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Local Government &  
Social Care  
**OMBUDSMAN**

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## Chesterfield Borough Council (17 003 494)

Category : [Other Categories > Other](#)

Decision : **Not upheld**

Decision date : **02 Jan 2018**

The complaint

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## The Ombudsman's final decision:

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**Summary:** There was no fault by the Council in a complaint that it did not make reasonable adjustments for the complainant and discriminated against him when it restricted the access he could have to its staff by invoking its unreasonable complaints and customer policy.

## The complaint

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1. Mr X says the Council did not make reasonable adjustments for him and discriminated against him when it restricted the access he could have to its staff and its offices.

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## The Ombudsman's role and powers

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2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person

making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)

3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3), as amended)

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## How I considered this complaint

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4. I considered the complaint and documents provided by the Council and Mr X's advocate. I sent a draft decision statement to Mr X through his advocate as well as the Council and invited their comments on it.

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## What I found

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5. The Council's contractor completed disability adaptations and roofing work at Mr X's home at the end of 2016 and early 2017. Mr X is autistic and dyslexic. Mr X's condition affects the way he communicates with people. He gets anxious if a person he has dealings with does not keep to prearranged times and the anxiety reduces his ability to manage contact with the person.

6. Mr X's advocate provided me with a letter sent to the contractor from one of the Council's officers within the adult care team ahead of the works. The council officer advised the contractor to be clear in communicating with Mr X. The officer said Mr X had difficulty managing timescales due to his autism and so it was important the contractor set timescales and adhere to them.
7. It turns out Mr X's dealings with the contractor were difficult. Mr X then contacted various officers because of the problems he experienced with the works.
8. The Council decided to invoke its unreasonable complaints and customer policy and restrict Mr X to a single point of contact. The Council's housing manager made the decision.
9. She acknowledged the works had been difficult for Mr X. She noted Mr X suffered from autism and dyslexia and the advice he gave to officers that this meant he responded differently to periods of anxiety compared to someone without these conditions.
10. But she noted Mr X:
  - Made frequent and lengthy contacts with council officers and its agents which were unreasonable;
  - Made unjustified complaints about staff who were dealing with the issues;
  - Insisted on the complaints he made being dealt with in ways which are incompatible with its complaints procedure;
  - Electronically recorded meetings and conversations without the consent of the person involved;
  - Pursued a scattergun approach involving multiple officers and organisations about the complaint;
  - Acted towards staff and contractors and partners in a manner which causes or is likely to cause them nuisance or annoyance or harassment or distress;
  - Persisted in contact which he had been told was unreasonable.
11. The housing manager said Mr X had been threatening and abusive in person and on the telephone. She also said Mr X made repeated and numerous telephone calls which prevented staff from not only responding to his

enquiry but also those of other people.

12. Mr X appealed against the Council's decision on the following grounds:

- The decision letter was unlawful and discriminatory.
- He was strongly misrepresented in the letter.
- The effect of his autism on his communication needs had not been considered and responded to sympathetically or practically.
- The complaints he made about the building works were not taken seriously or acted upon effectively.
- The Council stopped him from contacting local councillors and supporting other vulnerable people with his advocacy work. This left him feeling isolated from living in his community and doing any activities as he may meet council staff and have to walk away.
- The Council was not following the Autism Act 2009 for all staff to have training for supporting people with autism.

13. Mr X said he only used a scattergun approach as a last resort because no one in the Council wanted to take ownership of the issues he was facing. He makes recordings of interactions with people he comes into contact with so he can process the conversations in his own time and this is an advised strategy for autistic people.

14. Mr X said he had never received information from the Council on how to deal with complaints. He has a high level of anxiety about such matters and so information on the Council's complaints policy and procedures would have been welcome.

15. Mr X was puzzled that the Council stated he harassed its staff or acted in annoying way or as a nuisance. He said he can sometimes be repetitive and express his frustration but he denied harassing anyone. Annoyance and nuisance are subjective terms and he suspected everyone is capable of being perceived in that way on a bad day.

16. Mr X said he persisted in contact because the issues had to be resolved. He was not told verbally that he had done this in an unreasonable way and had some excellent and productive results from discussions and meetings with council staff.
17. Mr X denied any unreasonably frequent and lengthy contact with council officers and agents. He said he had a good working relationship with many County Council officers including the social worker who works with him.
18. Mr X said the complaints he made were justified and escalated because they had not been responded to coherently since 2013.
19. Mr X found a single point of contact inconvenient, unwarranted and unfair. He said the difficulties that arose between him and the Council were due to expectations set up by workers about when certain jobs would be done and then the reality being different. He said when something is promised and a date and time given it is very hard for him to cope if the thing is not done as stated.
20. Mr X said his name was now well known as a problem within the council and so its officers refused to engage with him. He said the Council's response was discriminatory.
21. Mr X said it was vague and subjective to refer to limits on telephone calls to a reasonable duration. He said it takes him time to explain a situation because of his needs.
22. Mr X was puzzled by accusations of violent, threatening, intimidating, abusive and aggressive behaviour. He queried whether his assertion and exasperation had been misread and dealt with defensively by the Council.
23. Mr X said the Council had unreasonably asked him to follow a written appeal procedure and this was discriminatory under the Equality Act 2010.
24. The Council did not allow Mr X's appeal. The reviewing officer rejected the grounds of appeal and made the following detailed comments:
  - a. On the matter of discrimination and lawfulness he reviewed the approach taken by the Council and the way in which the housing manager reached her decision to apply the policy. He found officers made reasonable adjustments for Mr X. These included the way in which information was provided

to Mr X; additional time spent by officers in meeting and discussing matters with Mr X; reminders regarding payment of council tax; making alternative arrangements for contacting the council and; supporting provision of an independent advocate for Mr X.

The housing manager had guidance and advice on understanding autism from various sources and had shared her understanding with other staff. The Council would arrange training on autism for all its housing staff and had already made guidance available to its staff.

The Council had made reasonable adjustments but its equalities duties also extend to its staff. It took steps to protect its staff because it had to fulfil its duties to them.

Mr X was not the subject of discrimination because he still had access to a full range of council services. A single point of contact was not a discriminatory approach to take.

- b. On the matter of misrepresentation and reasonableness of behaviour the officer said there were several occasions in which Mr X had treated council staff unreasonably. It included frequent and repeated calls to office and mobile numbers of officers. The officer said Mr X also acted in the same way towards its contractors and its insurer. The officer did not find Mr X had been misrepresented in the housing manager's decision letter.
- c. The officer said the Council had provided information on how to deal with complaints contrary to Mr X's claim it had not. It referred to the officer who had been designated as Mr X's point of contact providing explanations of the complaints process.
- d. Contrary to Mr X's view that he had not been told his behaviour was unreasonable the reviewing officer said he had seen examples of occasions where officers had warned Mr X about his

- unreasonable behaviour. The officer said the housing manager had previously discussed Mr X's behaviour with him and Mr X had acknowledged and apologized for unreasonable behaviour.
- e. The restriction did not stop Mr X from contacting his local councilors or using council facilities such as leisure centres or cultural venues.
  - f. The Council had put in place measures to address difficulties its officers had in communicating with Mr X in the past but these had not prevented its staff being subjected to unreasonable behaviour. So, it was appropriate to place restrictions on Mr X's contact with its staff.

## **The Council's unreasonable complaints and customers policy**

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- 25. Section 2 of the Council's policy defines unreasonable complaints or customers.
- 26. The policy says unreasonableness is typified by a customer conducting themselves in a manner as to hinder the Council's consideration of their own or other people's complaints and by the customer conducting themselves in such a manner as to place a disproportionate demand on the Council's resources.
- 27. An unreasonable customer may pursue a justified complaint or concern but in an inappropriate way.
- 28. The conduct of an unreasonable customer may cause a disproportionate or unjustified level of disruption, irritation, stress or distress to Council staff or contractors and partners.
- 29. Each case will turn on its own facts but the policy and procedure may be engaged by one or two isolated unreasonable incidents or a build-up of incidents or behaviour over time which amount to unreasonable conduct.
- 30. The section provided examples of the sort of behaviour covered by the policy. These include, for example, unreasonably frequent or lengthy contacts and/or repetitive information and pursuing a scattergun approach.
- 31. The Council paid for an advocacy service to support Mr X to make his complaints as well as the appeal against its decision to use the unreasonable customer policy.



# Finding

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## Did the Council properly invoke its unreasonable customer policy?

32. It is not for the Ombudsman to decide whether Mr X's behaviour was unreasonable or not. Rather the Ombudsman examines whether there was fault in the process leading to a council's decision.
33. Here the Council's officers and agents had contact from Mr X which they considered unreasonable. Mr X's contact with officers meets the description of unreasonable customer set out in its policy. Having identified the reason for invoking the policy the housing manager then sought advice from a senior manager before using it. I do not find fault in the process leading to the decision.
34. It may be that Mr X's concern about the contractor's alleged failure to keep to set times among other things is justified. Mr X also refers to other complaints stretching back to 2013 as giving him grounds to contact officers persistently. But Mr X cannot pursue a matter in an inappropriate way because a complaint is justified.
35. I note Mr X queries the meaning of telephone calls of a 'reasonable' duration and that he considers he did not harass officers. But it is important to also note that the Council acted because of the impact Mr X's contact had on its staff and agents. That impact, when considered from the point of view of the recipients, was negative.

## Did the Council fail to make reasonable adjustments for Mr X?

36. I am satisfied from the evidence I have seen that the Council made reasonable adjustments to take account of Mr X's disability. It appointed a single point of contact for him in its customer services team as well as its housing team when he became a council tenant. There are examples of meetings with him to resolve his concerns and officers visited his home to resolve disputes he had with contractors.
37. The letter provided by Mr X's advocate from an officer within the adult services team to the contractor is testament to the Council's awareness of Mr X's condition and its efforts to make reasonable adjustments for

him.

38. Again, I must stress that Mr X may have been justifiably aggrieved about delays in completing the works or damage to his property. But this did not mean he could make unreasonable demands of the Council and its agents.
39. Mr X says the Council failed to make reasonable adjustments for him because it asked him to appeal against its decision to invoke the unreasonable customer policy in writing. I do not share Mr X's view. The Council was correct to point out the requirement for a written appeal. But it then allowed for Mr X's disability by paying for an independent advocate to make the appeal for him. That was a reasonable adjustment.

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## Final decision

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40. I did not find fault by the Council and so, closed the complaint.

## Other matters

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41. Mr X says the Council discriminated against him under provisions of the Equality Act 2010 and the Autism Act 2009. It is not for the Ombudsman to determine whether conduct by a local authority meet the legal tests for discrimination. Discrimination is a matter for the courts to determine. In terms of maladministration I did not find fault by the Council.

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## Investigator's decision on behalf of the Ombudsman

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