

POLICY AND PROCEDURE ON THE MANAGEMENT OF UNREASONABLE COMPLAINTS OR CUSTOMERS

1.0 Introduction

- 1.1 This policy and procedure is aimed at providing a framework:
- (i) to help identify what might be classed as an unreasonable complaint or customer;
 - (ii) to manage the Council's limited resources to help ensure that customers have access to our limited resources in a way which is proportionate to the issues being raised and the need for other customers to be able to access these limited resources;
 - (iii) to set out openly how we will deal with unreasonable complaints or customers, what steps we will take if action is required and who can authorise these actions
 - (iv) which we can provide to customers where this policy and procedure is applied so that the customer can understand the process. This may help to manage the customer's expectations and behaviour.
- 1.2 The council aims to deal with complaints and customers in a way which is fair and impartial. On occasion customers may behave unreasonably or make unreasonable complaints. Unreasonable customers or complaints can hinder the proper consideration of their cases and may delay consideration of other customers' cases. Unreasonable complaints or customers can have significant resource implications for the Council.
- 1.3 Customers may sometimes act out of character at times of anxiety or distress and/or their conduct may relate to a disability. Reasonable allowances should be made for such factors. Ultimately, however, the council does not expect its staff to suffer behaviour or complaints by customers which is/are unreasonable in content, tone or persistence. In appropriate circumstances the Council will take proportionate action to protect the wellbeing of its staff, members and contractors and also the integrity of its processes and limited resources.
- 1.4 If the Council considers that any unreasonable conduct or complaint is or might be related to a disability, or because the customer's first language is not English, the Policy and Communications Manager should be consulted for advice and assistance to manage the issues arising under this policy and procedure where appropriate.
- 1.5 When considering this policy and procedure the Council will also have regard to other relevant policies and procedures operated by the Council which may include (but not be limited to):

- Chesterfield Borough Council Access statement (<https://www.chesterfield.gov.uk/living-here/people-and-families/equality-and-diversity/access-statements.aspx>)
- Equality, Diversity and Social Inclusion Policy (<https://www.chesterfield.gov.uk/living-here/people-and-families/equality-and-diversity/equality-diversity-and-social-inclusion-policy.aspx>)
- Aggressive customer behaviour – guidance to employees (<https://aspire.interactgo.com/Interact/Pages/Content/Document.aspx?id=1670>)

When this policy is engaged it shall take precedence over these policies in the event of any uncertainty as to different processes to be applied.

- 1.6 Where this policy and procedure is engaged the Council may take action to restrict conduct of the customer and access to Council services . Examples of the sort of restrictions which may be imposed are given in section 3.6 below. In the most serious cases the Council may bypass this policy and procedure and inform the police and/or take legal action with or without notice to the individual(s) concerned.
- 1.7 Where restrictions are applied and/or legal action taken the Council will take steps to inform those who it reasonably determines ought to be aware of the steps / action taken and the outcome. The steps taken will depend on the facts of each case.
- 1.8 It is to be emphasised that this document is a framework. It is not intended to be prescriptive since it is recognised that in those rare situations where customers behave unreasonably or make unreasonable complaints such that this policy and procedure is or might be engaged, each case will need to be considered on its own facts.
- 1.9 This policy and procedure has been drafted with regard to the Local Government Ombudsman’s current guidance note on managing unreasonable complainant behaviour¹. It will be reviewed annually and such reviews will take account of any updated guidance from the Local Government Ombudsman.
- 1.10 When the Council is faced with what it regards as vexatious Freedom of Information Act [FOIA] requests it will have regard to relevant guidance from the Information Commissioner’s Office [ICO]² and its own internal policies and procedures when determining such matters, noting that a request may be

¹ <http://www.lgo.org.uk/information-centre/reports/advice-and-guidance/guidance-notes/guidance-on-managing-unreasonable-complainant-behaviour>

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

refused if it is vexatious³ but that in that situation the test as to whether the request is vexatious applies to the request itself and not to the individual who makes it. Accordingly the engagement of this policy and procedure cannot of itself remove the obligations of the Council under the FOIA. Similarly with a subject access request the Council will have regard to such guidance as is available from the ICO⁴ as well as its own policies and procedures for dealing with such matters.

- 1.11 It is anticipated that this policy will be invoked in only a very small number of cases. During the period between adoption in December 2013 and August 2016 the previous version of this policy was not invoked at all. Since adoption of this current policy it was applied once in 2017 and twice in 2018.

2.0 Unreasonable Complaints or Customers

- 2.1 There is no single definition of an unreasonable complaint or customer. Each case must be judged on its merits.
- 2.2 An unreasonable customer may pursue a justified complaint or concern but in an inappropriate way. Alternatively they may pursue a complaint which has no substance or which has previously been addressed in which case the complaint might be judged to be unreasonable. The concept of 'unreasonableness' is typically identified by a customer conducting themselves in such 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. The conduct of an unreasonable customer may cause a disproportionate or unjustified level of disruption, irritation, stress or distress to Council staff or the Council's contractors / partners.
- 2.3 Whilst each case will ultimately turn on its own facts this 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. The focus is whether in all of the circumstances the complaint and/or customer are unreasonable. Examples of the sort of customer complaint and/or conduct which might be covered by this policy and procedure include (but are not limited to):
- Refusing to specify the grounds of a complaint despite offers of help
 - Making a complaint or complaints which have no proper grounds

³ The term 'vexatious' involves the manifestly unjustified, inappropriate or improper use of procedures. All circumstances must be considered but there will typically be a disproportionate or unjustified level of disruption, irritation or distress. When considering whether a request is 'vexatious' the focus should be on the impact of the request(s) rather than the behaviour of the requester

⁴ <https://ico.org.uk/for-organisations/guide-to-data-protection/principle-6-rights/subject-access-request/> See section *What about repeated or unreasonable requests?*

- Unreasonably frequent or lengthy contacts and/or repetitive information
- Pursuing a complaint only to annoy or disrupt or for reasons that are not identified or are not obvious
- Refusing to co-operate with the complaints investigation process but still wanting the complaint to be resolved
- Making unjustified complaints about staff who are dealing with issues and trying to have them replaced
- Refusing to accept that issues are not within the remit of the Council's Complaints, Comments and Compliments Procedure despite having been provided with information about the procedure's scope
- Insisting on the complaint being dealt with in ways which are incompatible with the Complaints, Comments and Compliments procedure or with good practice (for example insisting that there should be no written record of a complaint or aspects of a complaint)
- Electronically recording meetings and conversations without the prior knowledge and consent of the other person involved
- Where a complainant pursues a disproportionately large number of complaints with the Council or raises a multitude of unimportant questions
- Where a complainant pursues a 'scatter gun' approach of approaching multiple external organisations with parallel complaints about the Council
- Unreasonably repeating complaints which have previously been addressed (and as part of that perhaps seeking to add minor or immaterial additions to earlier complaints after the event as a basis for seeking to re-open investigations)
- Obstructing reasonable access for council staff (or agents) to tenanted properties or insisting upon unreasonable conditions for access
- Persistently seeking to complain about matters that occurred outside of the one year time period usually allowed for the investigation of complaints without good reason
- Acting towards staff or Council contractors or partners in a manner which causes or is likely to cause them nuisance or annoyance or harassment or distress
- Persisting in conduct which the customer has been told is unreasonable

3.0 Managing Contact

- 3.1 The Council operates a policy and procedure which has proved effective when addressing Complaints, Comments and Compliments. This policy and procedure for the management of unreasonable complaints or customers will be used only where the Council's day to day policies are unable to resolve the issues arising and where the complaint and/or the customer are deemed to be unreasonable.
- 3.2 If an officer of the Council considers that a complaint and/or customer are unreasonable they should discuss their concerns, and the reasons for their concerns, with a member of the Corporate Management Team or Senior Leadership Team.

3.3 **Warning:** A Service Manager, a member of the Corporate Management Team or Senior Leadership Team may determine that the complaint and/or customer are unreasonable and that it is proportionate to issue a warning to the customer under this policy and procedure. The officer who determines that a warning shall be issued will write to the customer concerned within 3 working days of that determination setting out:

- (i) why their complaint or conduct has been considered unreasonable
- (ii) that this policy and procedure has been invoked
- (iii) that a warning is being given to them under paragraph 3.3 of this policy and procedure
- (iv) what the customer is being asked to do to address the concerns raised
- (v) a request for the customer to consider the letter and amend their complaint or conduct (as appropriate)
- (vi) the actions which may be taken by the Council if the concerns raised are not addressed adequately (this will include informing the customer of the power of the Council to impose a restriction or restrictions on contact with the Council, the fact that any restriction(s) may be applied for a specified time period and how any restriction(s) might enable any continuing complaint or information request to be managed within the complaints policy or such other policy as is relevant)
- (vii) the right of the customer to appeal against the decision to invoke this policy and issue a warning (with reference to paragraphs 3.11 - 3.16 of this policy and procedure)
- (viii) an opportunity for the customer to write to the author of the letter to respond to the warning if he / she has proposals to address the Council's concerns and avoid further escalation
- (ix) suggestions on how the customer might obtain independent legal or other advice
- (x) details of the customers right to complain to the Local Government Ombudsman or Housing Ombudsman about the engagement of this policy and procedure and/or any determinations made pursuant to it

The customer should be sent a copy of this policy and procedure at this stage.

The circumstances of the complaint might mean that a warning under this policy is not appropriate, for example (but not limited to) where there have been previous warnings given in relation to the behaviour, or in the event of behaviour by the complainant causing serious distress.

3.4 **Apply an appropriate restriction:** If, notwithstanding a warning, the unreasonable complaint(s) persist(s) and/or the customer continues to be unreasonable then the officer of the Council who issued the formal warning (or another officer of the Council being of equal seniority or more senior to that officer) will determine whether a restriction or restrictions ought to be applied and, if so, the details of the restriction(s) (including their duration and the period of time after which the restriction(s) may be reviewed).

3.5 The customer will be notified in writing of any determination to apply a restriction or restrictions. A decision letter applying a restriction or restrictions

will be written by the officer who has made the determinations set out in paragraph 3.4 above. The decision letter should contain:

- (i) the date of the warning
- (ii) a summary of the concerns raised previously and the previous steps required of the complainant to address the concerns
- (iii) the determination that the concerns have not been addressed adequately or at all and the reason(s) supporting this determination
- (iv) the restriction(s) imposed on the customer's contact with the council (which will be proportionate and aimed at addressing the customer's unreasonable complaint(s) and/or conduct and removing ongoing or future prejudice to the Council and/or its staff and/or contractors)
- (v) the period of time the restriction(s) is/are being put in place for
- (vi) the period of time before the restriction(s) will be reviewed (this is typically 6 months but will depend on the facts of the case)
- (vii) the customer's right of appeal against the determination (pursuant to paragraphs 3.11 - 3.16 of this policy and procedure)
- (viii) suggestions on how the customer might obtain independent legal or other advice
- (ix) details of the customer's right to complain to the Local Government Ombudsman or Housing Ombudsman about the engagement of this policy and procedure and/or any determinations made pursuant to it

The letter should also enclose a further copy of this policy and procedure.

3.6 Any restrictions which may be applied by the Council (under paragraphs 3.4 and 3.5 of this policy and procedure) will be determined on consideration of the facts of the individual case at the time but they may include one or more of the following:

- Placing limits on the number and duration of contacts with staff
- Restricting telephone calls to specified days and limited times
- Limiting the customer to one method of contact (e.g. letter or email)
- Requiring the customer to communicate with one named member of staff
- Requiring any personal contacts to take place in the presence of a witness and in a suitable location
- Managing contacts with the assistance of an independent advocate
- Refusing to register and process further complaints save for new matters which are considered by the Council to be appropriate for investigation
- Stating that future correspondence will be read by a designated officer and placed on the file but not acknowledged unless it contains material new information
- Ending correspondence on particular issues and referring the matter to the Ombudsman where appropriate

This list is not exhaustive since each case must be considered on its facts.

3.7 **Reviews:** When the time comes for the restriction(s) to be reviewed the review shall be conducted by the officer who applied the restriction(s) or by

another officer who is of equal or greater seniority to the officer who applied the restriction(s).

- 3.8 The outcome of a review may be that the restriction(s) shall remain in force, be varied or be discharged. The officer who has made the determination on review should write to the customer with the decision on review within three working days of making the decision.
- 3.9 Where the review results in the restriction(s) being discharged the customer should be informed of this within the timescale set out at paragraph 3.8 of this policy and procedure.
- 3.10 Where the outcome of the review is that the restriction(s) remain in place following a review (whether in the form originally determined or in some varied form) then a decision letter should be sent within the timescale set out at paragraph 3.8 of this policy and procedure. The decision letter should contain:
- (i) the date of the imposition of the original restriction or restrictions and a copy of that decision letter
 - (ii) a summary of the decision on review and key reasons for the decision
 - (iii) the period of time before the restriction(s) will next be reviewed
 - (iv) the customer's right of appeal against the decision (pursuant to paragraphs 3.11 - 3.16 of this policy and procedure)
 - (v) suggestions on how the customer might obtain independent legal or other advice
 - (vi) details of the customer's right to complain to the Local Government Ombudsman or Housing Ombudsman about the decision

The letter should also enclose a further copy of this policy and procedure.

There might be circumstances where it is impracticable for a review to be carried out or it needs to be postponed, for example during an Ombudsman investigation into application of the policy. In such cases the customer should be kept informed of the reasons why the review has not taken place and anticipated timescale for its completion.

- 3.11 **Right to Appeal:** Subject to the time limits set out in paragraph 3.12 of this policy and procedure the customer has a right of appeal to the Council against:
- (i) the decision to invoke this policy and issue a warning (including the determination sent to the customer under paragraph 3.3 of this policy and procedure);
 - (ii) the decision to apply any restriction(s) and/or the decision as to the duration of the restriction(s) and/or the decision as to the period of time after which the restriction(s) may be reviewed (including the determination sent to the customer under paragraph 3.5 of this policy and procedure); and
 - (iii) the decision to keep a restriction or restrictions in place following review (whether in their original form or a varied form) including the

determination sent to the customer under paragraph 3.10 of this policy and procedure.

The customer may also make a complaint to the Local Government and/or Housing Ombudsman (as appropriate) at any time.

- 3.12 Any request to appeal to the Council must be made in writing and must be received by the Council's Monitoring Officer within 21 calendar days of the date of the decision being appealed. For the purpose of calculating the deadline for receipt of an appeal the date of the decision being appealed will be taken to be two working days after the date of the decision letter.
- 3.13 A request for an appeal made within time shall be considered and determined by an officer of the Council who has had no previous involvement with the case and who is more senior than the officer whose decision is being appealed. Where there is no officer in the Council who is able to determine the appeal the Monitoring Officer may appoint a suitably qualified or experienced senior officer from another authority or a solicitor/barrister to determine the appeal. Where an officer of another authority is appointed to determine an appeal they shall be more senior than the officer whose decision is being appealed.
- 3.14 The decision on appeal should ordinarily be sent to the customer within 21 days of receipt of the appeal by the Council. An appeal is by way of review of the earlier decision.
- 3.15 A decision letter on appeal should contain:
- (i) the date of receipt of the appeal
 - (ii) a summary of the decision on appeal and key reasons for the decision
 - (iii) any practical implications arising from the decision on appeal (e.g. if a restriction is retained in principle but varied then what that means for the customer and when the next review of the varied restriction will be)
 - (iv) a statement that there is no further right of appeal to the Council against this decision
 - (v) suggestions on how the customer might obtain independent legal or other advice
 - (vi) details of the customer's right to complain to the Local Government Ombudsman or Housing Ombudsman about the decision.

The letter should also enclose a further copy of this policy and procedure.

- 3.16 A decision on appeal is a final decision by the Council on those matters contained within the decision. There is no second appeal from a decision on appeal to the Council. The decision letter on appeal will signpost the customer to the Local Government Ombudsman or Housing Ombudsman (as appropriate) should they be dissatisfied at this stage.
- 3.17 **Where a customer ignores the restrictions applied:** If the issue(s) of unreasonableness persist(s) after the imposition of a restriction or restrictions

then the officer who applied the restriction(s) or an officer more senior than the officer who applied the restrictions (and in any event an officer of at least Executive Director level) may make the decision to impose further restrictions e.g. terminating further contact with the customer on current issues and/or ending any ongoing investigations which are underway. In such a case the customer will be informed in writing of this decision and the reasons for it. There will be no right of appeal to the Council against such a decision. The customer will instead be signposted to the Local Government Ombudsman and/or Housing Ombudsman (as appropriate) should they wish to make a complaint. In a serious case the Council may bypass this policy and procedure and make a report to the police and/or take legal action with or without notice to the customer(s) concerned.

- 3.18 Where further restrictions are applied and/or legal action is taken the Council will take steps to inform those who it reasonably determines ought to be aware of the steps / action taken and the outcome. The steps taken will depend on the facts of each case.
- 3.19 **New Matters:** Where a customer who is subject to any restriction(s) raises a new matter following the imposition of the restriction(s) the Council will consider whether the new matter has merit and ought to be considered further. The Council will inform the customer whether the new matter will be considered and, if so, how the restrictions in force will apply (if at all) to the new matter. Where the Council declines to consider a new matter the customer will be informed in writing and signposted to the Local Government Ombudsman and/or Housing Ombudsman as appropriate should they wish to complain further.
- 3.20 **Where a breakdown in communication occurs:** Very occasionally relations between a council and a customer might break down completely while a complaint is under investigation such that there is little prospect of achieving a satisfactory outcome. In such cases there may be nothing to gain from following through all stages of an organisation's complaints procedure. In such exceptional circumstances the Ombudsman may be prepared to consider a complaint before the Council's own procedures have been exhausted. The Council may seek advice from the Ombudsman and/or request the Ombudsman to consider the matter if it considers that such a situation has arisen. Where the Council does so it will inform the customer in writing so that the customer may express his or her views to the Council and/or Ombudsman if they wish to do so.

4.0 Recording and Reporting use of this policy

- 4.1 Records relating to the application of this policy and procedure will be kept by the Customers, Commissioning and Change Manager and shared with appropriate senior managers and as necessary within the Council. These records should include:

- details of requests to invoke this policy and procedure which are not supported by the relevant senior manager
 - the name and address of each customer where this policy and procedure has been invoked
 - the number of warnings which have been issued
 - what restriction(s) is / are in force and for what period
 - the number of determinations which have been appealed and the outcome of those appeals
 - the number of reviews carried out and the outcome of those reviews
 - whether legal action was taken and, if so, details of the action taken and the outcome(s)
 - who within the Council was advised of any restrictions
 - all correspondence relating to this policy and procedure sent between customer(s) and the Council (and any relevant third party e.g. Local Government Ombudsman or Housing Ombudsman)
 - the success of the policy in those cases where it has been invoked
 - the number of Ombudsman referrals and the outcome of each referral
- 4.2 An annual report will be provided to the Standards & Audit Committee with information about the application of and success of this policy and procedure during the year and any recommendations for amendment

Reviewed July 2019