

Earby Town Council
Policy on Vexatious
Complainant Behaviour

March 2020

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Earby Town Council

Policy on Vexatious Complainant Behaviour

The Council will not tolerate violence or aggression in any form including the use of racial, verbal, emotional or physical harassment of its employees.

1. Policy Statement

1.1. Earby Town Council acknowledges that we don't always get things right and the complaints procedure is there to help us improve our services. We are committed to dealing with all complaints effectively, consistently and fairly.

1.2. In doing so, we do not usually limit the contact that customers have with the Council.

1.3. However, there are a small number of customers who, because of their behaviour, hinder us in delivering the services we provide to them or others.

1.4. We refer to such behaviour as vexatious complainant behaviour.

1.5. When a customer is being unreasonable, we may decide to designate their behaviour as vexatious, and restrict their contact with the Council.

1.6. The decision to designate a customer's behaviour as vexatious will be taken by the relevant officer and will normally follow with a warning to the customer.

1.7. Any restrictions we take will be appropriate and proportionate.

1.8. We will also make appropriate adjustments for any equality and diversity issues, such as culture, language, and disability.

1.9. In all cases, we will write to the customer to tell them why we believe their behaviour is vexatious, what action we are taking, and the duration of that action. We will also tell them how they can challenge the decision if they disagree with it.

1.10. If a customer persists in communicating with us about a complaint that has already been responded to, we may decide to not enter into any further communication on this matter. In such cases, we will read all correspondence from customer, but unless there is any new information, we will simply acknowledge it and place it on file.

1.11. Ultimately, we may inform the customer that future correspondence will be read and placed on file with no acknowledgement.

2. Definition of vexatious behaviour

2.1. 'Vexatious behaviour' can be one or two isolated incidents, or 'unreasonably persistent' behaviour, which is an accumulation of incidents or behaviour over a longer period of time. In this policy we use the term 'vexatious' to cover both types of behaviour.

2.2. In applying the definition, we differentiate between "persistent" and "unreasonably persistent" behaviour. For example, many people are persistent on an entirely reasonable basis, as they are pursuing a justified complaint, and they feel the Council has not dealt with it properly.

2.3. Raising legitimate queries or criticisms of a complaint investigation as it progresses, for example, if agreed timescales are not met, should not in itself lead to someone's behaviour being regarded as vexatious. Similarly, the fact that a customer is dissatisfied with the outcome of a complaint and seeks to challenge it once, or more than once, should not necessarily cause their behaviour to be labelled unreasonably persistent.

3. Scope of the policy

3.1. This policy has been developed to deal with vexatious behaviour by customers who have raised a complaint that is being/has been dealt with through the Council's standard processes.

3.2. The policy does not apply to customer behaviour in relation to Freedom of Information Requests, as this is covered by separate procedures.

3.3. Sometimes a customer's behaviour moves from being unreasonable to unacceptable. This includes behaviour that is abusive, offensive, threatening or violent, both physically and emotionally, in person and online, and also situations where employees are being harassed, or where there is a hate incident.

3.4. The Council has separate procedures for dealing with customer behaviour of this type. We will protect our employees from harassment and harm. Where appropriate, incidents will be reported to the Police.

4. Recognising Vexatious behaviour

4.1. The following are examples of the main kinds of behaviours that may cause a customer to be designated as vexatious. The list is not exhaustive:

- Customer refuses to specify the grounds of a complaint, despite offers of assistance with this from Council employees
- Customer refuses to co-operate with the investigation process while still wishing their complaint to be resolved
- Customer refuses to accept that the issues raised are not within the scope of the Complaints Process despite having been provided with information about its scope.
- Customer insists on the complaint being dealt with in ways that are incompatible with the Complaints Process or with good practice
- Customer makes what appear to be groundless complaints about the employees dealing with the complaint, and seeks to have them replaced
- Customer publicising information on Council employees in a Public forum, including Social Media platforms and in Public directly
- Customer changes the basis of the complaint as the investigation proceeds and/or denies statements they made at an earlier stage
- Customer introduces trivial or irrelevant new information, which they expect to be taken into account, or raises a large number of detailed but unimportant questions and insists they are all fully answered

- Customer electronically records meetings and conversations without the prior knowledge and consent of the other persons involved
- Customer requesting information in relation to their complaint that under the Freedom of Information Act can be classed as a vexatious request and, as such, refused
- Customer makes unnecessarily excessive demands on our time and resources whilst a complaint is being looked into. For example, excessive telephoning or sending e-mails to numerous Council employees, writing lengthy complex letters every few days and expecting immediate responses. In some cases, the customer will be allocated a single point of contact within the Council to minimise the impact such contacts have on the organisation.
- Customer submits repeat complaints, after complaint processes have been completed, essentially about the same issues, with additions/variations which the customer insists make these 'new' complaints, which should be put through the full complaints procedure
- Customer refuses to accept the decision – repeatedly arguing the point and complaining about the decision
- Complaints involves discriminatory and/or offensive language/ views/behaviour
- Combinations of some or all of these.

5. Considerations prior to taking action under the policy

5.1. Different considerations will apply depending on whether or not the complaint investigation has finished. When an investigation has finished, the Council has the option of ending further communication about the complaint, and where appropriate referring the customer to the relevant Ombudsman. However, when the complaint is still being investigated, there will need to be some contact with the customer.

5.2. The decision to designate a customer's behaviour as vexatious could have serious consequences for them. So, before deciding whether the policy should be applied, the officers of the Council must be satisfied that:

- The complaint is being or has been investigated properly
- Any decision reached on the complaint is the right one
- Communications with the customer have been adequate
- The customer is not providing any significant new information that might affect the Council's view on the complaint.
- Appropriate adjustments for Equality and Diversity issues have been fully taken into account and there is no reason to believe that cultural, language, or disability (including learning disability) barriers still exist which explain the behaviour of the customer

5.3. If the officers are satisfied on these points, they should consider whether any further action is necessary before taking the decision to designate the customer's behaviour as unreasonable. Examples of further action might be:

- One final letter to the customer confirming that the matter has exhausted the Council's complaint procedures, and reminding the customer of other external routes through which they can pursue the matter, such as the Local Government Ombudsman.
- If no meeting has taken place between officers and the customer, and provided there is nothing known about the customer that would make this inadvisable, consider offering the customer a meeting with the Complaints Officer and relevant Service Manager. Such meetings can dispel misunderstandings and move matters towards a resolution.
- If more than one service is being contacted by the customer, consider setting up a strategy meeting to agree a cross-service approach, and designating a key officer to co-ordinate the Council's response. In some cases, this will involve designating a single point of contact for the customer.
- If the customer has individual needs or needs a reasonable adjustment e.g., language needs, learning disability, etc., an interpreter or advocate might be helpful to both parties. Consider offering to help the customer to find an independent one.
- Discussing options for managing the complaint with the Complaints Team.

5.4. Before applying any restrictions, give the customer a warning in writing stating that if their behaviour continues, the Council may decide to designate their behaviour as vexatious and explain why and the implications for them. It is important that the customer is given an opportunity to modify their behaviour before any restrictions are applied.

6. Options for action

6.1. The action taken should be appropriate and proportionate to the nature and frequency of the customer's contacts with the Council.

6.2. The following is a list of possible options for managing a customer's interactions with the Council. One or more might be chosen and applied. The list is not exhaustive and the Head of Service and Head of Legal Services will need to take account of relevant factors when deciding what might be appropriate action.

- Placing time limits on telephone conversations and personal contacts
- Restricting the number of telephone calls that will be taken (e.g. one call on one specified morning/afternoon of any week)
- Limiting the customer to one type of contact (e.g., telephone, letter, email, etc.) and/or requiring the customer to communicate only with a single point of contact, and/or limiting the location for contact
- Drawing up a signed agreement with the customer that sets out a code of behaviour
- Requiring any personal contacts to take place in the presence of a witness
- Refusing to register and process further complaints about the same matter
- Where a decision on a complaint has been made, providing the customer with acknowledgements only, or ultimately informing the customer that future correspondence will be read and placed on the file but not acknowledged.

- Asking the customer to re-submit their complaint without the inclusion of discriminatory/offensive language before the complaint will be dealt with. If appropriate, refer the matter to the Police as a Hate Incident

6.3. It is important to ensure that any contact restrictions put in place do not prevent the customer from requesting services on a day to day basis.

7. Invoking the Policy

7.1. The relevant officer will seek advice from the Complaints Team as to whether the customer's actions can be considered vexatious.

7.2. If appropriate, a case for designating a customer's behaviour as vexatious will be made by the Complaints Team. This will include details of what actions have already been taken to try and manage the customer's behaviour and what actions are now proposed. The officers of the Council will be asked to authorise these actions.

7.3. If the vexatious behaviour is affecting more than one service each relevant officer should be consulted about whether the restrictions should be extended to their service. The decision will be communicated to the customer by the Complaints Team.

7.4 In extreme situations where all reasonable options have been exhausted, the Council may decide to withdraw services from the customer.

7.4. The Complaints Team will write to the customer informing them of:

- The decision that has been taken
- What it means for their contacts with the Council
- How long any restrictions will last and when these will next be reviewed
- Their right to challenge the decision in writing within 14 days, and have the decision reviewed by an appropriate Director within 28 days of the date of the original decision letter.

7.5. The letter should enclose a copy of the Council's Vexatious Complainant Behaviour Policy Statement (see section 1).

7.6. In addition, the relevant officer should consider whether support should be provided to employees affected by the unreasonable behaviour.

8. Records of Decisions

8.1. A record should be kept, by the Complaints Team, of all decisions that are taken, and the reasons for the decision.

9. Challenge/Review of Designation

9.1. If a customer wishes to challenge the decision to designate their behaviour as vexatious, they should write to the Complaints Team within 14 days of the decision, setting out the reasons for the challenge.

9.2. In this instance, the decision should be reviewed by an appropriate Officer. A letter should be sent to the customer advising them of the outcome.

9.3. The designation and any restrictions should be kept under review.

9.4. If a customer, whose behaviour has been deemed to be vexatious under this policy, makes a complaint about a new issue this should be treated on its merits, and a decision will need to be taken on whether any restrictions are appropriate and necessary.

9.5. Arrangements should be in place to check on the customer's contact and behaviour and to review the designation and restrictions at least once every 12 months.

9.6. The Complaints Team will write to the customer informing them of the outcome of the review.

9.8. If the decision is to continue to apply contact restrictions for a further period, the customer will be offered the right to challenge the decision and have the decision reviewed by an officer within 28 days of the date of the review decision letter.