

Vexatious Complaint Procedure

1.0) Introduction

East Hertfordshire Council is committed to ensuring that it is 'Fit for purpose, services fit for you - *Deliver customer focused services by maintaining and developing a well-managed and publicly accountable organisation*'. All employees will be trained to respond with patience and sympathy to the needs of all our customers, especially when they feel the need to register a complaint.

However, in rare and exceptional cases the Council may receive correspondence that is obsessive, persistent or aggressive. In such circumstances there may be nothing further that can reasonably be done to assist a customer or rectify a real or perceived problem. The Council's resources are limited and to continue to provide good services the Council must take action to manage these rare situations where a disproportionate amount of resources have to be focused on dealing with individual customers. In these situations the Council will refer to this Vexatious Complaints Procedure.

The Council's processes have been informed by the guidance issued by the Information Commissioner to establish the status of vexatious information requests. The Freedom of Information Act has specific provision (section 14) to manage requests for information that may be determined as vexatious. This is a separate statutory process which falls outside of the determination of vexatious complaints or complainants under the Council's own procedures.

The Council recognises that it is important to distinguish between people who make a number of complaints because they genuinely believe things have gone wrong, and people who are simply being difficult. Complaints may often be frustrated and aggrieved and it is therefore essential to consider the merits of each case rather than a customer's attitude. It is also important to recognise that even though someone has made vexatious complaints in the past, it must not be assumed that the next complaint is also vexatious. Each complaint must be considered and a decision made as to whether it is vexatious or genuine.

2.0) Scope and Purpose

A very small minority of customers make complaints that are vexatious, in that they persist unreasonably with their complaints, or make complaints in order to make life difficult for the Council rather than genuinely to resolve a grievance. This may involve making serial complaints about different matters, or continuing to raise the same matters over and over again.

How we manage these customers will depend upon the nature and extent of the behaviour and issues raised. If their persistency adversely impacts our ability to do our work and provide a service to others, we may need to address unacceptable behaviour by restricting contact with our offices.

This procedure and guidance covers all corporate complaints made to the Council. All complaints should be processed in accordance with East Hertfordshire Council's Comments, Compliment and Complaints procedure (3Cs). This procedure enables staff to respond in a professional and helpful manner to all complainants and sets out the Council's approach to dealing with vexatious complainants so that staff and customers can be clear what to expect.

Appendix A lists a range of situations the Council consider to be vexatious. The list is not exhaustive but is indicative of the nature of the issues that will need to be considered within this procedure.

This procedure should be used in conjunction with:

Comments, Compliments and Complaints Procedure

Customer Care – Handling Difficult Situations

Managing Violence and Aggression in the Workplace Policy (part of the Council's Health & Safety Policy)

The purpose of this document is to provide staff with a framework and potential steps that can be taken to manage vexatious and persistent complainants in a consistent and professional manner.

3.0) Use of the Vexatious Customers and Complaints Procedure

This policy is intended only for use in exceptional circumstances, when all other measures have failed to resolve matters.

It is important not to spend large amounts of time on vexatious complainants but skill is needed to avoid inflaming an already difficult situation. Effort spent diffusing a situation rather than taking a hard line and spending time holding that line can sometimes use a greater resource.

It is not necessary to meet a complainant's unreasonable demands or to answer every point in an unreasonable letter. But judgement is required to separate legitimate queries from those that are unreasonable, often within the same complaint.

Judgement and discretion must be used in deciding action to be taken in specific cases. To decide whether a complaint is vexatious it is necessary to look at its context and history and take into account all the facts of the case. The policy should only be implemented following careful consideration by, and with the authorisation of a Director or the Chief Executive. It is essential that any decision to limit access to a service is taken with careful consideration of the welfare responsibilities of the authority to meet the needs of the customer concerned and the authorities' staff.

4.0) Key Questions

Some key questions that may assist in establishing if use of this procedure may be required:

- 1) Has the Council's Comments, Compliments and Complaints procedure been correctly implemented such that no material element of a complaint has been overlooked or inadequately addressed?
- 2) Has the complaint been fully evaluated? Care is needed since even vexatious complaints may have aspects that contain some substance which need to be considered.
- 3) Could the complaint be reasonably seen as obsessive, as opposed to persistent?
- 4) Could the complaint's behaviour be reasonably expected to harass the organisation or cause distress to specific staff?
- 5) Does the complaint have no value and no serious purpose; has the complainant suffered an injustice?
- 6) Does the continued consideration of the complaint generate significant burden on the service in terms of time or cost?

7) Has an equitable approach has been followed; the customer may have special needs that may make it harder for them to express themselves?

8) Is there an overriding requirement involving the welfare responsibilities of the Council to the customer?

9) Does the complaint represent a continuation of a pattern of behaviour of thematic complaints which could reasonably be seen as obsessive?

Any action taken as a result of this policy should aim to minimise the impact on staff without unreasonably restricting access to the public services that we provide. This is particularly relevant where staff suspect that the person's behaviour may be symptomatic of some physical or mental disability.

5.0) Key Types of Vexatious Complaint or Complainants

5.1) Complaints about the Same Matter (No New Information)

If a complaint is essentially unchanged from that already considered with only minor differences and containing no new information.

Possible Responses

- 1) If the complainant has not exhausted the complaints procedure, they should be referred the next stage of the procedure.
- 2) If the Council's complaint procedure is exhausted but the customer has not registered their complaint with the Local Government Ombudsman they should be directed to do so. In the event that the Ombudsman considers there to have been maladministration the Council will consider their recommendations accordingly. Disagreements with the Ombudsman's decision raised with the Council will be returned to the customer, so the customer can raise the matter with the Ombudsman, the Council's complaints procedure being exhausted.
- 3) If the complainant does not pursue their complaint to the next stage but continues to correspond with the Council, this correspondence must be read by the officer that addressed the original complaint. If no significant new matters are raised and no additional information is provided the complainant must be informed they should raise the matter under the next stage of the complaints procedure. The complainant should also be warned that the Council will not enter into any further correspondence about the matter.
- 4) If the complainant does not follow any of the advice provided above, any further correspondence that does not raise any significant new information should be filed (after dating and recording who it was checked by) with no acknowledgement sent.

5.2) Complaints about Similar Matters

The most difficult vexatious complaints to manage are often those that are slightly different from the original complaint but about the same broad area of activity.

Possible Responses

- 1) A decision will have to be made in such cases whether the matters are sufficiently different to justify being considered as a new complaint.
- 2) The determination should be made in conjunction with the Head of Service with a recommendation made to a Director for approval in the event that a vexatious situation is identified.

5.3) Complaints about Different Matters

The council understands that a complaint cannot be judged vexatious purely on the basis that the person who submitted that complaint had previously submitted one or more vexatious, though unrelated complaints. If a complainant makes multiple complaints about different matters each complaint must normally be considered under the complaints procedure. However, they will be considered vexatious where the complaint(s), although not repeated in the sense that they are the same, each represent a continuation of previously demonstrated pattern of behaviour, that form a pattern of obsessive thematic complaints.

5.4) Trivial Complaints

A complainant may make multiple complaints about entirely trivial matters, or matters where the complainant has clearly not caused the complainant injustice.

Possible Responses

- 1) It may be appropriate to consider closing the complaint at stage 1. This should only be done with the Director concerned and the Head of Communications, Strategy & Policy (who will draw on additional professional advice if required). The complainant should be informed that as the Council feels their complaint has been full addressed at stage one the Council will not offer a further review and that any appeal should be made to the Local Government Ombudsman.
- 2) Any subsequent complaints should be filed (once date stamped and the details of the officer that has reviewed it noted).

5.5) Vexatious Telephone Complaints

Complaints do not have to be made in writing to the Council. However, if a complainant continues to telephone the Council to discuss an existing complaint or make further complaints, and this is becoming time consuming and disruptive.

Possible Responses

- 1) It may be reasonable to ask the complainant to put their specific concerns in writing and to discontinue the call.
- 2) If the behaviour persists it may be reasonable to tell the complainant that the Council will, for a set period, not accept telephone calls from the customer and only deal with the complainant in writing. This must be decided in conjunction with the Head of Service and approved by a Director. A letter must be sent confirming this decision, how long the time period is to last and the reason for it.
- 3) At the end of the period the matter should be re-considered and the ban reconsidered as appropriate.

5.6) Multiple Vexatious Contacts across the Council

Vexatious complainants often contact many different people across the Council and try to take advantage of the different responses they receive.

Possible Responses

- 1) A vexatious complainant should be appointed a single, main contact within the Council.
- 2) The complainant must be informed in writing who the main contact is and why they have a single point of contact.

- 3) This approach must be decided in conjunction with the Head of Service and approved by a Director.
- 4) Always take advice from the Head of Communications, Strategy & Policy (who will take additional professional advice as required in each case).
- 5) If the complainant's method of contacting the council is usually by email, the Director may agree that all email correspondence from that address should be routed to a single point and may instruct IT to implement that decision.

6.0) Taking Actions

Appendix B is a flow chart of the Vexatious Complaint Process.

Where complainants have been identified as vexatious in accordance with this procedure and the recognised behaviours (Appendix A), the Head of Service will (after taking appropriate advice from the Head of Communication, Strategy & Policy) recommend to a Director what action they would like to take. The Director or Chief Executive will consider this recommendation. The Head of Service must inform the Head of Communication, Strategy & Policy when a decision has been made and what action has been agreed. The Head of Service will implement the agreed action and will notify the complainant in writing of the reasons and the action to be taken. This notification may be copied for the information of any other involved parties e.g. Local Councillor. A record will be kept by the Customer Service Manager for future reference of the reasons why a complainant has been classified as habitual, persistent or aggressive.

A formal record of decisions, why the conclusion was reached and any subsequent review must be made using the case consideration and review form in Appendix C.

The Head of Service may decide to deal with complaints in one (or more) of the following ways:

- 1) Try to resolve matters before invoking this policy by drawing up a signed two way agreement with the complainant which sets out a code of behaviour for all the parties involved if the Council is to continue processing the complaint. If these terms are contravened, consideration would then be given to implementing further action.
- 2) Decline contact with the complainants either in person, by telephone, e-mail, fax, and letter or by any combination of these, provided that one form of contact is maintained.
- 3) Notify the complainant in writing that the Head of Service 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. The complainants must also be notified that the correspondence is at an end and that further letters will be acknowledged but not answered.
- 4) Withdrawal from telephone communication, instructing all staff to close telephone conversations with the statement 'I am sorry I am unable to deal with your complaint. I understand your complaint is being dealt with by, please put any matters that you wish to raise in writing to' In extreme cases an abusive telephone call should be brought to a close by the member of staff clearly stating a warning that whilst we would like to address the customer's concerns we are unable to do so whilst he/she continues to use unacceptable language.
- 5) Inform the complainant that in extreme circumstances the Council reserves the right to pass unreasonable or aggressive complainants to the authority's solicitors.
- 6) Temporarily suspend all contact with the complainant or investigation of a complaint whilst seeking legal advice or guidance.

7.0) Threatening and Abusive Complainants and Harassment

The Council will always protect its staff so that they may perform their roles without abuse, harassment, fear or intimidation from its customers.

□ **Harassment** - generally used to define unwelcome and unwarranted behaviour that affects the dignity of an individual or group of individuals; it may include:

□ **Bullying** – characterised as offensive, intimidating, malicious, insulting or humiliating behaviour, an abuse or misuse of power or authority to undermine or injure an individual or group of individuals

□ **Discrimination/victimisation** – an act of inappropriate differential treatment, intentional or otherwise, direct or indirect, based on an individual's identity.

If staff are subjected to any threatening or abusive complaints the Council's Handling Difficult Situations Procedure and Managing Violence and Aggression in the Workplace Policy (part of the Council's Health & Safety Policy) set out our policy and approach to ensuring the safety of employees, guests, contractors and customers. The staff guide 'Dealing with Customer Conflict' sets out how staff should manage situations to minimise the risks to themselves arising from potential violent or abusive customers.

At the same time a restriction on contact by the customer may be imposed with immediate effect at the discretion of the Head of Service in consultation with and with the approval of a Director. Depending upon the nature or severity of the incident the customer may be placed on the 'Cautionary Person's Register' or the police may be called by the Director.

These procedures are designed to support Council staff in their dealings with external customers. The Human Resources Policy 'Harassment and Bullying at Work Policy and Procedure' is in place to support employees being bullied or harassed by other employees.

Possible Responses

- 1) East Hertfordshire Council has agreed a number of procedures for dealing with potentially violent customers within its 'Handling Difficult Customers Procedure'. It is always better to prevent the possibility of customer conflict; it is for this reason that all officers are asked to follow these procedures. The procedures are not a substitute for proper training. The Council is able to provide courses to assist in dealing with difficult customer situations including: Telephone Training, Handling Customers Effectively, Customer Conflict. Details are available from the Learning and Development Officer within Human Resources.
- 2) The Council may decide to give instructions not to respond to the demands of customers or to withdraw services. However, if staff are assaulted, verbally abused or harassed in relation to their work, regardless of whether it is off site or outside normal working hours the Council will consider whether it is appropriate to report the facts to the police with a view to criminal prosecution or make an application to the courts for an Anti-Social Behaviour Order. If the police and the Crown Prosecution service decide not to prosecute, the Council will advise its staff member to consider the commencement of a private prosecution. (The Council will also advise its staff as to the commencement of appropriate civil action, such as an injunction if appropriate. The Council will provide the member of staff with appropriate support in taking such action.)

8.0) The Customer's Right of Appeal

Any customer or complaint that has, after review been identified and notified as being considered vexatious has a right of appeal. This appeal must be in writing to the Chief Executive. The Chief Executive may instruct the Head of Communication, Strategy & Policy to undertake investigations in respect of any appeal. This right of appeal does not apply to Freedom of Information Requests determined as vexatious under section 14 of the Act. In this case a formal appeal will be considered by a special interest panel; following the Freedom of Information Procedures.

9.0) Removing Vexatious or Aggressive/Potentially Violent Status

In the rare event that a complaint or complainant has been determined as vexatious, an agreed mechanism for review should be also be established. E.g. if complainants demonstrate a more reasonable approach or if they submit a further complaint for which the Council's standard comments, compliments and complaints procedures would appear appropriate. Staff should have used discretion in recommending vexatious status and discretion should similarly be used in recommending that the status be withdrawn when appropriate. When this is appropriate the Head of Service and Director/Chief Executive will hold discussions. Subject to their approval, normal contact with the complainant and application of the Council's 3C procedure will be resumed. (Please see Appendix A for the definition of an obsessive, vexatious or aggressive complainant).

The Council's Health & Safety Officer manages the Cautionary Persons Register and changes to this list will only be made following careful consideration by all parties previously involved with the customer.

10.0) Further Advice

Advice on specific cases can be obtained from the Head of Communication, Strategy & Policy or a Director.

Advice regarding the 'Cautionary Persons' Register' can be obtained from the Health and Safety Officer or Risk Manager.

11.0) Review of this Procedure

This procedure and guidance will be reviewed annually or following an incident when it is utilised to help us ensure the documents are up to date and fit for purpose.

12.0) Storage of Information

Information on the handling of complaints classified as habitual, persistent and aggressive is held in the secure environment of the Council's Cautionary Persons' Register. The Council's Health & Safety Officer and the Customer Service Manager may only access this. The substance of what is recorded could be made public available to the complainant under the requirements of the Freedom of Information Act.

13.0) Appendices

A Vexatious or Persistent Complainants

B Flow Chart – Vexatious Customers Procedure

C Case Consideration and Review Form – Vexatious Customers Procedure

Vexatious or Persistent Complaints

It is difficult and unwise to give prescriptive definitions of habitual, persistent and aggressive customers. However complaints that exhibit certain characteristics tend to lead to unreasonable demands on the Council and its staff. Complainants (and/or anyone acting on their behalf) may be identified as habitual, persistent or aggressive where previous contact or current contact with them shows that they exhibit one or more of the following behaviours:

- 1) Persisting in the pursuit of a complaint where the Council's procedure has been fully and properly implemented and exhausted (e.g. where investigation of the complaint has been concluded and no mistake or admission has been identified or the Council has identified a mistake or omission and has put things right).
- 2) Changing the substance of a complaint or continually raising new issues or seeking to prolong contact by continually raising further concerns or questions upon receipt of a response whilst their complaint is being addressed. (*Caution must be taken not to discard new issues that are significantly different from the original complaint. These may need to be addressed as separate complaints*).
- 3) Involving numerous services and organisations in their complaint by making the same complaint from different angles or via different routes (e.g. Chief Executive, District Councillor, County Councillor, Portfolio holder) which makes it harder to investigate and resolve. This can happen consecutively or concurrently.
- 4) Unwilling to accept documented evidence of actions taken by Council Officers as fact e.g. site reports, visit logs.
- 5) Denying receipt of an adequate response in spite of correspondence specifically answering their questions.
- 6) Failing to accept that facts can be difficult to verify when a long period of time has elapsed.
- 7) Failing to clearly identify the precise issues that they wish to be investigated, despite reasonable efforts by Council Officers to help them specify their concerns and/or where the concerns identified are not within the remit of the Council to investigate or take action.
- 8) Focusing on a trivial matter to an extent which is out of proportion to its significance and continuing the focus on this point. (*It is recognised that determining what a 'trivial' matter is can be subjective and careful judgement must be used in applying this criterion*).
- 9) Threatening to use or using actual physical violence towards staff at any time. This will in itself cause personal contact with the complainant and/or their representatives to be discontinued and the complaint will, thereafter only be progressed through written communication. All such incidents must be documented and referred to the Council's Health and Safety Officer for inclusion on the Cautionary Persons Register.
- 10) Having an excessive number of contacts with the Council service concerned in the course of addressing a single complaint placing unreasonable demands on staff. (*Contact may be in person, by telephone, letter, e-mail or fax. Discretion must be used in determining the precise number of 'excessive contacts' applicable under this reason using judgement based on the specific circumstances of each individual case.*)
- 11) Harassing or being personally abusive or verbally aggressive on more than one occasion towards staff dealing with their complaint. (*Staff must recognise that*

complainants may sometimes act out of character at times of stress, anxiety, or distress and should make reasonable allowances for this. Staff should document all incidents of harassment.)

12) Recording meetings or face-to-face /telephone conversations without the prior knowledge and consent of the other parties involved.

13) Making unreasonable demands or having unreasonable expectations and failing to accept that these may be unreasonable (e.g. insist on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice.)