

East Herts Council Report

Overview and Scrutiny Committee

Date of Meeting: 3 November 2020

Report by: Head of Communications, Strategy and Policy

Report title: East Herts Council Complaints 2019-20

Ward(s) affected: All

Summary

This report provides a summary of customer complaints made to the Council.

RECOMMENDATIONS FOR Overview and Scrutiny Committee:

- (a) The issues in the report and progress made to date on addressing them be noted.**
- (b) The Unreasonable and Persistent Behaviour Policy be recommended to Council for approval.**

1.0 Proposal(s)

- 1.1 That a new Unreasonable and Persistent Behaviour Policy replaces the Vexatious Complainant Policy

2.0 Background

- 2.1 Every year Scrutiny receive a report on customer complaints made to the council. This details trends around performance and the nature of complaints the council receives. This report covers the 2019/20 year and also contains information for the April – September 2020 period. The following points are worth noting:

- 2.2 Performance against the main measure of complaints is a

concern (% dealt with in 10 working days). The number of complaints in the past two years have been less than 100 which does skew a % calculation however some service areas have struggled to meet the target. There has been improvement in the last 6 months however.

- 2.3 The volume of complaints made has dropped off in the past two years. This is perhaps an indication that complaints are not being recorded properly on the system (infreemation) as opposed to customers not needing to complain. Benchmarking against Stevenage Borough Council would indicate this is the case – in 2018/19 for example 318 complaints were submitted via the East Herts council website but only 85 logged. In the same year Stevenage logged 531 complaints. All the complaints received have been followed up with customers however in many cases staff haven't logged these on infreemation.
- 2.4 There has been a spike in the number of complaints sent to the Local Government Ombudsman. Typically we only have a handful per year and none have ever been upheld. However over the 2019/20 year the ombudsman contacted us about 8 separate complaints and a further three since April. It is logical to assume that a stronger response in the first place may lead to less complaints being reported to the ombudsman.
- 2.5 Natural turnover of staff has meant that knowledge around the complaints process, use of infreemation and where to get support has been lost. No training and development has taken place on complaints handling for some time which is in part evident by the widely different tone, style and degree of empathy displayed in correspondence with complainants.
- 2.6 In addition an informal peer review was undertaken on our approach in late 2019. This was conducted by the complaints lead for Stevenage Borough Council who was invited by the Head of Communications, Strategy and Policy to provide some

critical friend challenge. A number of excellent recommendations were made including:

- As the complaints and feedback service is dispersed with no central person or team, it appears that there aren't consistent reports being run on trends. Statistics are run for KPI monitoring, but they don't fully show trends in certain areas.
- There is no 'Learning' captured as a result of dealing with complaints, which could mean customers are complaining about the same things again and again, one after another, without previous upheld complaints driving service changes.
- You may wish to consider quality checking a random sample of responses to ensure that officers are taking complaints seriously and responding to all the issues customers raise.
- Complaints/Compliments are a valid source of intelligence and show what is going well and not so well in the service areas. Less emphasis on volumes could mean more cases are logged, which adds to the organisation's intelligence.
- MP/Cllr Enquiries are not logged on infreemation. They are dealt with by service areas but no central record is kept. This means that East Herts do not know what issues Councillors are raising on their ward members behalf. If these were logged reports could be run to show the full picture detailing what customers are reporting/the current issues with services

2.7 The complaints "champions" (leads in service areas) were gathered in late December to discuss these challenges and any areas of improvement. The following points were made during discussion

- Customers contact staff across different services on a regular basis to complain or raise concerns. In many cases these are responded to as soon as possible rather than escalating it to a full complaint. This explains the disparity outlined in (2.3) above. Arguably this provides a better service to the customer if it means they get the outcome they want more quickly but equally means we are not accurately recording the amount of time spent on customer concerns.
- Need to have some more guidance around distinguishing genuine complaints from a customer just wanting to get their point across that they are unhappy about something (ie. when is a complaint a complaint?)
- Need a standard response for complaints that are about adopted policy or legislation (ie. where their recourse is to the democratic process and no investigation is needed). Examples would include a complaint about why waste is only collected fortnightly
- Training would be helpful for Stage 1 and Stage 2 responders, primarily focused on internal processes such as standard templates and wording, processes to follow in terms of logging and using information, style, tone and language of responses
- Targets – general feeling that targets are less important provided there is a mechanism to incorporate learning from complaints

3.0 Improvements made:

3.1 Following on from the work above the following actions have been undertaken:

- 3.2 A dedicated Customer Services Team Leader is now the central point for complaints handling. This enables us to keep consistent oversight for performance, trends and quality control (including random checks and wider trend analysis). In recognition of these extra duties the Team Leader is no longer involved in day to day customer services work including rota planning and line management providing the necessary capacity to lead the complaints process.
- 3.3 A number of training sessions with staff have been run over Zoom in April – June focusing on the complaints process and use of infreemation. These have been refresher sessions and around 60 minutes in length.
- 3.4 Two training sessions were run in March looking at style and tone for replying to complaints. These were led by a colleague from Stevenage Borough Council who provides complaint handling training for housing staff.
- 3.5 A new member query case management system was launched in June.
- 3.6 All complaints literature including the web form and printed leaflets were reviewed and condensed to bring them up to date, using guidance from the Local Government and Social Care Ombudsman.
- 3.7 Leadership Team receives a weekly report on outstanding complaints and every quarter the performance data is discussed in a meeting, including learning and trends.
- 3.8 These interventions have had an impact in the first six months of 2020/21. 66 stage 1 complaints were logged between 1st April – 30th September and of these 48 (73%) were dealt within 10 working days. Hopefully this trend of increased reporting and timeliness of responses will be sustained.

4.0 Performance data

4.1 The main performance measure of complaints handling is “% of stage 1 complaints resolved within 10 working days” for which the target is 70%. This has been an area of underperformance in the past and has been the subject of previous reports. The following table shows performance data for the last 4 years:

	2016/17	2017/18	2018/19	2019/20	Apr - Sep 20
Total Number of Complaints	97	105	68	59	66
Total Number Dealt with in 10 working days	60	72	52	38	48
% Dealt with in 10 working days	62%	69%	76%	64%	73%

4.2 In the 19/20 year performance unfortunately slipped to well below target. In addition the overall complaint numbers for 18/19 and 19/20 have dropped significantly from previous years as referred to in (2.3). However performance has since improved.

4.3 The following table shows data for the previous four years by service. Generally speaking Planning and Operations are most complained about service areas followed by Revenues and Benefits and Health and Housing:

	16/17		17/18		18/19		19/20		APR - SEP 2020	
	Number	%	Number	%	Number	%	Number	%	Number	%
Comms, Strategy & Policy	0	0%	1	1%	0	0%	3	5%	1	2%
Democratic and Legal Services	1	1%	0	0%	0	0%	0	0%	1	2%
Health and Housing	23	24%	10	10%	8	12%	8	14%	9	14%
Human Resources and Organisational Development	0	0%	0	0%	0	0%	0	0%	0	0%
Operations	23	24%	27	26%	30	44%	24	41%	19	29%
Planning and Building Control	34	35%	36	34%	19	28%	13	22%	9	14%
Revenues and Benefits	14	14%	30	29%	9	13%	9	15%	27	41%
Strategic Finance and Property	2	2%	1	1%	2	3%	2	3%	0	0%
Total	97	100%	105	100%	68	100%	59	100%	66	100%

4.4 The types of complaints in 19/20 and April – September this year related to the Operations Service were:

- Missed bins – dispute that bin was placed at boundary/ dispute over contamination
- Inner paper boxes going missing
- Grass cutting not being done properly and often enough

- Scheduled street cleaning not frequent enough
- Crew behaviour – not putting bins back on resident's boundary
- Suspension of green waste collection during the early phases of lockdown

4.5 Our contractor will take picture evidence of contamination and there is often CCTV footage which can be used to ascertain whether a bin was placed at a boundary. Where this evidence isn't available however we will often give customers the benefit of the doubt. It should be noted that the volume of formal complaints we received for missed bins is a very small proportion of the overall number of bin collections. Where complaints are about frequency of grass cutting and street cleansing we are unable to adjust this without changing the contract with Urbaser. The joint waste team review complaints received and this forms part of any discussion with Urbaser regarding performance concerns or changes to the contract.

4.6 Types of complaints related to Planning and Building Control were:

- Objections to planning applications: largely from stakeholders/ neighbours where minor residential applications have gone ahead.
- Enforcement – largely that enforcement against perceived planning breaches are not pursued or in some instances where a customer is unhappy enforcement action is being taken against them

4.7 Planning complaints are by the far the most complex and time consuming part of our overall complaints process. Often customers assume that it is a mechanism to review planning decisions and this is not the case. However most planning complaints will cite other reasons for not being happy with any planning decisions including lack of communication, failure and quality of process. Where complainants raise these issues,

often in specific detail and against individual officers, they are logged as complaints and investigated.

4.8 Typical complaints in relation to Housing and the Revenues and Benefits services include:

- Delays in dealing with a benefits claim/ processing refunds/ reliefs
- Communication styles (formal letters)
- Delays in processing housing needs applications
- Please note there is a large spike in the number of complaints to Revenues and Benefits in the last six months. The majority of these relate to the cash grants of either £10,000 or £25,000 awarded to businesses as part of the Chancellor's support package to deal with Covid-19 restrictions. Businesses were entitled to ask for a review a decision not to award via the complaints process. Of the 27 complaints received by Revenues and Benefits, 22 related to not being awarded a grant. Given almost 2500 individual grants were awarded however this is a relatively small number.

4.9 The data below shows how many complaints in those four service areas missed the 10 day target:

	2016/17	2017/18	2018/19	2019/20	Apr - Sep 20
Health and Housing	23	10	8	8	9
of which missed 10 day target	4	3	3	3	6
Operations	23	27	30	24	19
of which missed 10 day target	7	4	5	8	3
Planning and Building Control	34	36	19	13	9
of which missed 10 day target	26	23	8	6	7
Revenues and Benefits	14	30	9	9	27
of which missed 10 day target	0	2	0	2	2

4.10 Planning and Building Control tends to be the area in which response times exceed the 10 day target. This is largely down to the fact that planning complaints are more complex and require more time to investigate.

4.11 A further measure of performance is the “% of stage 1 complaints upheld or partially upheld” (or in other words where the council accepts we are at fault or partially at fault). Performance data for the last four years is shown below. The target is 25% to be upheld/ partially upheld.

	2016/17	2017/18	2018/19	2019/20	Apr - Sep 20
Total number of complaints	97	105	68	59	66
Number upheld/ partially upheld	30	20	24	20	21
% upheld/ partially upheld	31%	19%	35%	34%	32%

4.12 We have missed the target for the past three years albeit the low numbers can cause large percentage swings. The following table shows the data broken down by the four service areas:

	2016/17	2017/18	2018/19	2019/20	Apr - Sep 20
Health and Housing	23	10	8	8	9
of which were upheld/ partially upheld	4	2	3	3	1
Operations	23	27	30	24	19
of which were upheld/ partially upheld	15	8	14	10	11
Planning and Building Control	34	36	19	13	9
of which were upheld/ partially upheld	4	3	4	4	5
Revenues and Benefits	14	30	9	9	27
of which were upheld/ partially upheld	5	6	3	3	4

4.13 Operations tends to be the area in which most complaints are upheld partially upheld. In most cases this is an apology from the council and an offer to rectify the situation. Examples include:

- Complaint about waste crews moving waste between bins to avoid having to drag half empty bins to the vehicle. An apology was given for the additional mess this caused in a customer’s bin and crew instructed not to do this in future
- Complaint about not replacing bins at a boundary property. Apology given and as the customer was vulnerable an assisted collection service was offered
- Complaint about boundary property and where a bin needs to be left. There was some confusion as the bin

area was a communal property. An apology was given and agreement reached on where bins should be left in future

4.14 Examples of complaints that were upheld/ partially upheld in Planning, Housing and Revenues and Benefits include:

- Complaint about a letter threatening legal action if a council tax balance was not settled. It was acknowledged that the letter was sent in error and a full apology was given.
- Complaint about registering an empty home which was mistakenly directed to Herts County Council. An apology was given.
- Complaint about lack of planning enforcement action. There was no basis for enforcement but the case officer apologised to the customer for not keeping them informed of this decision.

4.15 A further measure of performance is the number of stage 2 complaints received and “% of stage 2 complaints upheld”. Complaints escalate to this level when a customer is not happy with the outcome of a stage 1 investigation. Usually a stage 2 complaint will be investigated by a Head of Service. Data for the last few years is shown below:

	2016/17	2017/18	2018/19	2019/20	Apr - Sep 20
Total	16	16	17	12	16
of which were upheld/ partially upheld	4	3	3	2	4

	2016/17	2017/18	2018/19	2019/20	Apr - Sep 20
Health and Housing	4	1	1	4	1
of which were upheld/ partially upheld	1	1	0	0	1
Operations	1	5	3	2	1
of which were upheld/ partially upheld	0	1	1	1	0
Planning and Building Control	10	9	10	3	6
of which were upheld/ partially upheld	3	1	2	1	1
Revenues and Benefits	0	1	2	0	8
of which were upheld/ partially upheld	0	0	0	0	2

4.16 The two complaints upheld/ partially upheld in 2019/20 and

four in April – September of this year were as follows:

- Request from a customer to review a TPO and complaint when the TPO wasn't removed. After extensive investigation it was concluded that the TPO is valid however an apology was given regarding missed communication and correspondence over email
- Complaint from a customer about a refusal for their application for an extension. Investigation acknowledged that the 20 day deadline for responding to pre-application submissions was missed and the case officer's line manager did not return a call when they have offered to do so. An apology was provided.
- Complaint from a customer regarding a planning appeal and the processes surrounding it. The investigation revealed no failings in the process but an apology was given for not acknowledging a document which had been provided as part of the appeal.
- Complaint around dealing with a nuisance case, the process and the behaviour of staff. The investigation concluded the processes were consistent with our policy, staff had acted professionally however it was acknowledged a diary sheet had not been sent out when it should have been. An apology was given.
- Complaints from two business owners that they were not eligible for a grant when they should have been. After reviewing the cases and allowing the business owners to resubmit evidence that they were in occupancy of the building at the required time both grants were awarded.

4.17 Where customers remain unhappy after a stage 2 investigation they are able to contact the Local Government and Social Care Ombudsman. In 2019/20 eight customers contacted the ombudsman and the following conclusions were made. In addition the Ombudsman has taken up a further three cases since April this year. One of those has concluded and details are below. The remaining two are still being investigated.

Summary of Complaint	Ombudsman's Decision
<p>Mr X complains the Council wrongly issued a summons and took him to court for not paying his council tax. Mrs Y had paid the council tax but the Council had not allocated the payment to the account. Mr X says the Council should pay compensation for his time, loss of earnings and the experience of attending court, including how the Council's officer spoke to him.</p>	<p><i>Not investigated</i></p> <p>The Ombudsman will not investigate Mr X's complaint that the Council wrongly took legal action against him when he had paid his council tax. The Council has apologised for its fault and cancelled the costs of the court summons. There is no remaining injustice.</p>
<p>'Miss C'. She complains the Council did not give proper priority to her application for re-housing, considered under its housing allocation policy.</p> <p>Miss C says because of this she had to maintain the tenancy of a property that was unsuitable for her and her son because of disrepair, which worsened their health.</p>	<p><i>Complaint upheld – although the council had already agreed to compensate the complainant so no further action was needed</i></p> <p>Summary: Miss C complains about the priority the Council gave to her housing application. We uphold the complaint, finding fault in how the Council considered Miss C's medical priority and how it responded to reports of disrepair in her flat. We consider this has caused distress to Miss C. The Council has agreed</p>

	proposals to remedy the complaint set out at the end of this statement.
Mrs X complains that the Council will not take enforcement action over a raised platform built by a neighbour.	<i>Not investigated</i> The Ombudsman will not investigate this complaint because there is no evidence of fault by the Council causing injustice
Mrs X complained the Council failed to consider enforcement reports properly and did not consider the impact of a planning application correctly. She also felt the Council was biased in favour of the developer and failed to communicate with her.	<i>Partially upheld – although no action needed as apology already given</i> There was no fault in the Council’s planning decisions. However, its communication with Mrs X was lacking. The Council apologised to Mrs X in its response to her complaint to remedy this fault.
The complainant, Mr X, complains about the Council’s handling of his neighbour’s planning application. He says he was not consulted on the application and is not happy with its decision.	<i>Not investigated</i> The Ombudsman will not investigate Mr X’s complaint about the Council’s handling of his neighbour’s planning application. This is because it is unlikely we would find fault affecting the decision.
Mrs C complains the Council failed to take timely and effective action in response to her reports	<i>Upheld – but no action needed as remedy already provided</i>

<p>about the removal of a mature ash tree and several mature beech trees in a conservation area. Mrs C also complains the Council has wrongly allowed a new licensed garden area and has not enforced the timely removal of decking at the nearby public house which is the same site as the tree removal.</p>	<p>The Ombudsman has found fault by the Council as it has no record of its reasons for not acting earlier about the tree removal. The Ombudsman considers the action the Council has already taken in requiring a replacement tree and issuing a planning enforcement notice with some agreed follow up actions and improvements to its record keeping are enough to remedy Mrs C's injustice.</p>
<p>Mr Y, complains that the Council:</p> <ul style="list-style-type: none"> a) Failed to enforce against the developer's non-compliance with the approved plans and conditions attached to the permission granted; b) Failed to advise residents that the condition regarding the landscaping had been discharged without prior consultation; and c) Provided inaccurate and misleading comments to a Planning Committee about the status of the road. 	<p><i>Partially upheld – instruction given to apologise</i></p> <p>On the evidence seen, the Ombudsman does not find procedural fault in the Council's decision to invite retrospective applications to rectify the planning breaches. However, there is some drift in the Council's contact with the developer to obtain the application. The Council also failed to provide a timely update to Mr Y about the outcome of the application, which it will apologise for.</p>
<p>Mr X, has complained</p>	<p><i>Not investigated.</i></p>

<p>about how the Council has dealt with planning applications for developments near his home. He has raised concerns about highway safety and the implications of construction vehicles using the road where he lives.</p> <p>Mr X has also complained about a possible breach of planning control.</p>	<p>The Ombudsman also should not investigate how the Council dealt with complaints about a possible breach of planning control. This is because he is unlikely to find fault by the Council and the complainant has not been caused significant injustice</p>
<p>Mr Y complained the Council failed to review or update a Tree Preservation Order covering his property. Mr Y said the Council did not know what trees remained on his property when it carried out a site visit. He said he felt the Council had wasted his time and warned about enforcement action causing him upset and worry.</p>	<p><i>Council not at fault.</i></p> <p>Councils can vary TPOs but are not under an obligation to amend TPOs when work is completed on trees. The Council has kept records of applications Mr Y has made to complete work on the trees on his land over a number of years. The Council has considered the TPO each time and has a record of applications made and agreed to add the site visit notes to update the TPO records. Consequently, there is no injustice to Mr Y and any potential future injustice has been prevented.</p>

- 4.18 The council complies with all rulings by the Ombudsman and their decisions are published on their website. Their findings are helpful in terms of service development – be it challenging us where the Council may have got it wrong and thus leading us to review our approach or independently validating our decisions to customers.

5.0 Vexatious Complainant Policy

- 5.1 The Council's current vexatious complainant policy can be found here:
<http://democracy.eastherts.gov.uk/documents/s47827/Complainant%20Policy%20ERP%20B%20D.pdf>
- 5.2 The vexatious complainant policy is essentially too narrow as it can only be applied to people who have been through the complaints process and only in regard to a specific complaint/ issue/ FOI (ie. the fact that the requester is vexatious doesn't automatically make further requests vexatious). If an individual has been declared vexatious they are still entitled to contact us regarding any new issues, service requests or an FOI. Arguably the vexatious policy doesn't deliver any additional value above and beyond the council's right to not engage with someone. At 6 pages in length it also unnecessarily long.
- 5.3 Once someone has been through the complaints process if they continue to contact us about the same issue their only recourse is to the ombudsman (or ICO in the case of FOIs) and we are not obliged to continue correspondence (regardless of being declared vexatious or not). In the last 5 years only two individuals have been declared vexatious however many others have simply been informed that we will keep all their correspondence on record but will no longer respond to them as we have been through our complaints process.
- 5.4 We do however need a definition of unreasonable or

persistent contact from customers (often when they have been directed to the complaints process but refuse to engage with it). It is legitimate to disengage with customers who become aggressive or abusive, provided we are clear about what constitutes such behaviour. It should be noted that where such behaviour is deemed to constitute a threat to staff wellbeing the cautionary person's register (maintained by the Health and Safety Officer) captures any details. This register is shared with all relevant staff and reviewed every year and provides stronger safeguards for staff than the vexatious complainant policy.

- 5.5 A new, shorter, "Unreasonable and Persistent Behaviour" policy has been drafted and it is recommended this replaces the vexatious complainant policy (see Appendix A).

Community Safety

No

Data Protection

Yes – use of information

Equalities

Yes – EQIA needed on new policy

Environmental Sustainability

No

Financial

The costs of dealing with complaints and compliments are contained within existing budget resources. A robust complaints policy and handling should prevent cases being referred to the Local Government Ombudsman which can result in additional administration cost burdens and the risk of compensation payments outside of normal budgeted amounts as well as reputational damage and increased reactive communication costs from adverse Ombudsman decisions. The learning points from complaints are taken into consideration and changes made in processes to prevent

future occurrences.

Health and Safety

No

Human Resources

No

Human Rights

No

Legal

Yes – new policy drafted in conjunction with data protection colleagues. Complaints policies are named within the constitution under the policy framework and therefore require approval at Full Council.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

7.1 Appendix A – Unreasonable and Persistent Behaviour Policy

Contact Member

Councillor George Cutting, Executive Member for Corporate Services
george.cutting@eastherts.gov.uk

Contact Officer

Benjamin Wood, Head of Communications, Strategy and Policy, Tel:
01992 531699. benjamin.wood@eastherts.gov.uk

Report Author

Benjamin Wood, Head of Communications, Strategy and Policy, Tel:
01992 531699. benjamin.wood@eastherts.gov.uk