact or use of services
- where full access may cause unacceptable annoyance or distress to council employees

- where full access would be likely to encourage or allow rude and abusive behaviour
- where full access may mean that an employee or employees are unacceptably distracted from carrying out their normal occupation

5. Imposing Restrictions

- 5.1 The council will ensure that the complaint is being, or has been, investigated properly according to the adopted complaints procedure.
- 5.2 In the first instance the clerk will consult with the town mayor and chairman of the designated council group prior to issuing a warning to the complainant. The clerk will contact the complainant in writing, or by email, to explain why this behaviour is causing concern and ask them to change this behaviour and outline the actions that the council may take if they do not comply.
- 5.3 If the disruptive behaviour continues, the clerk, under the instruction of the council, will issue a reminder letter to the complainant advising them that the way in which they will be allowed to contact the council in future will be restricted. The clerk will be authorised by the council to inform the complainant in writing of what procedures and restrictions have been put in place and for what period.
- 5.4 Any restriction that is imposed on the complainant's contact with the council will be appropriate and proportionate and the complainant will be advised of the period of time that the restriction will be in place for. In most cases restrictions will apply for six months but in exceptional cases this may be extended. In such cases the restrictions would be reviewed on a six monthly basis.
- 5.5 Restrictions will be tailored to deal with the individual circumstances of the complainant and may include:
- banning the complainant from making contact by telephone except through a third party e.g. a solicitor, a councillor or a friend acting on their behalf
 - banning the complainant from sending emails to individual and/or all officers and insisting they only correspond by letter
 - requiring contact to take place with one named member of staff or designated member/s only
 - restricting telephone calls to specified days and/or times and/or duration
 - requiring any personal contact to take place in the presence of an appropriate witness, usually a designated member of the council
 - letting the complainant know that the council will not reply to or acknowledge any further contact from them on the specific topic of that complaint unless any further evidence or relevant related information comes to light (in this case, a designated member of staff or council member will be identified who will read future correspondence). Where there is any doubt about what is new evidence or relevant related information, the matter will go to the council for a decision
- 5.6 When the decision has been taken to apply this policy to a complainant, the clerk or, in exceptional cases, the town mayor or designated councillor acting under instructions from the council, will contact the complainant in writing to explain.
- why the decision has been taken
 - what action is being taken

- the duration of that action

- 5.7 A copy of this policy will be enclosed in the letter to the complainant.
- 5.8 Where a complainant continues to behave in a way that is unacceptable, the clerk, under instruction from the council may refuse all contact with the complainant and stop any investigation into a specific complaint. This would not preclude the complainant from taking up other, unrelated issues with the designated contact.
- 5.9 In the event of habitual complaints about any one member of staff, the council will investigate each complaint on its merits but in the event of there being no evidence in each case, will alert the complainant to the fact that the council will not tolerate harassment of its employees and will curtail contact between the habitual complainant and the employee in question. In this event the complainant will then be directed to deal with a nominated group of councillors, who will ensure that the complainant's rights within the Freedom of Information Act are met.
- 5.10 Where the behaviour is so extreme or it threatens the immediate safety and welfare of staff, other options will be considered, e.g. the 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.

6. New complaints from complainants who are treated as abusive, vexatious or persistent

- 6.1 New complaints from people who have come under this policy will be treated on their merits. The council will decide whether any restrictions that have been applied before are still appropriate and necessary in relation to the new complaint. A blanket policy is not supported, nor is ignoring genuine service requests or complaints where they are founded.
- 6.2 The fact that a complainant is judged to be unreasonably persistent or vexatious and any restrictions imposed on council's contact with him or her, will be recorded and notified only to those who need to know within the council. This will normally be all members and council staff who normally deal directly with concerns.

7 Review

- 7.1 The status of a complainant judged to be unreasonably persistent or vexatious will be reviewed by the council after six months, and at the end of every subsequent six months within the period during which the policy is to apply.
- 7.2 The complainant will be informed of the result of this review if the decision to apply this policy has been changed or extended.

8. Record Keeping

- 8.1 The clerk will retain adequate records of the details of the case and the action that has been taken. Records will be kept of:
- the name and address of each member of the public who is treated as abusive, vexatious or persistent;
 - when the restriction came into force and ends;
 - what the restrictions are;
 - when the person and council were advised.
- 8.2 The council will be provided with an annual report giving information about members of the public who have been treated as vexatious/persistent as per this policy.

9. Persons suffering from a disability

9.1 Impaired mental capacity

- 9.1.2. Where it appears that a habitual or vexatious complainant may have an impaired mental capacity, no action or decision will be taken without first consulting with the council as to whether there is any other way of dealing with the proposed limitations on access that is less restrictive of the complainant's freedom of action. These may include securing continued access through a relative, friend, carer or other professional. However it should always be remembered that the complainant has a right to confidentiality and may not want certain people to be involved. This must always be balanced with the need to protect employees and members of the council from habitual or vexatious contact.

10. Persons under the age of eighteen

- 10.1 In the case of a habitual or vexatious client who is under the age of eighteen one form of contact - generally by means of written communication - must always be maintained. It may be possible to arrange to deal with such a complainant.

- 11. No restrictions on the council's or its employees' or its members' recourse to law**
Nothing in this policy shall operate so as to impede the right of the council or an employee or a member to have recourse to the civil and/or criminal law where such recourse is available to the council or employee or member in any particular case.

NB Where access is to be limited, the customer will be provided with a full copy of this policy and a letter of explanation about the exact limits and the reasons for the limitation. They will also be informed that there will be a review of their limited access every six months one form of contact will remain open to them at all times but there may be a greater delay in dealing with the concerns because of the terms of the limitation. Time limits will be made clear to the customer and will be adhered to.

This policy will be the subject of regular monitoring and will be reviewed annually by the council.

REVIEWED 23 May 2018 Reviewed 24 May 2019 Reviewed 5 May 2020
Reviewed May 2021 Next Review May 2022