

# THE COUNCIL'S CORPORATE COMPLAINTS PROCEDURE

<b>Cabinet Member</b>	Councillor Ray Puddifoot MBE
<b>Cabinet Portfolio</b>	Leader of the Council
<b>Officer Contact</b>	Dan Kennedy - Head of Business Performance, Policy and Standards.
<b>Papers with report</b>	<ul style="list-style-type: none"><li>• Appendix A: Committee recommendations</li><li>• Appendix B: Revised Corporate Complaints Procedure.</li><li>• Appendix C: Remedies for complaints and the payment of financial compensation.</li><li>• Appendix D: Unreasonable or Unreasonably Persistent complainants.</li></ul>

## 1. HEADLINE INFORMATION

<b>Summary</b>	<p>A review of the Corporate Complaints Procedure was undertaken by the Corporate Services and Partnership Overview Committee and their recommendations were considered by Cabinet on 21 May 2015. Cabinet agreed that the current three-stage Corporate Complaints Procedure should continue, with additional discretion to be applied by officers to escalate complaints direct from Stages 1 or 2 to the Ombudsman where the decision cannot be overturned through the complaint process. This report, therefore, seeks Cabinet consideration and approval of an updated three-stage Corporate Complaints Procedure.</p> <p>Two other linked complaint policies, introduced in June 2007, have been updated. Cabinet approval is sought to the updated policy on complaint remedies and compensation and the policy for dealing with complainants whose behaviour is unreasonable or unreasonably persistent. Only minor changes have been made to these documents.</p>
<b>Putting our Residents First</b>	<p>This report supports the following Council objective of: <i>Our People</i>. Having such policies in place will provide officers with guidance on dealing with complaints and complainants in a consistent and fair way. It also helps officers to understand clearly what is expected of them.</p>
<b>Financial Cost</b>	<p>Compensation payments to complainants will be met from existing service area budgets.</p>
<b>Relevant Policy Overview Committee</b>	<p>Corporate Services and Partnership Policy Overview Committee.</p>
<b>Ward(s) affected</b>	<p>All</p>

## **2. RECOMMENDATION**

**That Cabinet approves an updated Three-Stage Corporate Complaints Procedure, along with the accompanying policy documents as set out in the report.**

### **Reasons for recommendation**

The reason for the recommendation is to seek approval from Cabinet for changes to policies on handling complaints and complainants to:

1. Reflect the recommendations agreed by Cabinet on 21 May 2015 in relation to the review of the Corporate Complaints Procedure; and
2. Update existing complaint policies (Remedies for complaints and the payment of financial compensation and Unreasonable or Unreasonably Persistent complaints), that were introduced in June 2007.

### **Alternative options considered / risk management**

1. *To continue to rely on existing policies* - published documents will not reflect the views of Cabinet to implement the recommendations of the Corporate Services and Partnership Policy Overview Committee.
2. *Not to have these policies in place* - there is a risk that some complainants will be dealt with inconsistently, it could lead to a higher number of complaints escalating to the Local Government Ombudsman who may criticise the Council about the effectiveness of our complaint handling processes and it will be unclear to residents and officers what the complaint process is.

### **Policy Overview Committee comments (Appendix A)**

The Corporate Services and Partnership Overview Committee undertook a major review of the Corporate Complaints procedure and their recommendations (Appendix A) were endorsed by Cabinet on 21 May 2015, one of which has resulted in this report back to Cabinet.

## **3. INFORMATION**

As part of their review, the Corporate Services and Partnership Overview Committee found strong evidence that officers are resolving concerns at the earliest stage possible when a matter is raised by a resident and this averts the need to escalate issues to become a formal complaint. This has led to a relatively low number of complaints being registered in comparison to the high number of residents who receive services in the Borough. In addition, it was noted that there are fewer complaints from Hillingdon escalating to the Local Government Ombudsman (LGO) compared to other London Boroughs. For example in 2013/14, the LGO received 93 enquiries for Hillingdon which is almost 40% less than average for London (at an average of 151 enquiries).

The changes outlined in this report seek to further strengthen the Council's position in handling complaints effectively.

## **Corporate Complaints Procedure (Appendix B)**

Dealing with complaints is a key part of effective customer service delivery. This Council aims to make it as easy as possible for people to provide feedback and we aim to resolve all complaints at the earliest opportunity. The updated Corporate Complaints Procedure is aimed at ensuring that the process continues to put residents first through a fast and effective resolution to their complaint from the outset. Appendix B sets out the updated policy on dealing with complaints that are processed under the Corporate Complaints Procedure. The main changes are:

- Minor service requests should not be logged as complaints where the issue is simply corrected within 24 hours; and
- Officers have discretion to escalate a complaint direct from Stages 1 and/or 2 to the Housing or Local Government Ombudsman where it is felt that the decision cannot be overturned through the complaint process, e.g. on policy matters.

## **Remedies for complaints and the payment of financial compensation (Appendix C)**

When dealing with complainants, the Council's main purpose is to remedy the situation as soon as possible and ensure the customer is satisfied with the response and feels that they have been treated fairly. The Council accepts that there will be occasions when mistakes will cause additional expense, financial loss or inconvenience for the customer. Where a complaint is assessed as justified, Appendix C sets out the guidance on how and when remedies and financial compensation are appropriate.

Only minor amendments have been made to this policy to bring it up-to-date since it was last approved in 2007, including clarification that sign-off of any compensation should be at Chief Executive/Director level only, with any payment over £1000 approved by the relevant Cabinet Member in-line with existing thresholds.

Subject to approval by Cabinet the remedies and compensation policy will ensure that complainants are dealt with fairly, effectively and in a consistent way.

## **Unreasonable or Unreasonably Persistent complaints (Appendix D)**

Generally, dealing with a complaint is a straight-forward process but in a minority of cases people pursue their complaints in a way which can either impede the investigation of their complaint or which can have significant resource issues for the Council and therefore potentially disrupt service delivery to other residents. These actions can occur either while their complaint is being investigated or once the investigation has been concluded and can have a considerable impact on council resources. The guidance covers behaviour that is unreasonable, which 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.

Only minor amendments have been made to this policy to bring it up-to-date since it was last approved in 2007, including clarification that any designation of people/complaints under this policy should only be taken at Deputy Director, Director or Chief Executive level.

Appendix D sets out how the Council should deal with unreasonable or unreasonably persistent complainants. Subject to the approval from Cabinet this policy will be made available to officers.

## **Financial Implications**

There are no direct financial implications associated with the proposed amendments to the corporate complaints procedure.

## **4. EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

### **What will be the effect of the recommendation?**

The effect on residents, service users and communities will be:

- A transparent and consistently applied procedure; and
- The proposed changes to the policies will ensure service related complaints will be actively resolved at an early stage to put our residents first.

### **Consultation Carried Out or Required**

Internal consultation has been carried out within the Council and discussion has taken place with the Local Government Ombudsman when the review of the Corporate Complaint Procedure was undertaken by the Corporate Services and Partnership Policy Overview Committee.

In relation to complaint remedies and compensation and in dealing with complainants whose behaviour is unreasonable or unreasonably persistent policies, minor changes were made (i.e. change of contact details, offices, titles, etc) to the existing documents.

## **5. CORPORATE IMPLICATIONS**

### **Corporate Finance**

Corporate Finance has reviewed this report and confirms there are no direct financial implications associated with the proposed changes to the complaints procedure.

### **Legal**

The Borough Solicitor confirms that the proposed complaints procedure complies with Best Practice Guidance issued by the Local Government Ombudsman. There were no legal impediments to Cabinet agreeing the recommendations set out in the report.

### **Relevant Service Groups**

The findings and recommendations of the Corporate Service and Partnership Overview Committee were considered by the Corporate Management Team. All groups have, therefore, been involved in discussions on the proposed changes to the Corporate Complaints Procedure.

## **6. BACKGROUND PAPERS**

NIL

### Corporate Services and Partnerships Policy Overview Committee recommendations agreed by Cabinet on 21 May 2015:

(i) Notes the positive way in which complaints are handled by the Council and that officers are actively encouraged to prevent complaints from escalating by resolving service issues to prevent complaints and where complaints do arise, resolving these at the earliest opportunity.

(ii) That to ensure consistency, minor service requests across all service areas should not be logged as complaints where the issue is simply corrected within 24 hours.

(iii) Notes that officers will continue to target specific service areas to reduce complaints in order to put the Council's residents first.

(iv) That the current arrangements for a three-stage complaints procedure continue, with additional discretion to be applied by officers to expedite complaints through Stages 2 and/or Stage 3 of the procedure in particular where the complaint is against Council policy and therefore, the outcome of the complaint investigation will be unchanged.

(v) That to implement the above recommendations, an updated three-stage Corporate Complaints Procedure be presented to Cabinet in the Autumn of 2015 for consideration and subject to the approval of the Leader of the Council, take account of the suggested changes set out in the Committee's review report to streamline the three stage process.

(vi) Looking ahead, that Cabinet notes from the evidence the Committee received during the review, some local authorities are operating a two-stage complaint procedure with success; and that a future report is presented in 2016/17 to both the Cabinet and the Committee on the operation and effectiveness of the Corporate Complaints Procedure, to ensure arrangements for preventing and resolving complaints continue to put the Council's residents first.

## Revised Corporate Complaints Procedure

### 1. Our complaint policy

#### Scope of our policy

This policy and procedure applies to all Council employees and to employees and organisations who deliver services on behalf of this Local Authority.

#### Introduction

The Council is committed to putting people at the centre of everything we do and aims to provide the best possible service to residents. However, sometimes things can go wrong and if you are not happy with the service you have received from the Council then please tell us so that we can, where possible, sort out the problem.

We will carry out enquiries fairly, deal with your complaint as quickly and effectively as we can while maintaining confidentiality and keeping you informed of progress. We want to reassure you that the service you get will not be affected if you raise concerns or make a complaint.

The policy and procedure:

- allows managers to address issues of unsatisfactory service and seek improvements in service delivery;
- ensures that customers are treated fairly and consistently;
- ensures that a proper and adequate investigation takes place before any action is taken; and
- safeguards the integrity and good reputation of the Council.

Whenever you contact us, we will:

- be polite and treat you with respect;
- give you honest and clear advice;
- make it clear what we can and cannot do;
- listen to your views; and
- admit when things go wrong and do our best to put them right.

What we ask you to do:

- treat us politely and with respect; and
- tell us when things go wrong so that we can put them right.

#### What is a complaint?

In general terms a complaint can be considered as: *“an expression of dissatisfaction by telephone, personal visit or in writing, about the standard of service, actions or lack of action by the council or its staff affecting an individual or group of customers.”*

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## **How can people complain?**

Complaints can be made in person, by telephone, in writing, by fax, via our website or email. It is somewhat difficult to investigate a complaint submitted anonymously but where we have sufficient information to allow an investigation to begin, we will do so. Where possible, we will also respect a complainant's reasonable request for anonymity.

## **Who can complain?**

Anyone who uses our services and is dissatisfied with the standard of service we have provided or our lack of action. However, any complaint should be made to the Council within 12 months of when a person feels that something has gone wrong.

## **What can people complain about?**

People can complain about any **services** that the Council provides or contracts out. However, please note that:

- although a complaint can be submitted against Council **policy**, please be aware that Council policy cannot be overturned through the complaint process as this can only be done through the statutory decision making procedure; and
- issues relating to employment or application for employment with the Council cannot be addressed through the complaint procedure.

## **Remedies for redress**

The purpose of redress is to remedy the injustice or hardship suffered and where possible to return a complainant to the position they would have been before the situation went wrong. Types of redress include:

- an apology;
- providing the service that should have been received at first;
- taking action or making a decision that should have been done before;
- reconsidering an incorrect decision;
- improving procedures so that similar problems do not occur again; and
- if after an investigation by Council staff or the Ombudsman, it is concluded that as a result of maladministration there is no practical action that would provide a full and appropriate remedy or if the complainant has sustained loss or suffering, financial compensation may be the most appropriate approach.

## **Unreasonable or Unreasonably Persistent complaints**

If we consider that a complainant is unreasonable or unreasonably persistent, we will refer the matter to a senior manager, who will consider whether further investigation of the complaint will be carried out.

## **2. The Corporate Complaints Procedure**

Our complaints procedure is designed to support the effective management of complaints and is set out below.

## **INFORMAL COMPLAINTS**

We will always try to resolve enquiries/concerns by way of 'service requests' by talking through problems with you, without the need to go through our formal complaints procedure. We will aim to put things right and give you a timescale when we will respond to you, detailing the action we have taken.

If we are unable to resolve the complaint to your satisfaction then we will tell you how to proceed within the formal complaint procedure which is outlined below.

### **FORMAL STAGE 1**

In all cases, the Council will attempt to resolve an issue informally in the first instance. A complaint will be registered under Stage 1 of our formal complaints procedure when:

- we can't resolve the problem informally
- you tell us that you want to make a formal complaint
- we believe it is necessary to use the formal procedure to resolve or respond to the complaint

Complaints at Stage 1 will be investigated by a Deputy Director, or appropriate manager, from the service you have complained about, who was not directly involved in the reason for your complaint.

Prior to that, we will acknowledge the complaint within 3 working days of receipt and tell you who is looking into it. We aim to give you a response to your complaint at Stage 1 within 10 working days. If this is not possible, we will write to you to let you know why there is a delay and the estimated time it will take to provide a full response. If you are not happy with the response you receive, the full response will tell you:

- how to escalate your complaint to Stage 2; or
- that you may escalate your complaint direct from Stage 1 to the Housing or Local Government Ombudsman if we feel that the decision cannot be overturned through the complaint process.

### **FORMAL STAGE 2 (Appeal)**

You can ask us to review your complaint at Stage 2 if:

- you are unhappy with how your complaint was handled at Stage 1
- you are unhappy with the response you have received

In your appeal you will need to say why you are dissatisfied with the response and what further action you expect.

Complaints at Stage 2 will be investigated by a Director, who will review how your complaint was dealt with originally to decide if:

- the complaint was investigated thoroughly and objectively
- the conclusions reached are based on evidence



- the response was reasonable, appropriate and tried to achieve resolution

We will acknowledge your request for an investigation at Stage 2 of the Corporate complaints procedure within 3 working days of receipt and tell you who is looking into it. We aim to give you a full response to your complaint at Stage 2 within 10 working days and if we can't finish our investigation in time, we will let you know and tell you why. If you are unhappy with the response you receive, the full response will tell you:

- how to escalate your complaint to Stage 3; or
- that you may escalate your complaint direct from Stage 2 to the Housing or Local Government Ombudsman if we feel that the decision cannot be overturned through the complaint process.

### **FORMAL STAGE 3 (Review)**

You can appeal to the Chief Executive of the Council if:

- you are unhappy with the outcome of your complaint at Stage 2
- you are unhappy with the response you have received

In your appeal you will need to say why you are dissatisfied with the response and what further action you expect.

The Chief Executive will acknowledge the complaint within 3 working days of receipt and will then review the previous decisions and decide if they were fair and reasonable. We aim to give you a full response to your complaint at Stage 3 within 15 working days. If we can't complete it on time, we will tell you why. The response will advise you how to escalate your complaint further if you are still unhappy.

### **TAKING YOUR COMPLAINT FURTHER**

If your complaint is about Housing management matters, (but not Lettings/Housing allocations) please see section A below. For all other matters see section B.

#### **A. Designated Person and Housing Ombudsman**

If your complaint has been through Stages 1, 2 and 3 of the formal complaint procedure and the complaint is about a tenancy, leasehold, or other housing management issue, there are two further steps.

##### **(i) Designated Person**

As a result of the Localism Act 2011, this Council has a 'designated person' whose role is fulfilled by a locally elected member. The role of the designated person is to consider the request by a tenant for assistance in resolving his/her dispute with the Council. If the designated person does not feel that he can resolve the complaint, or after trying he has not resolved it to your satisfaction, he will advise you of his findings and that you may refer your complaint to the Housing Ombudsman Service.

Alternatively, if you do not want the designated person to consider your complaint, you could allow 8 weeks to elapse (from the date of the Stage 3 response) and then escalate your complaint direct to the Housing Ombudsman Service.

## **(ii) Housing Ombudsman Service**

The Housing Ombudsman Service is set up by law to look at complaints about registered providers of social housing and their service is free, independent and impartial. The contact details of the Housing Ombudsman are:

Housing Ombudsman Service  
81 Aldwych  
London  
WC2B 4HN

Telephone 0300 111 3000 (Mon-Fri 8.30am to 5pm)

Fax 020 7831 1942

Email [info@housing-ombudsman.org.uk](mailto:info@housing-ombudsman.org.uk)

<http://www.housing-ombudsman.org.uk/>

## **B. Local Government Ombudsman (LGO)**

If your complaint is about any other Council service, and you feel we have treated you unfairly or you disagree with our decision, you can complain to the LGO. The Ombudsman is an independent watchdog which makes sure that all councils act fairly and follow their own policies and procedures. The contact details of the LGO are:

Local Government Ombudsman  
PO Box 4771  
Coventry  
CV4 0EH

Telephone: 0300 061 0614 (Mon-Fri 8.30am to 5pm)

Fax: 024 7682 0001

Online complaint form: [www.lgo.org.uk/forms/ShowForm.asp](http://www.lgo.org.uk/forms/ShowForm.asp)

<http://www.lgo.org.uk/>

## Remedies for complaints and the payment of financial compensation

### 1.0 Introduction

1.1 The Council, like any other large organisation will receive complaints about the services it provides. The Council will also receive complaints about the decisions made regarding access to services and enforcements. When dealing with complainants, our main purpose is to remedy the situation as soon as possible and ensure the customer is satisfied with the response and feel that they have been treated fairly.

1.2 The Council accepts that there will be occasions when mistakes will cause additional expense, financial loss or inconvenience for the customer. The payment of compensation will be considered on a case-by-case basis taking due account of the circumstances relating to each.

1.3 Under Section 92 of the Local Government Act 2000 it states that:

Where a local authority considers:

- that action taken by or on behalf of the authority in the exercise of their functions (or a failure to act) amounts to, or may amount to, maladministration; and
- that person has been, or may have been, adversely affected by that action, the authority may, if they think appropriate, make a payment to, or provide some other benefit for, that person.

1.4 It should be noted that the power to pay compensation under this Section can only be used if:

- the Council is satisfied that it has found evidence of maladministration; and
- the individual concerned has been adversely affected as a result.

1.5 Also, in order to avoid prejudicing the Council's position in any legal proceedings, any offer to pay compensation should be made expressly "without prejudice" and "in full and final settlement"

### 2.0 Purpose

2.1 The purpose of this guidance is to set out when the Council should consider providing a remedy to a complainant under its complaints procedure, including the payment of compensation. The guidance has been put together taking account of best practice issued by the Local Government Ombudsman. Where specific services have been mentioned, these are purely to give examples and do not mean the Council has received complaints in these areas.

2.2 The aim of this guidance is to:

- ensure that remedies are provided in accordance with Council policy;
- ensure that payments of compensation are properly monitored and controlled; and

- promote consistency in approach across the Council, whilst recognising that each case has to be considered on its own merits in the light of the particular circumstances.

2.3 These guidelines can only offer an overview of the issues that surround remedy and compensation. The decision of the type and level of compensation will be made by a Director or the Chief Executive and any payments over £1,000 require Cabinet Member approval in line with the Constitution.

### **3.0 Applicability**

3.1 This guidance applies to:

- complaints dealt with at Stages 1, 2 and 3 of the Council's corporate complaint procedure and to complaints being considered by the Local Government Ombudsman.
- Adult Social Care and Children's complaints that falls within the Social Services Regulation produced by the Department of Health.
- Public Health complaints that falls within the NHS Bodies and Local Authorities (Partnership Arrangement Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

### **4.0 Maladministration with injustice**

4.1 If the Council is causing, or has caused, injustice to the complainant it should consider a remedy if, after the complaint has been investigated it appears that there has been maladministration. Maladministration includes, for example, neglect or unjustified delay, failure to follow the Council's agreed policies, rules or procedures, malice, bias or unfair discrimination, failure to tell people of their rights or entitlements and providing inaccurate or misleading advice.

4.2 Not all maladministration causes injustice:

- i) The complainant may not have suffered any disadvantage.
- ii) If the complainant has been disadvantaged, this may not be as a direct consequent of the Council's failure. The disadvantage may have been caused by a third party, or by the actions of the complainant themselves.

4.3 For a remedy to be considered it must be clear, on balance, that the injustice (wholly or partially) occurred as a consequence of the Council's maladministration.

### **5.0 General principles of remedy**

5.1 A remedy should, as far as possible, put the complainant back into the position that s/he would have been in if the maladministration had not occurred. There will be circumstances where this cannot be achieved because of the passage of time or events that have occurred. In such cases, a financial remedy may be appropriate.

## **6.0 Views of complainants**

6.1 It is good practice to seek the view of the complainant about the remedy he or she is seeking. Sometimes an apology is all that is required, so at the onset it should be established what outcome the complainant is looking for. This may or may not be achievable. However, while taking account of the complainant's views, the Council must come to its own decision on what is a reasonable remedy.

## **7.0 Elements in a remedy**

7.1 A remedy could include:

- i) Taking some specific action: for example, issuing a statement of special educational needs; mending a leaking roof; offering a housing transfer; backdating a housing application; assessing and paying house benefit; providing screening to mitigate the effect of a development.
- ii) Apologising: this should normally be done as a matter of course if the Council has been at fault, but it may in some cases be all that is required by way of remedy.
- iii) Paying compensation: see section 8 below.

## **8.0 Paying compensation**

8.1 Financial compensation may be appropriate, for example, if the complainant has suffered as a result of delay by the Council in taking some action; or if there is no practical action that would provide a full and appropriate remedy; or if the complainant has sustained loss or suffering. Compensation needs to take account of all the facts of the case. These include:

- i) The effects of the complainant's own actions: for example, delay on his or her part in returning a form.
- ii) Whether money due to the complainant has not been paid: the Council may need to consider compensation as well as paying the money due and also paying interest on the sum.
- iii) Quantifiable loss: costs that would not have been necessary but for the Council's maladministration. For example, paying for additional help for a child with special educational needs because the Council delayed in drawing up a statement. These will need to be assessed with care, on the basis that it was reasonable for the complainant to incur costs, and they were as a consequence of the maladministration.
- iv) Loss of non-monetary benefit: for example, loss of education because a child is out of school for a period and no suitable alternative provision has been made.
- v) Loss of value: for example, damage to possessions.
- vi) Lost opportunity: for example, the complainant may have been deprived of the right to appeal because he or she was not told of that right.

vii) Distress: this will include stress, anxiety, inconvenience, frustration, worry and uncertainty. The amount will need to take account of all the circumstances including the severity of the distress, the length of time involved and the number of people affected.

viii) Professional fees: it may sometimes be appropriate to recognise the nature of the complainant's difficulty with the Council was such that expenditure on professional fees in pursuing the dispute was justified. For example, legal fees or fees for a planning consultant. However, this will need to be assessed with care. The Council will need to be satisfied that it was reasonable for the complainant to incur these costs, and that it was a consequence of maladministration. It may sometimes be appropriate to reimburse only part of the expenditure, from the point when the professional advice became appropriate.

ix) Time and trouble in pursuing the complaint: this should only be paid when the time and trouble in pursuing the complaint are more than the minor costs that would routinely be expected. It is not the same as distress caused by the Council's actions. In assessing whether payment is appropriate, relevant factors to consider could include the passage of time in resolving the matter; the effort required from the complainant; the degree of inadequacy of the Council's responses, and whether there has been any element of wilful action of the Council as opposed to poor administration.

## **9.0 Offsetting compensation**

9.1 Where a complainant owes money to the Council, for example for rent or Council tax arrears, it will normally be appropriate for the compensation to be offset against the debt. However, this will not be the case if there is a legitimate dispute about the debt for example, there is a benefit claim pending.

## **10.0 Complaints about contractors**

10.1 Partners or contractors now provide many services on behalf of the Council. In these circumstances the Council still has responsibility for the service being provided so in partnership the Council and the organisation responsible for delivering the service should agree the remedy to be offered.

## **11.0 Insurance**

11.1 It should always be established at an early stage whether any part of a claim for compensation is covered by the Council's insurance arrangements. If so, it may be necessary for the matter to be dealt with directly by the Council's insurers, or at least in close liaison with them, so as to avoid prejudicing any claim on the insurance policy. Advice on this can be obtained from the Council's insurance section, based at the Civic Centre, telephone ext. 6458 or 01895 556458.

11.2 This guidance applies only to complaints dealt with under the Council's corporate complaint procedure or by the Local Government Ombudsman. This guidance does not apply to:

- i) Matters that are the subject of current legal action or any settlement of court proceedings.
- ii) Disputes about matters covered by the Council's insurance or any settlement of insurance claims.
- iii) Disputes that are or can be taken to statutory appeal e.g. parking tickets, housing benefit.

11.3 No clear line can be drawn between what might be treated as a 'complaint' and what could be dealt with through the courts. For example, a failure to carry out a housing repair can be investigated through the complaint procedure but the tenant also has the option of taking action through the courts. Where it is apparent that legal action has been instigated while a complaint is being investigated, officers of the Council should refer the matter to the Legal Services Team. The likelihood of an overlap is higher where the complaint is more complex and a claim for compensation has been made. Care should be taken to preserve the Council's legal position.

## **12.0 Authorisation of compensation payments**

12.1 The relevant senior managers (Chief Executive -Stage 3) and Director are authorised to agree compensation payments in line with the scheme of delegation up to defined limits. These officers will agree all compensation payments. Payments over £1,000 require Cabinet Member approval in line with the Constitution. Obtaining this will be the responsibility of the service department and compensation will be paid from the Service Department's budget.

## **13.0 Making an offer of compensation**

13.1 A standard letter making an offer of compensation will be sent by the Complaints Officer on behalf of the Department responsible and will always include the words "**without prejudice**" at the top of the first page. Any offer will always be '**in full and final settlement**' of the complaint. This means that, if the offer is accepted, the matter is effectively closed. Confirmation of acceptance of the offer will be obtained in writing before payment is made.

## **14.0 Monitoring of payments**

14.1 A record of any compensation paid must be made on the record of the complaint and all payments will be made using an appropriate service area cost code.

14.2 The Complaints Manager is responsible for maintaining the information across the department and reporting it quarterly. The complaint record will detail the reason why the compensation has been paid, evidence that it has been agreed by the appropriate senior manager and how the amount has been assessed.

## **15.0 Policy on the payment of financial compensation**

15.1 When compensation should be considered

15.1.1 Compensation will be considered if, after a complaint has been investigated at stages 1, 2 or 3 of the Council's own complaints procedure or as part of an Ombudsman's investigation, it is concluded that the Ombudsman:

- would find that there has been maladministration by the Council causing injustice to the complainant; and
- would recommend that compensation should therefore be paid to the complainant.

15.2 The amount of compensation that should be paid

15.2.1 The compensation paid to the complainant will be the amount that it is estimated the Ombudsman would recommend in the circumstances.

### 15.3 Record keeping

15.3.1 The amount of each compensation payment, and the reasons for it, will be recorded with the records of the complaint. The Complaint Manager will maintain departmental information. The figures will be collated on at least a quarterly basis and reported to Senior Management Teams.



## Unreasonable or Unreasonably persistent complainants

### 1.0 Introduction

1.1 Generally, dealing with a complaint is a straight-forward process, but in a minority of cases people pursue their complaints in a way which can either impede the investigation of their complaint or can have significant resource issues for officers within the Council. These actions can occur either while their complaint is being investigated, or once the investigation has been concluded.

1.2 This guidance is based on what the Local Government Ombudsman regards as good practice in dealing with complainants that are deemed unreasonable or persistent.

### 2.0 Definition

**“Unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with the authority, hinder the authority’s consideration of their, or other people’s, complaints.”**

2.1 It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many people who submit complaints are 'persistent' on the entirely reasonable basis that they feel the Council has not dealt with them properly and are not prepared to leave the matter there and almost all complainants see themselves as pursuing justified complaints.

2.2 Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but are pursuing them in inappropriate ways, or they may be intent on pursuing complaints which appear to have no substance or which have already been investigated and determined. Their contacts may be amicable but still place very heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.

2.3 Sometimes the situation between the Council 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. Such complainants are in a very small minority, but sometimes the Council finds itself in the position of having to restrict access to its premises or even having to resort to legal action to address such behaviour, for example, in the form of anti-social behaviour orders or injunctions. These actions are extremely rare but are in place to protect staff and avoid disruption to front line services for residents. This guidance does not address these issues of health and safety, but sits alongside existing policies as a means of addressing the full spectrum of behaviours which may have to be addressed.

2.4 This guidance covers behaviour that is unreasonable, which 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. Raising legitimate queries or criticisms of a complaints procedure as it progresses, for example if agreed timescales are not met, should not in itself lead to someone being regarded as an unreasonably persistent complainant. Similarly, the fact that a complainant is unhappy with the outcome of a complaint and seeks to challenge it once, or more than once, should not necessarily cause him or her to

be labelled unreasonably persistent. If complaint procedures are operating properly, then responding to expressions of dissatisfaction and requests for information should not cause the Council particular problems.

### **3.0 Why have a policy?**

3.1 Having a policy on unreasonably persistent complainants and unreasonable complainant behaviour and corresponding guidance for staff on procedure should help deal with complainants in ways which are demonstrably consistent and fair. It also helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. In the absence of such guidance staff are likely to have greater problems with unreasonable and unreasonably persistent complainants. In addition, it provides a yardstick against which performance can be assessed for monitoring purposes.

### **4.0 Actions and behaviours of unreasonable and unreasonably persistent complainants**

4.1 These are some of the actions and behaviours of unreasonable and unreasonably persistent complainants that the Council may find problematic. It is by no means an exhaustive list and every situation will be considered taking into account issues such as the Disability Discrimination Act 1995, and the Mental Capacity Act 2005, and peoples' ability to communicate and understand.

- 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.
- 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.
- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- Making what appear to be groundless complaints about staff dealing with the complaints, and repeatedly seeking to have officers replaced.
- Changing the basis of the complaint as the investigation proceeds and/or denying statements he or she made at an earlier stage.
- 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.
- Electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved.
- Adopting a 'scattergun' approach: pursuing a complaint or complaints with the authority and, at the same time, with a Member of Parliament / a Councillor / the authority's independent auditor / the Standards Committee / local police / solicitors / the Ombudsman.
- 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.

- 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.
- Combinations of some or all of these.

## **5.0 Who decides whether someone should be treated as unreasonable or unreasonably persistent?**

5.1 This decision must be made by a Deputy Director, Director or the Chief Executive.

## **6.0 Considerations prior to taking action under the policy**

6.1 Different considerations will apply depending on whether the investigation of the complaint is ongoing or whether it has been concluded. To some extent the latter is easier to deal with. It is in effect the complainant simply refusing to take no for an answer, and the Local Authority has the option of ending all communication with the complainant, and where appropriate referring the complainant to the Ombudsman. However, where the complaint is ongoing there needs to be some continuing contact with the complainant.

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

- the complaint is being or has been investigated properly;
- any decision 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 authority's view on the complaint.

6.3 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 might be:

- If no meeting has taken place between the complainant and officer(s), and provided that the authority knows nothing about the complainant which would make this inadvisable, 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 mediation may help remedy the complaint.
- If more than one department is being contacted by an unreasonably persistent complainant, consider:
  - setting up a strategy meeting to agree a cross-departmental approach; and
  - designating a key officer to co-ordinate the authority's response(s).
- If the complainant has additional needs, an advocate might be helpful to both parties, consider offering to help the complainant find an independent one.

- Before applying any restrictions give the complainant a warning that if his/her actions continue the authority may decide to treat him/her as an unreasonably persistent complainant, and explain why.

## **7.0 Options for action**

7.1 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 list is a 'menu' of possible options for managing a complainant's involvement with the authority 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.

- Placing time limits on telephone conversations and personal contacts.
- Restricting the number of telephone calls that will be taken (for example, one call on one specified morning/afternoon of any week).
- 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.
- Requiring any personal contacts to take place in the presence of a witness.
- Refusing to register and process further complaints about the same matter.
- 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.

## **8.0 Operating the policy**

8.1 If a decision is taken to apply the policy, the Council will write to inform the complainant that:

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

8.2 The Council will enclose with the letter a copy of the policy and keep adequate records of all contacts with unreasonable and unreasonably persistent complainants, for example:

- 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
- when a decision is taken not to put a further complaint from such a complainant through its complaints procedure for any reason; or
- 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.

8.3 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.

8.4 Reviews of decisions to restrict a complainant's contacts or the Council's responses to them should be taken by an officer senior to the person who made the original decision. When reviews are carried out, the Council will write to advise the complainant of the outcome and, if restrictions are to continue to be applied, when these will next be reviewed.

8.5 The restrictions will be kept under review. Arrangements will be put in place for a check to be made in six months on whether there has been any further contact from the complainant. If a complainant to whom the Council has decided the policy will apply has 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 client records. If the restrictions are cancelled, consideration should be given to re-introducing the restrictions if the behaviour which led to the original decision re-commences.

## **9.0 Referring unreasonable and unreasonably persistent complainants to the Local Government Ombudsmen**

9.1 In some cases, relations between public authorities 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 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.

9.2 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.

## **10.0 Unacceptable behaviour of complainants – Policy Statement**

"Hillingdon Council is 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 officers. However, the Council does not expect their staff to tolerate behaviour by complainants that is unacceptable, for example, which is abusive, offensive or threatening, and will take action to protect staff from that behaviour.

When we consider that a complainant's behaviour is unacceptable we will tell them why we find their behaviour unreasonable and we will ask them to change it. If the unacceptable behaviour continues, we will take action to restrict the complainant's contact with our officers.

The decision to restrict access to our officers will be taken by a senior manager. Any restrictions imposed will be appropriate and proportionate. The options we are most likely to consider are:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer and a nominated officer in their absence;

- restricting telephone calls to specified days and times; and/or
- asking the complainant to enter into an agreement about their conduct.

In all cases we will write to tell the complainant why we believe his or her behaviour is unacceptable, what action we are taking and the duration of that action. We will also tell them how they can challenge the decision if they disagree with it.

Where a complainant continues to behave in a way that is unacceptable, we may decide to terminate contact with that complainant and discontinue any investigation into their complaint. In this instance we may refer the complainant to the Ombudsman, even if the complaint has not been through all three stages of the complaints procedure.

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, we may not give the complainant prior warning of that action."

### **Unreasonably persistent complainants – Policy Statement**

"The Council is 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 officers.

However there are a small number of complainants who, because of the frequency of their contact with Council's officers, hinder our consideration of their, or other people's, complaints. We refer to such complainants as 'unreasonably persistent complainants' and, exceptionally, we will take action to limit their contact with our officers.

The decision to restrict access to our officers will be taken by a senior manager and will normally follow a prior warning to the complainant. Any restrictions imposed will be appropriate and proportionate. The options we are most likely to consider are:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer;
- restricting telephone calls to specified days and times; and/or
- asking the complainant to enter into an agreement about their future contact with us.

In all cases where we decide to treat someone as an unreasonably persistent complainant, we will write to tell the complainant why we believe his or her behaviour falls into that category, what action we are taking and the duration of that action. We will also tell them how they can challenge the decision if they disagree with it. If we decide to treat someone as an unreasonably persistent complainant we will still investigate their complaint and respond in accordance with our local and statutory procedures.

Where a complainant whose case is closed persists in communicating with us about it, we may decide to terminate contact with that complainant. In such cases, we will read all correspondence from that complainant, but unless there is fresh evidence, which affects our decision on the complaint, we will simply acknowledge it or place it on the file with no acknowledgement. New complaints from people who have come under the unreasonably persistent complainant policy will be treated on their merits."