West Sussex County Council
Procedure and Guidance on Handling Unreasonably Persistent Complainants and Unacceptable Behaviour

Introduction
The aim of the County Council’s complaints procedure is to provide our customers with a fair, objective and consistent process that will resolve the complaint as quickly as possible. If they remain dissatisfied with the response we will tell the customer how they can appeal against our decision and take matters further. However, the County Council also has an obligation to use resources efficiently and effectively and there may be occasions where the Chief Executive, Director, Head of Service or equivalent will decide that a complainant is demonstrating behaviour which is unreasonably persistent or unacceptable.

Aim of Guidance
The aim of this guidance is:
- To provide definitions of unreasonably persistent complainants and unacceptable behaviour
- To identify a corporate approach to respond fairly to such behaviours
- To ensure that other service users, County Council staff or the County Council do not suffer any detriment from people making unreasonably persistent complaints or behaving in an unacceptable way
- To recognise the rights of complainants under the Human Rights Act 1998

Definition of an Unreasonable or Unreasonably Persistent Complainant
Very rarely one of our customers becomes so persistent or their communications so time-consuming that we have to take steps to manage communications with them.

For the purpose of this guidance, unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with us, cause or are likely to cause excessive and disproportionate demands upon staff or resources.

It is important to differentiate between 'persistent' and 'unreasonably persistent' complainants. Many of the people who submit complaints are 'persistent' on the entirely reasonable basis that they feel the County Council has not dealt with their complaint properly and are not prepared to leave the matter there.
Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but be pursuing them in inappropriate ways, or they may be intent on pursuing complaints which have no substance or which have already been investigated and determined. Their contacts with the Council may be amicable but still place very heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.

Sometimes the situation between a local authority and a complainant can escalate and the behaviour moves from being unreasonable and unreasonably persistent to behaviour which is unacceptable, for example, abusive, offensive or threatening. This is dealt with at the end of this guidance.

For the purposes of this procedure, complainants may be deemed unreasonably persistent if they demonstrate one or more of the following behaviours:

- Persistence in pursuing a complaint where the County Council’s complaints procedure has been fully and properly implemented and exhausted, or where the substance of the complaint has been fully aired in another forum (including complaints panels). This includes seeking an unrealistic outcome to the complaint.
- Submitting repeat complaints, after complaints processes have been completed, essentially about the same issues, with additions/variations which the complainant insists make these 'new' complaints which should be put through the full complaints procedure.
- Refusing to accept the decision – repeatedly arguing the point and complaining about the decision.
- Refusing to specify the grounds of a complaint, despite offers of assistance with this from the authority’s staff.
- Refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved.
- Insisting on the complaint being dealt with in ways that are incompatible with the adopted complaints procedure or with good practice.
- Making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced.
- Having an excessive number of contacts with County Council staff while a complaint is being looked into – placing unreasonable demands on staff, such as repeated or lengthy phone calls, requests for personal interviews or lengthy correspondence every few days and expecting immediate responses.
- Changing the substance of a complaint or continually raising new issues whilst the complaint is being investigated, or raising large
numbers of detailed but unimportant questions and insisting they are all fully answered.

- Raising an excessive number of complaints, which upon investigation cannot be substantiated.
- Adopting a 'scattergun' approach: pursuing a complaint or complaints with all or some of the Customer Relations Team/relevant officer/Director/Chief Executive/local member/Cabinet Member/Leader/County Chairman, at the same time, and possibly also with a Member of Parliament/independent auditor/the Standards Board/local police/solicitors/the Ombudsman.
- Denying receiving an adequate response in spite of correspondence specifically responding to their complaint.

Dealing with Unreasonably Persistent Complainants

It is emphasised that this approach should be used only in exceptional circumstances after all reasonable measures have been taken to try to resolve a complaint by following the West Sussex County Council complaints procedure. The Customer Relations Team (CRT) Manager or Social Care Complaints Manager (who is a member of the CRT) should always be involved.

A complainant may be identified as unreasonably persistent at any stage of the complaints procedure and levels of action should be determined by the seriousness of the conduct not the stage it has reached in the complaints procedure. In exceptional cases the steps below may be combined.

Prior to taking action

Where officers identify that they may be dealing with an unreasonably persistent complainant in accordance with the above criteria, the case should be referred as soon as possible to the Head of Service or Director. Before deciding whether the procedure should be applied the Head of Service or Director should be satisfied that:

- the complaint is being or has been investigated properly;
- any decision which has already been reached on it is the right one;
- communications with the complainant have been adequate; and
- the complainant is not now providing any significant new information that might affect the County Council’s view on the complaint.

If satisfied on these points, he or she should consider whether further action is necessary prior to taking the decision to designate the complainant as unreasonable or unreasonably persistent. Examples might be:
• If no meeting has taken place between the complainant and an officer/officers, and provided that nothing is known about the complainant which would make this unadvisable, consider offering the complainant a meeting with an officer of appropriate seniority. Sometimes such meetings can dispel misunderstandings and move matters towards a resolution.
• If more than one directorate is being contacted by an unreasonably persistent complainant, consider:
  ° setting up a strategy meeting to agree a joint approach; and
  ° designating a key officer to co-ordinate the County Council’s response(s).
• If the complainant has special needs, an advocate might be helpful to both parties: consider offering to help the complainant find an independent one.

**Step 1 - Warning**

Before applying any restrictions give the complainant a warning that if his/her actions continue the Council may decide to treat him/her as an unreasonably persistent complainant, and explain why. If, following the warning, the complainant ceases his/her actions then no further steps are necessary. If the complainant resumes or repeats his/her actions at a later date, then consideration should be given as to whether a reminder would be appropriate before moving to the next steps. The time period between warning and resumption of the actions will be an important factor in these considerations.

**Step 2 – Designate as unreasonable and impose restrictions**

The precise nature of the action to take in relation to an unreasonable or unreasonably persistent complainant should be appropriate and proportionate to the nature and frequency of the complainant’s contacts with the County Council at that time. The following list is a ‘menu’ of possible options for managing a complainant’s involvement from which one or more might be chosen and applied, if warranted. It is not exhaustive and often local factors will be relevant in deciding what might be appropriate action:

1. To withdraw or restrict contact with the complainant either in person, by telephone, by fax, by letter/e-mail or any combination of these. One form of contact must always be maintained with the complainant, although this may be restricted e.g. the complainant could be notified that telephone calls will be taken only at specific times of specific days and may be time-limited, that correspondence must be in writing, or that only a nominated staff member will deal with their calls in the future and any appointments must be made with that nominated member of staff.
2. To notify the person that no further action on the complaint (whether completed or not) will be taken. In appropriate cases this will be combined with 5 below.

3. To inform the person that contact will be made only through a legal or other representative nominated by the complainant.

4. To inform the complainant that contact will not be made with the current representative where that person is the cause of concern.

5. To notify the complainant that they have the right to refer the matter to the Local Government Ombudsman’s office (and to supply the relevant form) or other appellate body such as the Information Commissioner.

If, after due warning, the Head of Service or Director decides to designate the complainant as unreasonably persistent, inform the complainant clearly and promptly in writing:

- that the decision has been taken;
- the reasons for it;
- what it means for his or her contacts with the County Council;
- how long any restrictions will last; and
- what the complainant can do to have the decision reviewed.

Usually, the complainant should be entitled to use Stage 2 of the County Council’s complaints policy to complain about the decision to designate them as unreasonably persistent. In exceptional cases access to such a review may be refused by the Chief Executive if satisfied that this would be an unacceptable abuse of the complaints procedure.

The action taken and reasons should be documented in the relevant complaint file and circulated to any other officers involved in the complaint. The Chief Executive and other potential contacts (such as Director’s PA or Contact Centre manager) should also be informed.

**Step 3 – Further restrictions and/or legal action**

If the person continues to contact the County Council and it is clear that they will not accept the County Council’s decision on the matter and all appropriate avenues of internal review or appeal have been exhausted, the Head of Service or Strategic Director should refer the case to the Chief Executive and Monitoring Officer. They will consider the evidence available and determine what further action to take. At this stage the Chief Executive and Monitoring Officer may decide:

1. To notify the person in writing that any correspondence received on the same matter will be read and filed but responded to only if the person provides significant, new information relating to their complaint, or raises new issues which, in the County Council’s opinion, warrants a new investigation.
2. In exceptional circumstances to take legal action.

The Chief Executive will instruct the Monitoring Officer to implement such action and will notify complainants in writing. This notification should be copied for information to officers and members involved in the complaint or likely to be contacted by the complainant.

**Record of Complainants**

It is the responsibility of the Customer Relations Team to maintain an up to date record of complainants who have been designated unreasonably persistent

**Further Complaints**

Any further complaints or communication received from an unreasonable or unreasonably persistent complainant must be reviewed by the relevant officers to ensure that it does not contain fresh and relevant information about the original complaint, which would require a further review of the complaint, or a genuine new complaint that deserves a response.

**Withdrawing Unreasonable or Unreasonably Persistent Status**

Once a complainant has been determined as unreasonable or unreasonably persistent there must be a mechanism for withdrawing this status if, at a later date, a complainant demonstrates a more reasonable approach, or if they submit a further complaint for which the normal complaints procedure would appear appropriate. Where this is the case, discussion will be held with the Chief Executive and Monitoring Officer and, subject to their approval, normal contact with the complainant will then be resumed. The complainant will be advised of this in writing.

**Referring unreasonable and unreasonably persistent complainants to the Local Government Ombudsman**

In some cases, relations between the County Council and unreasonable and unreasonably persistent complainants break down badly while complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances there is often little purpose in following through all stages of the County Council’s complaints procedure and where this occurs the Ombudsman may be prepared to consider complaints before complaints procedures have been exhausted. This is the case even in respect of statutory complaints procedures. If this option is being considered, the advice of the CRT Manager or Social Care Complaints Manager must be sought.

A complainant who has been designated an unreasonably persistent complainant may make a complaint to the Ombudsman about the way in which he or she has been treated. The Ombudsman is unlikely to be critical of the County Council’s action if it can show that the decision has been taken properly and fairly.
Definition of and Guidance on unacceptable behaviour

The County Council does not expect its staff to tolerate behaviour by customers that is unacceptable and will take action to protect staff from that behaviour. This is defined as:

Conduct towards County Council staff or others acting on the County Council’s behalf which is abusive, offensive or threatening, or using or threatening the use of violence or harm to people or property.

Such behaviour may include:

- harassing or being personally abusive or verbally aggressive to staff
- behaving aggressively or threateningly towards the Council’s property, reputation or individual members of staff
- targeting very high numbers of e-mails to a particular staff member or to several staff members, repeating demands or expecting immediate responses on the same or similar issues

Staff must document all instances of such behaviour and report it to their manager, who should assess the risks posed by it.

Where the behaviour is an immediate threat to the safety and welfare of staff, the Head of Service may consider reporting the matter to the police or taking legal action through the Monitoring Officer. In such extreme cases, and after advice from the Monitoring Officer the Service may choose not to give the complainant prior warning.

Managers should be aware of the accumulative psychological impact of specifically targeted e-mails on staff. Staff should be protected from this sort of harassment which can be personal and damaging. Managers could consider intervening with the sender or re-allocating responsibility so that in extreme cases, the staff affected can “Block Sender” from their Inbox. Managers should ensure that residents who are contacting the service in this way have had access to the complaints procedure in the first instance so that legitimate concerns can be addressed.

Where unacceptable behaviour occurs, the three step approach outlined above for dealing with unreasonably persistent complainants will be applied. The same considerations and processes shall be used for informing the complainant of the decision and for reviewing the decision. See below for guidance on dealing with unacceptable behaviour during a telephone conversation.
Dealing with unacceptable behaviour during a telephone conversation

When a caller swears/shouts/talks over/refuses to listen to advice, staff should take the following steps:

First chance: “Please refrain from swearing/shouting at/talking over me. If you continue I will not be able to help you”.

Second chance: “Please refrain from swearing/shouting at/talking over me. As I have said, if you continue I will not be able to help you and will have to terminate the call”

Third chance: “I am sorry but as you have continued to swear/shout at/talk over me I am not able to help you and I am now going to terminate this call”