

For publication

Review of Unreasonable Complaints Policy

Meeting:	Standards and Audit committee
Date:	23 May 2018
Portfolio:	Cabinet Member for Governance
Report by:	Local Government And Regulatory Law Manager

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1.0 Purpose of report

- 1.1 To report to members on the use and application of the Council's Policy and Procedure on the Management of Unreasonable Complaints or Customers ("the Policy").

2.0 Recommendations

- 2.1 That the report is noted.
- 2.2 That the Policy be modified by the changes proposed at paragraph 5.3 and 5.4.

3.0 Background

- 3.1 On 4th October 2016 the Cabinet Member for Governance approved the Council's policy for dealing with unreasonable complainants or complaints. This replaced an earlier policy.

- 3.2 A copy of the Policy is attached at Appendix A. The Policy provides guidelines for application, taking account of current Ombudsman advice and relevant legal cases. The policy sets out a clear and proportionate procedure for warning the complainant and imposing restrictions, with provision for review and right of appeal.
- 3.3 It is a requirement of the Policy that it be reviewed annually by this Committee. This report is the first review of the Policy, following consideration of the first application of the policy to a complaint/complainant.

4.0 Application of the Policy

- 4.1 Since the adoption of the Policy the Council has continued to manage complaints received from the public through the Complaints, Comments and Compliments Policy. During this time there have been only a very small number of complaints which may have warranted consideration of whether or not to apply the Policy.
- 4.2 The Policy has been applied only once since adoption, in March 2017, as a result of persistent and unreasonable complaints to the Housing Service by a complainant. The application of the policy can be taken as a thorough test of the Policy as the matter was ultimately taken by the complainant to the Ombudsman (as anticipated by procedures in the Policy).
- 4.3 Prior to the Ombudsman stage there was also a review of the application of the Policy by one of the Executive Directors (again, part of the Policy), who upheld the decision to apply the policy.
- 4.4 In this case, a disability related reasonable adjustment was agreed. This was in the form of financial assistance to engage an experienced advocate. The advocate represented the

complainant in their appeals to the Executive Director and Ombudsman. This was consistent with Ombudsman advice and in line with the Equality Act 2010.

- 4.5 The Ombudsman upheld the Council's application of the policy in a decision issued in January 2018. The decision also considered other aspects of the complaint, over which the Council's response was also upheld. On the application of the Policy the Ombudsman said:

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.

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 conduct set out in its policy. Having identified the reasons 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.

It may be that some of Mr X's concern [about the council's agent] 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.

It is important to also note that the Council acted because of the impact Mr X's conduct had on its staff and agents. That impact, when considered from the point of view of the recipients, was negative.

- 4.6 A copy of a summary of the Ombudsman's decision was subsequently published on the Local Government and Social

Care Ombudsman website (where all decisions on complaints are published).

5.0 Review of the Policy

- 5.1 The Policy has proved to be an effective way of managing a persistent/unreasonable complaint. It has achieved its intended outcome by reducing inappropriate contact with services and has protected staff.
- 5.2 While use of the policy is fairly slow to apply and cumbersome in view of the various appeal stages, these stages help ensure that the complainants' rights are protected and proper consideration is given before the policy is applied. It is important to ensure that any application of the Policy follows these procedures in order to help ensure a complaint to the Ombudsman will be less likely to succeed on procedural grounds.
- 5.3 In the case where the Policy was applied it was apparent that the behaviour of the complainant was so serious and causing distress to staff that a warning stage was inappropriate. In that case warnings had already been given about the behaviour and possible consequences. It is suggested that the Policy be amended at paragraph 3.3 and 3.4 to proceed straight to applying a restriction without a warning stage in the event of serious and distressing behaviour, but only after discussion with senior management.
- 5.4 In the case where the policy was applied, the time set for review of the restriction applied under the policy coincided with consideration of the matter by the Ombudsman. This made it impracticable to carry out a review as the whole issue of the application of the Policy was being considered by an independent body. Accordingly it is suggested that the Policy be clarified that there might be circumstances (such as an appeal

to the Ombudsman) where it might not be practicable to carry out a review at the time that has been set.

6.0 Recommendations

6.1 That the report is noted.

6.2 That the Policy be modified by the changes proposed at paragraph 5.3 and 5.4.

7.0 Reason for recommendations

7.1 To enable completion of the review of the Policy by the Committee and to ensure an effective Policy in the light of experience from its application.

Decision information

Key decision number	N/A
Wards affected	All
Links to Council Plan priorities	This report links to the Council's priority to provide value for money services.

Document information

Report author	Contact number/email
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Background documents	
These are unpublished works which have been relied on to a material extent when the report was prepared.	
Appendices to the report	
Appendix A	Unreasonable Complaints Policy