

BABERGH DISTRICT COUNCIL

From: Head of Corporate Resources	Report Number: M74
To: Strategy Committee	Date of meeting: 13 September 2012

POLICY AND GUIDANCE ON UNREASONABLE AND PERSISTENT COMPLAINANT BEHAVIOUR

1 Purpose of the Report

- 1.1 The Joint Member Implementation Board (JMIB) agreed on 14 August 2012 to recommend to Strategy Committee, that they in turn recommend to Council, the adoption of a Joint Policy and Guidance on Unreasonable and Persistent Complainant Behaviour.

2. Recommendations

- 2.1 That the Joint Policy and Guidance on Unreasonable and Persistent Complainant Behaviour attached as an Appendix be endorsed.

The Committee is asked to make a recommendation to Council.

3. Financial Implications

- 3.1 The introduction of this Policy and Guidance will not on its own have any financial implications for the Council.

4. Risk Management

- 4.1 This report is not specifically linked to any of the Council's Joint Corporate Risks.

5. Consultations

- 5.1 A working group of officers currently involved in the complaints procedure, from both Councils, has been established. They have reviewed this policy and guidance along with the plans / proposals for a new Joint Corporate Complaints / Comments / Compliments Policy, which will be presented to Members early in 2013. On-going consultation, communication and training for officers will be undertaken.

6. Equality and Diversity Impact

- 6.1 This new policy has been presented to the Equality Impact Assessment Group who has suggested that it be assessed as part of the overall Joint Corporate Complaints / Comments / Compliments Policy outlined in paragraph 5.1 above. The outcome will be reported to Members when the overall policy is presented in 2013.

7. Shared Service / Partnership Implications

- 7.1 The Policy and Guidance has been prepared by officers across both Councils and is presented for approval and onward recommendation to Council as a joint policy.

8. Key Information

- 8.1 Babergh District Council has adopted a policy and issued a guidance document on dealing with persistent complainants. Mid Suffolk District Council has not adopted any such policy or guidance in the past.
- 8.2 The result is that managers who are confronted with persistent complainants in each Council do not have a consistent policy framework in which to deal with such cases and in the case of Mid Suffolk District Council, are hampered in their ability to deal effectively with such complainants. Such cases tend to absorb more senior manager resource as a result.
- 8.3 JMIB recommend that both Councils adopt a single joint policy. This will enable managers in both councils to deal with persistent complainants in the same way.
- 8.4 The Babergh District Council policy is straightforward in its content and the guidance helpfully supplements the policy with information about its use.
- 8.5 This report contains a new joint policy and guidance, that if approved, would be adopted by both Councils and gives a single process for all managers to adopt and apply.
- 8.6 The new policy and guidance is based upon that already used by Babergh District Council and amended to take account of the operational needs of both organisations.
- 8.7 It is proposed that the joint policy be adopted by both Councils at their meetings in September 2012 and that a review of the operation of the policy be carried out quarterly by the Corporate Manager – Customer Services and the 3 Corporate Managers – Business Improvement, who will then report to Management Team.
- 8.8 This policy will form part of the Joint Corporate Complaints / Comments / Compliments Policy and Procedures which are being prepared with an aim to present them to Members in early 2013.

9. Appendices

- 9.1 A copy of the new Joint Policy and Guidance on Unreasonable and Persistent Complaint Behaviour is attached.

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POLICY AND GUIDANCE ON UNREASONABLE AND PERSISTENT COMPLAINANT BEHAVIOUR

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Generally

Babergh and Mid Suffolk District Councils are committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them. As part of this service we do not normally limit the contact complainants have with us.

Definition

Complainants who behave unreasonably and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with the Council's, hinder the Council's consideration of their or other people's complaints or the efficient conduct of Council business.

Complainant behaviour which is unreasonable may include one or two isolated incidents, as well as unreasonably persistent behaviour, which is usually an accumulation of incidents or behaviour over a longer period.

Examples of actions and behaviours of unreasonable and unreasonably persistent complainants.

The following, non-exhaustive list, are examples of the actions and behaviours of unreasonable and unreasonably persistent complainants which may cause the policy to be invoked.

- a) Refusing to specify the grounds of a complaint, despite offers of assistance with this from Council staff.
- b) Refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved.
- c) Refusing to accept that issues are not within the remit of a complaints procedure despite having been provided with information about the procedure's scope.
- d) Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- e) Making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced.
- f) Changing the basis of the complaint as the investigation proceeds and/or denying statements made at an earlier stage.
- g) Introducing trivial or irrelevant new information which the complainant expects to be taken into account and commented on, or raising large numbers of detailed but unimportant questions and insisting they are all fully answered.
- h) Electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved.
- i) Making unnecessarily excessive demands on the time and resources of staff whilst a complaint is being looked into, by for example excessive telephoning or sending emails to numerous Council staff, writing lengthy complex letters every few days and expecting immediate responses.

- j) 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.
- k) Refusing to accept the decision – repeatedly arguing the point and complaining about the decision.
- l) Combinations of some or all of the above examples.

Unreasonably persistent complainants

There are a small number of complainants who, because of the frequency of their contact with the Council's offices, hinder consideration of their or other people's complaints or the efficient conduct of Council business. Such complainants are referred to as 'unreasonably persistent complainants' and, exceptionally, action will be taken to limit their contact with the Council.

Considerations prior to taking action

Different considerations will apply depending on whether the investigation of the complaint is ongoing or whether it has been concluded. If the complaint has been concluded and the complainant is simply refusing to accept the answer, the Council has the option of ending all communication with the complainant. Where appropriate the complainant may be referred to the Ombudsman. However, where the complaint is ongoing there needs to be some continuing contact with the complainant.

The decision to designate someone as an unreasonable or unreasonably persistent complainant is onerous and could have serious consequences for the individual. Before deciding whether the policy should be applied the Council should be satisfied that:

- a) the complaint is being or has been investigated properly;
- b) any decision reached is the right one;
- c) communications with the complainant have been adequate; and
- d) the complainant is not now providing any significant new information that might affect the Council's view on the complaint.

If the Council is satisfied on these points it should consider whether further action is necessary prior to taking the decision to designate the complainant as unreasonable or unreasonably persistent. Examples of further action include:

- a) If no meeting has taken place between the complainant and an officer/officers, and provided that the Council knows nothing about the complainant which would make this unadvisable, offering the complainant a meeting with an officer of appropriate seniority. Sometimes such meetings can dispel misunderstandings and move matters towards a resolution.
- b) If more than one directorate is being contacted by an unreasonably persistent complainant:
 - i. agreeing a cross-departmental approach; and
 - ii. designating a key officer to co-ordinate the Council's response(s).
- c) If the complainant has special needs, an advocate might be helpful to both parties and the Council should consider offering to help the complainant find an independent advocate.

- d) Before applying any restrictions giving the complainant a warning that if their actions continue the Council may decide to treat them as an unreasonably persistent complainant, and explaining why.

Options for Action

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 Council at that time.

The following is a list of possible options for managing a complainant's involvement with the Council from which one or more might be chosen and applied, if warranted. It is not an exhaustive list and there may be particular factors which will be relevant in deciding what might be appropriate action.

- a) Placing time limits on telephone conversations and personal contacts.
- b) Restricting the number of telephone calls that will be taken (for example, one call on one specified morning/afternoon of any week).
- c) Limiting the complainant to one medium of contact (telephone, letter, email etc) and/or requiring the complainant to communicate only with one named member of staff.
- d) Requiring any personal contacts to take place in the presence of a witness.
- e) Refusing to register and process further complaints about the same matter.
- f) Where a decision on the complaint has been made, providing the complainant with acknowledgements only of letters, faxes, or emails, or ultimately informing the complainant that future correspondence will be read and placed on the file but not acknowledged. A designated officer should be identified who will read future correspondence.

Decision to restrict access

The decision to restrict access will be taken at Director Level or above. In the case of a persistent complainant, they will have already received prior warning about their behaviour

What happens if a decision is taken to restrict access?

If a decision is taken to apply the policy, staff should write to inform the complainant that:

- a) the decision has been taken;
- b) what it means for their contacts with the Council;
- c) advice about which officers/members of the authority are to be informed that contact with a named complainant is being restricted and why, and who will have access to that information.
- d) how long any restrictions will last; and
- e) what the complainant can do to appeal against the decision. Enclose with the letter a copy of the policy.

Who needs to be notified of decisions taken under the policy?

Every time a person is designated, pursuant to the policy, their details should be entered on to the Corporate Persistent Complainers list, on Z drive and managed by the Corporate Complaints Co-ordinator. This should ensure that people who have been designated under the policy are not able to continue pursuing their complaint via other officers. All Management Team, Heads of Service and Corporate Managers will be notified.

For the same reason, ordinarily (i.e. unless there are any overriding confidentiality considerations) the relevant local ward councillor should also be notified of a designation affecting one of his or her constituents.

Keeping adequate records of all contacts with complainants

Adequate records of all contacts with unreasonable and unreasonably persistent complainants must be maintained, for example:

- a) when a decision is taken not to apply the policy when a member of staff asks for this to be done, or to make an exception to the policy once it has been applied; or
- b) when a decision is taken not to put a further complaint from such a complainant through the complaints procedure for any reason; or
- c) when a decision is taken not to respond to further correspondence, make sure any further letters, faxes or emails from the complainant are checked to pick up any significant new information.
- d) These details/information should be entered onto the Corporate Persistent Complainers list, contained on the Z drive and accessible by both Councils, and managed by the Corporate Complaints Co-ordinator

Who can review the decision?

Where a complainant appeals against a decision to restrict their contacts or the Council's responses to them, a review of that decision should be carried out by another member of the Council's Management Team. The Council should write to advise the complainant of the outcome of the appeal and, if restrictions are to continue to be applied, when they will next be reviewed.

Terminating contact with a complainant

Where a complainant continues to behave in a way which is unreasonable, the Council may decide to terminate contact with that complainant.

Where a complainant whose case is closed persists in communicating with the Council about it, the Council may decide to terminate contact with that complainant. In such cases all correspondence from that complainant will be read but, unless there is fresh evidence which affects the decision on the complaint, the Council will, on the first occasion, simply acknowledge its receipt and any subsequent communications will be placed on the file without acknowledgement.

Keep any restrictions under review

These arrangements will be reviewed on a quarterly basis by the Corporate Manager – Customer Services and the 3 service Corporate Managers - Business Improvement on whether there has been any further contact from the complainant in the previous 6 months. If a complainant has had

no contact with the Council within that period, the position should be reviewed and a decision taken on whether any restrictions placed on the complainant's contacts should be cancelled. The outcome of this review should be noted on the Council's records. If the restrictions are cancelled, urgent consideration should be given to re-introducing the restrictions if the behaviour which led to the original decision re-commences. This information

What about complaints about new issues?

When unreasonable and unreasonably persistent complainants make complaints about new issues these should be treated on their merits, and decisions will need to be taken on whether any restrictions which have been applied before are still appropriate and necessary.

What happens if the complainant then complains to the Ombudsman?

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 Council's action if it can show that its policy has been operated properly and fairly.

Referring unreasonable and unreasonably persistent complainants to the Local Government Ombudsman

If relations between the 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, then there is little purpose in following through all stages of the Council's complaints procedure.

Where this occurs the Ombudsman has indicated that he may be prepared to consider complaints before complaints procedures have been exhausted. This is the case even in respect of statutory complaints procedures.

Extreme unreasonable behaviour

Where the behaviour is so extreme that it threatens the immediate safety and welfare of the Council's staff, we will consider other options, for example reporting the matter to the police or taking legal action. In such cases, the Council may not give a complainant prior warning of that action.

Record Keeping

In line with the new Joint Complaints Procedure, any information/correspondence in relation to this Policy will be stored centrally by the Corporate Complaints Co-ordinator and reviewed quarterly by the Corporate Manager – Customer Services, The Customer Complaints Co-ordinator and the 3 Corporate Managers – Business Improvement.