



**REPORT TO:** Standards Committee  
Audit/Governance and Improvement Review Committee  
Overview and Scrutiny Committee  
Cabinet  
Council

**DATE:** 5<sup>th</sup> June 2007  
7<sup>th</sup> June 2007  
18<sup>th</sup> June 2007  
28<sup>th</sup> June 2007  
11<sup>th</sup> July 2007

**SUBJECT:** Unreasonably Persistent Complainants

**REPORT OF:** Director of Legal and Property Services

**CONTACT OFFICER:** Susan Lowe 01942 827026 or Peter Hassett 01942 827381

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**PURPOSE/SUMMARY:** To inform Members of the Local Government Ombudsman's recently issued guidance note on dealing with unreasonably persistent complainants and to invite Members to amend the Council's Corporate Complaints Policy, Procedure and Practice in respect of dealing with such complainants and dealing with unacceptable behaviour.

**ALTERNATIVE OPTIONS CONSIDERED AND REASON FOR SELECTING THE ONE RECOMMENDED:** The alternative option is not to amend the Council's Corporate Complaints Policy, Procedure and Practice in respect of dealing with unreasonably persistent complainants and unreasonable behaviour. This option may be viewed by the Ombudsman as not following best practice

**RECOMMENDATION/DECISION:**

- That Council amend the Council's Corporate Complaints Policy, Procedure and Practice as detailed in the report and that the amended policy at Appendix Three form part of the Council's Policy Framework.
- That the Wigan Council Corporate Complaints Policy, Procedure and Practice at Appendix Three apply to all persons making complaints against the actions of the Council or its officers.
- That the Council's Member/Officer Protocol be amended as necessary to provide that the section within the Council's Corporate Complaints Policy, Procedure and Practice regarding dealing with unreasonably persistent complainants and unreasonable behaviour applies to complaints made by Members of the Council against officers and by officers of the Council against Members (except where such conduct falls within the remit of the Standards Board for England).

**KEY DECISION**

This report does not involve a key decision.

**IMPLICATIONS/RISKS:**

Financial:	Not known
Staffing:	Not known
Policy:	Corporate Complaints Policy, Procedures and Practice
Equal Opportunities - Has a Diversity Impact Assessment been conducted?	No
Wards Affected:	All
Special Interest Members – Which have been consulted	None

**For Cabinet reports only :**

Categorisation of the report:	<b>X</b>		<b>X</b>
Discussion leading to a decision		Discussion	
Monitoring		Decision	<b>X</b>
Sharing for corporate understanding		Information	

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**Tracking/Process:**

	Consultation	Ward Members	Partners
Panel	Overview & Scrutiny	Cabinet	Council
	18 <sup>th</sup> June 2007	28 <sup>th</sup> June 2007	11 <sup>th</sup> July 2007

List of Background Papers in accordance with Section 100D of the Local Government Act 1972:

Document	Date	File Reference	Place of Inspection
Corporate Complaints Policy, Procedures and Practice			The Chief Executive Town Hall, Library Street, Wigan

Proper Officer Susan D Lowe

Date 1<sup>st</sup> June 2007

## **BACKGROUND:**

1. The Council's Corporate Complaints Policy, Procedures and Practice contains a section on how the Council deals with vexatious complaints (copy extract attached at Appendix One).
2. In January 2007 the Local Government Ombudsman issued a guidance note on unreasonably persistent complainants (copy attached at Appendix Two).
3. The Local Government Ombudsman recommends that all local authorities have a policy on unreasonably persistent complainants and unreasonable complainant behaviour and corresponding guidance for staff on procedure to help authorities 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.

## **EXAMPLES OF THE ACTIONS AND BEHAVIOUR OF UNREASONABLY PERSISTENT COMPLAINANTS**

4. The Local Government Ombudsman has identified the following as some of the actions and behaviours of unreasonable and unreasonably persistent complainants which authorities often find problematic. It is by no means an exhaustive list but they are examples that frequently come to the Ombudsman's attention:
  - 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 the staff dealing with the complaints, and seeking to have them 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 Board/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.

## **OPTIONS FOR ACTION TO BE TAKEN IN RELATION TO AN UNREASONABLY PERSISTENT COMPLAINANT**

5. The Local Government Ombudsman recommends that the precise nature of the action a local authority decides 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 authority at that time. The following list is a 'menu' of possible options for managing a complainant's involvement with a local 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.

**AMENDMENT TO THE WIGAN COUNCIL CORPORATE COMPLAINTS POLICY PROCEDURES AND PRACTICE IN RELATION TO DEALING WITH UNREASONABLY PERSISTENT COMPLAINANTS AND UNREASONABLE BEHAVIOUR**

6. Attached as Appendix Three is a suggested amended Wigan Council Corporate Complaints Policy, Procedures and Practice. The Section dealing with vexatious complaints (Appendix One) has been deleted and two new sections dealing with unreasonable behaviour and unreasonably persistent complainants inserted.

**RECOMMENDATION:**

7. That Council amend the Council's Corporate Complaints Policy, Procedure and Practice as detailed in the report and that the amended policy at Appendix Three form part of the Council's Policy Framework.
8. That the Wigan Council Corporate Complaints Policy, Procedure and Practice at Appendix Three apply to all persons making complaints against the actions of the Council or its officers.
9. That the Council's Member/Officer Protocol be amended as necessary to provide that the section within the Council's Corporate Complaints Policy, Procedure and Practice regarding dealing with unreasonably persistent complainants and unreasonable behaviour applies to complaints made by Members of the Council against officers and by officers of the Council against Members (except where such conduct falls within the remit of the Standards Board for England).

Susan D. Lowe  
Director of Legal and Property Services

## **Appendix One – Extract from the Council’s Current Corporate Complaints Policy, Procedures and Practice**

### **Vexatious Complaints**

It is normally inadvisable to take a complainant’s motivation into account when considering the validity or otherwise of any complaint made. However, there are occasions when it is necessary to consider if a complainant should be regarded as vexatious.

Such terminology may be appropriate if a complainant:

1. Persistently complains about a series of issues
2. Repeatedly makes the same complaints but does not accept the findings of any investigation.
3. Persistently seeks an unrealistic outcome to their complaints.
4. Insists on pursuing complaints through complaint procedures when these complaints should be pursued through other channels (for example, court proceedings).

Vexatious complaints often include some or all of the following elements:

- The complaint arises out of an historical decision which cannot be reversed or undone.
- Contact with the department is frequent and often lengthy and complicated.
- The complainant behaves aggressively towards the department and individual members of staff.
- The complainant frequently changes details of the complaint, consistently adds new elements to complain about or frequently alters expectations for resolution.

It is not possible to devise a single way of dealing with every vexatious complaint as each complaint would have to be dealt with on its own merit. This means that letters would always need to be read, for example, to ensure that no new valid complaint was being raised amongst a host of vexatious complaints. It is not necessary however to undertake detailed and lengthy investigations into matters which can clearly be seen to be trivial.

Every department must determine specific strategies for dealing with vexatious complainants but the essential components to be considered are:

- Ensure action is largely based on the “issues” or “complaints” raised rather than the difficulties presented by an individual.
- Do not “miss the wood for the trees”. Ensure valid complaints are not missed within vexatious elements.
- Record actions taken so that there is evidence of a reasoned approach should this be necessary at any time in the future.
- Try to channel responses through a minimum number of sources.

- Communicate effectively with staff colleagues to avoid confusion, duplication or manipulation.
- Do not respond to the same queries indefinitely. Decide at which point it is necessary to advise the complainant that no further response will be given to the same issues.
- Take appropriate action to protect staff against abuse or intimidation.
- Use meetings as a useful forum for developing plans for managing the situation.



The Commission for  
Local Administration in England

# Guidance note on ‘unreasonably persistent’ complainants and ‘unreasonable complainant behaviour’

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**January 2007**

## Introduction

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 authorities. These actions can occur either while their complaint is being investigated, or once an authority has concluded the complaint investigation.

This guidance note aims to help local authorities formulate policies on unreasonably persistent complainants and unreasonable complainant behaviour based on what the Ombudsmen would regard as good practice in dealing with these complainants. We hope it will be helpful to both officers and councillors when addressing such complaints.

It should be read in conjunction with our general guidance on *Running a complaints system*.

## Definition

We use the terms 'unreasonable complainant behaviour' and 'unreasonably persistent complainants'.

**For us, unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with an authority, hinder the authority's consideration of their, or other people's, complaints.**

It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many of the people who submit complaints to the Ombudsmen are 'persistent' on the entirely reasonable basis that they feel the authority has not dealt with their complaint properly and are not prepared to leave the matter there. The fact that approximately 26% of the complaints we investigate conclude either by report or by local settlement indicates that this persistence is frequently justified. And almost all complainants see themselves as pursuing justified complaints.

Unreasonable and unreasonably persistent complainants may have justified complaints or grievances but be 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 with authorities may be amicable but still place very heavy demands on staff time, or they may be very emotionally charged and distressing for all involved.

Sometimes the situation between a local authority 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 an authority finds itself in the position of having to restrict

access to council 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. Authorities will have their own policies and procedures for dealing with unacceptable behaviour and protecting their staff from harassment and harm. These are well established. **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 an authority might have to address.**

This guidance covers behaviour which 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 complaints procedures are operating properly, then responding to expressions of dissatisfaction and requests for information should not cause authorities particular problems.

## **Why have a policy?**

Having a policy on unreasonably persistent complainants and unreasonable complainant behaviour and corresponding guidance for staff on procedure should help authorities 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.

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

These are some of the actions and behaviours of unreasonable and unreasonably persistent complainants which authorities often find problematic. It is by no means an exhaustive list and local factors will vary, but they are examples that frequently come to our attention.

- 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 the staff dealing with the complaints, and seeking to have them 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 Board/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.

## **Elements of a policy/procedure on unreasonable and unreasonably persistent complainants**

A policy document or procedural note issued with it could include:

- examples of the main kinds of 'trigger' actions/behaviours which may cause the policy to be invoked (see above);
- a list of the options for action open to the authority;
- information about the decision-making process: who decides
  - whether the policy will be applied to a complainant
  - what restrictions will be placed on contacts and for how long
  - whether restrictions can be lifted or should continue;
- details of complainants' rights of review/appeal against
  - a decision to invoke the policy and/or
  - any particular restrictions applied;
- guidance on the nature of the records to be kept;
- details of the information to be given to complainants to whom it has been decided the policy should apply;
- advice about which officers/members of the authority are to be informed that contact with a named complainant is being restricted and why, and who will have access to that information on request;
- details of when and by whom such a decision should be reviewed; and
- guidance on how the policy may link in with other authority policies and procedures (for example equal opportunities, health and safety, staff welfare, harassment, codes of conduct for staff, disciplinary procedures, as well as the authority's complaints policy, Freedom of Information requests), and how it should be monitored.

Authorities could also consider producing annual returns showing the numbers of complainants to whom such a policy has been applied in that year and the kinds of restrictions which have been imposed.

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

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 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.

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

If the authority 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 an officer/officers, and provided that the authority knows nothing about the complainant which would make this unadvisable, 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 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 special 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 a unreasonably persistent complainant, and explain why.

## Options for action

The precise nature of the action an authority decides 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 authority at that time. The following list is a 'menu' of possible options for managing a complainant's involvement with an 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.

## Operating the policy

If a decision is taken to apply the policy, 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.

Enclose with the letter a copy of the policy.

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.

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.

Reviews of decisions to restrict a complainant's contacts or the authority'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 authority should write to advise the complainant of the outcome and, if restrictions are to continue to be applied, when these will next be reviewed.

Keep any restrictions under review. Arrangements should be put in place for a check to be made in, say, six months on whether there has been any further contact from the complainant. If a complainant to whom the authority has decided the policy will apply has no contact with the authority 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 authority's records. If the restrictions are cancelled, urgent consideration should be given to re-introducing the restrictions if the behaviour which led to the original decision re-commences.

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

In some cases, relations between 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 Ombudsmen may be prepared to consider complaints before complaints procedures have been exhausted. This is the case even in respect of statutory complaints procedures.

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.

We have attached our own internal policies on 'unacceptable behaviour' and on 'unreasonably persistent complainants' as appendices to this guidance.

## **Appendix 1 – Policy on unacceptable behaviour**

The Ombudsmen recognise that they are often the last resort for complainants. They also have a duty to ensure the safety and welfare of their staff.

The Ombudsmen are committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them. As part of this service they do not normally limit the contact complainants have with their offices. However the Ombudsmen do not expect their staff to tolerate behaviour by complainants which is unacceptable, for example, which is abusive, offensive or threatening, and they 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 offices.

The decision to restrict access to our offices will be taken at Assistant Ombudsman level or above. 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 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 which is unacceptable, we may decide to terminate contact with that complainant and discontinue any investigation into their complaint.

Where the behaviour is so extreme that it threatens the immediate safety and welfare of the Commission'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.

### **Commission for Local Administration in England**

*Date policy approved: December 2005*

## **Appendix 2 – Policy on unreasonably persistent complainants**

The Ombudsmen recognise that they are often the last resort for complainants. They are also accountable for the proper use of public money and must ensure that that money is spent wisely and achieves value for complainants and the wider public.

The Ombudsmen are committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them. As part of this service they do not normally limit the contact complainants have with their offices.

However there are a small number of complainants who, because of the frequency of their contact with the Ombudsmen's offices, 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 offices.

The decision to restrict access to our offices will be taken at Assistant Ombudsman level or above 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 contacts 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 carry on treating someone as an unreasonably persistent complainant and we are still investigating their complaint six months later, we will carry out a review and decide if restrictions will continue.

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 complainants policy will be treated on their merits.

### **Commission for Local Administration in England**

*Date policy approved: December 2005*

***Wigan Council***

***Corporate Complaints***

***Policy, Procedures and Practice***

Adult Services		
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## **Introduction**

Wigan Council provides a wide range of services (directly or indirectly) which:

- help protect vulnerable people;
- contribute to the safety and wellbeing of the community; and
- help members of the community to achieve their potential and enrich their lives.

What we do is important to every individual in the borough so it is not surprising that we get a lot of feedback about our services.

As council staff we are all part of an organisation that is crucial to the community which we serve and in which many of us live. That community does not usually recognise separate departments but sees us as “the Council”. In all our contact with the public we represent “the Council” and it is important therefore that both staff and the public are confident in the consistent way we deal with complaints. These procedures will help staff understand how to respond to complaints in practice and will provide the framework for a consistent council approach, irrespective of the department in which we may work.

This document will explain the corporate complaint procedures and provide useful information on how to deal with complaints in a positive way.

Partner organisations, such as Wigan and Leigh Housing and Wigan Leisure and Culture Trust, have their own complaints procedures, but as managers of council resources they are equally committed to the principles and general procedures outlined here.

## **Corporate Policy on Complaints**

It is the policy of Wigan Council to encourage our customers to provide feedback on services provided, or commissioned on our behalf. As part of this policy departments must ensure availability of council or departmental forms enabling the public to comment on services. Should that feedback be in the form of a complaint we will act on it quickly and positively in order to provide an objective, honest response within a specified time scale.

Where complaints are upheld we will provide an apology and explain any action necessary to resolve the complaint. Where the complaint is not upheld we will identify the reasons for reaching this conclusion and produce relevant evidence to defend the service against challenge.

It is essential to use the information obtained from complaints as a real opportunity to improve and develop services. Where change is made we will produce evidence of that change and ensure that it is publicised. We will put things right when they have gone wrong and always attempt to resolve the complaint to the satisfaction of the complainant.

The Corporate Complaint Procedures are a means by which the public can challenge services provided by (or on behalf of) the Council. We recognise that such procedures directly affect staff and therefore the Council is committed to ensure that:

- complaints refer to the **service** received by customers and therefore any criticism of staff will be in the context of service issues;
- staff will be supported, as appropriate, throughout complaint investigations;
- these procedures will not be used as an alternative to other procedures (for example, disciplinary, Protection of Vulnerable Adults or police investigations);
- reports completed as a result of complaint investigations will not be held on personnel files.
- staff will be trained in complaint management.

Dealing with complaints can often lead staff into extremely complex and difficult situations. Advice should always be available to staff from appropriate managers in their department.

## What is a complaint?

A complaint should be seen as an opportunity to receive feedback on the services we provide in order to help us improve what we do. A good complaints system reinforces our willingness to treat complaints as a valuable source of information. It also helps us to demonstrate that we are committed to being open and honest.

The following description should be used as a framework for defining what a complaint is, but should also be operated flexibly to deal with exceptions to the definition:

A complaint is an expression of dissatisfaction by one or more members of the public about:

- the council's action or lack of action; or
- the standard of a service provided.

Whether the action was taken or the service provided by the council itself, or a person or body acting on behalf of the council.

## What's not a complaint?

We recognise that there are instances where complaints can be dealt with under existing departmental processes, a statutory procedure or an alternative appeals process. We will not include the following within the corporate complaints procedures:

- initial fault reports;
- a planning appeal against refusal of planning permission;
- where the complaint is more appropriately dealt with through alternative procedures (for example, court action, disciplinary, police investigation);
- complaints that fall within other statutory complaint procedures;
- a school admission or exclusion appeal;
- complaints about councillors;
- a staff complaint about a personnel matter, including appointments, dismissals, pay, pensions and discipline;
- a complaint about the issue of a penalty charge notice by the parking wardens;
- objections to schemes, such as planning applications or traffic regulation orders;
- insurance claims; and
- complaints that are resolved at operational level that do not warrant further action within corporate procedures.

## How we will deal with a complaint

All complaints will be:

- dealt with promptly, efficiently and sensitively within defined time limits;
- investigated thoroughly in a balanced, objective and honest way;
- treated in confidence and only discussed with those who need to know;
- dealt with in compliance with any corporate, legal, statutory or other procedures; and
- formally recorded and monitored.

We should not suspend any necessary operational activities just because a complaint has been made.

### ***The complaints procedure***

The **corporate complaints procedure** is a three stage process and should be used as a general framework for dealing with complaints, recognising that some complaints may involve statutory, legal or other processes.

	Dealt with by
--	---------------

Stage 1	Department concerned.
<b>Stage 2</b>	Chief Executive (or nominated representative)
<b>Stage 3</b>	Referral to the Local Government Ombudsman

Complaints can be made in any way most suitable to a complainant, whether this be in writing, by letter, telephone, email, fax or face to face. Complaints can also be made on somebody's behalf if they have the agreement of the person concerned to complain for them. Should a complaint be made verbally to any member of staff, that staff member must make a written record of the complaint.

When responding to a verbal complaint it is important that the member of staff does not take the comment personally and recognises that an appropriate response at this stage can defuse the situation and potentially could still lead to the complaint being withdrawn. Whilst recognising that staff should not be subjected to verbal abuse or intimidation, they should:

- remain calm and not become defensive;
- not attempt to justify or explain actions prior to investigation but make sure they record the complainant's view accurately;
- actively listen; and
- tell the complainant what action will be taken.

In any response to a complaint you will need to demonstrate to the complainant that:

- their complaint has been taken seriously;
- all relevant enquiries have been made and your response is reasonable; and
- you have valid reasons for any action or decision taken.

If mistakes have been made, you should always apologise and reassure the complainant that action will be taken to prevent it happening again. Discretion should be used in the wording of apologies, as this may be used against the Council in future proceedings (for example, insurance claims or legal proceedings).

If the complaint has not been upheld, care should be taken not to increase a feeling of grievance. Your response should be worded sensitively and sympathetically. It should be remembered that how a response is worded is at least as important as the response itself.

## Informal complaints

Whenever we receive a complaint we should always try to resolve it on the spot. Often, if we talk through problems with our customers, complaints can be sorted out straight away without the need to go through our complaints procedures.

It can save a great deal of time, distress and expense. You will probably deal with the majority of complaints on an **informal** basis.

If the complainant remains dissatisfied, they should be told how they can make a complaint within the formal procedures.

The Council's formal complaints procedure must also be used when:

- a complaint is made in writing, by email or on the Council's comments, compliments and complaints form.
- the person making the complaint wants it to be recorded;
- the complaint is serious enough to need recording;
- the complaint by itself is relatively minor, but when put into context with other similar complaints, raises serious concerns.
- staff believe it is necessary to use the procedures in an attempt to resolve or respond to the complaint.

## Corporate complaint - Stage 1

When a complaint cannot be resolved informally then it becomes a **stage 1 corporate complaint** and the department concerned deals with it. Each department must establish a clear line of accountability and responsibility for handling complaints but in all circumstances they must:

- appoint an officer to investigate the complaint;
- acknowledge the complaint within 3 working days and advise who the investigating officer is;
- conduct an investigation as necessary and appropriate and send a final reply within 10 working days; or
- send an interim reply within 10 working days, and a full response within a further 15 working days.

In exceptional circumstances, it may be necessary to exceed these time limits. If so, the complainant must be given a written explanation, together with a time within which a response will be made.

Complainants should be advised that if they are not happy with the response to their complaint, they have the right of appeal to the Chief Executive. The Council's comments, compliments and complaints form should be enclosed with the response. A customer satisfaction questionnaire should then be sent out within 3 months of the complaint being closed to enable the complainant to comment on how the complaint was handled.

## Corporate complaint - Stage 2

This stage is for complainants who remain dissatisfied with the response to their complaint at Stage 1 and have exercised their right of appeal to the Chief Executive. The Chief Executive will either investigate the complaint personally or nominate an officer to carry out the investigation. The Chief Executive or nominated officer will:

- acknowledge the complaint within 3 working days;
- conduct an investigation as necessary and appropriate in order to respond to the complaint; and
- provide an appropriate written response to the complainant within 15 working days.

In exceptional circumstances, it may be necessary to exceed these time limits. If so, the complainant must be given a written explanation, together with a time within which a response will be made.

### **Stage 3**

Complainants should be advised that if they are not happy with the response to their complaint, they can contact the Local Government Ombudsman ([www.lgo.org.uk](http://www.lgo.org.uk)). A Local Government Ombudsman complaint form should be enclosed with the response.

## **Recording and Monitoring Complaints**

Each department must keep a record of all stage 1 and 2 complaints. The record must include:

- the contact details of the complainant (unless the complaint is anonymous);
- a clear description of what the complaint is about;
- what action was taken to resolve the complaint;
- if the complaint was upheld or not;
- the total number of complaints received in each stage;
- if target times were met; and
- changes made as a result of the complaint.

Each department must also complete a corporate complaint monitoring form (see attached) on a quarterly basis and forward it to the Chief Executive's Department. The quarterly reports will be collated and placed on the agenda for the Chief Officers' and Performance Panel meetings. An annual report of all corporate complaints received within the Council will also be presented to the Chief Officers and Performance Panel by the Chief Executive's Department.

The Director of Legal and Property Services should also report details of any Ombudsman complaints received.

## **Recording and Monitoring Positive Feedback**

We often get things right and it is important that we also record and monitor positive feedback from customers. If a customer writes to any department to compliment it or its staff about a service then this should also be recorded. Such positive feedback may be about the benefit obtained from a service, the way a service was provided or positive comment about individual members of staff. Where staff are named, they should be advised of the positive feedback.

# Good Investigative Practice

## Corporate Complaint Stage - 1

- 1) The investigating officer should apply the guidelines as appropriate given the specific circumstances of any individual complaint. Sometimes it is possible to resolve the complaint speedily without further contact with the complainant. If this is not possible then it is good practice to contact them personally (by phone or meeting) in order to clarify the complaint and identify the complainants expectations for resolution. During any contact make sure that you treat the complainant as you would expect to be treated yourself.
- 2) If you do contact the complainant, confirm the results of contact in writing and clarify the details of the complaint, expectations for resolution, who is investigating and timescales for response.
- 3) Identify any support that may be needed and where possible advise the complainant accordingly (for example, interpreter or personal advocate).
- 4) Do not take the complaint personally.
- 5) Check if previous complaints have been made and where necessary identify any legal, policy or, procedural background information that may be needed.
- 6) Refer the complaint to any other channels that may be more appropriate for the complainant to follow (for example, police investigation or legal proceedings). This can be done at any stage of the investigation.
- 7) Identify if the complaint can be resolved quickly and speedily without the need for any further investigation.
- 8) Identify if any immediate action is necessary in respect of the complaint (for example, defer a decision or rearrange a meeting).
- 9) Obtain all relevant information from files, message books etc. (obtain copies if necessary) and identify which staff need to be interviewed.
- 10) Plan any interviews in respect of the order in which relevant members of the public or staff are to be interviewed, the areas to be covered and any specific questions that need to be raised. Advise anyone being interviewed that they can have a person present to support them if they wish (for example, friend, colleague, union rep).
- 11) Staff members interviewed should not have their line manager present so that management considerations do not colour the views expressed by the staff member.
- 12) Consider if you may need a witness to an interview.

- 13) Advise all people interviewed of the specifics of the complaint that relates to them, the procedures being followed and the remit of the investigation.
- 14) Although interviews should be conducted in a relaxed manner they should be minuted and a written recording taken by yourself which is later sent to the person interviewed for signing as accurate, or for amendment to be agreed. Write up notes made at the interview as soon as possible after the interview whilst things are fresh in your mind.
- 15) Before ending an interview ensure that you have the answer to any necessary questions, or areas for clarification, even if this means repeating questions.
- 16) Advise the interviewee that all information obtained during the interview will be treated as part of the investigation unless it is hearsay. A person cannot expect to provide you with information on the basis that you will not put it on record or use it in your investigation.
- 17) Throughout the investigation look for EVIDENCE rather than subjective opinion or hearsay.
- 18) Use open, not leading questions and keep questioning simple – do not ask multiple questions.
- 19) Summarise the main points covered at the end of the interview.
- 20) Always provide a written response to a complaint whether this is in the form of a report or a letter or confirmation of a meeting. The response should be provided by the appropriate person in the department (usually a senior officer) and must clearly state the outcome of the investigation, the evidence on which the conclusion is based and any action that will follow as a result. The response should also advise the complainant as to further action that may be available to them if they wish to pursue their complaint.
- 21) The response should attempt to provide resolution to the complaint wherever possible and staff should be innovative in considering how this can be achieved.
- 22) If an apology is warranted then provide one but be careful about the wording as any written response may be referred to in a later investigation as part of the “evidence” collected. For example if a complainant believes that a member of staff has been rude but staff deny this and there is no corroborative evidence, apologise that the complainant “felt” that the staff member was rude or “interpreted comments made as being rude”.
- 23) Keep a complainant advised of progress if agreed timescales cannot be adhered to.

- 24) Any response to a complaint or contact with a complainant should be done in a manner which is consistent with relevant departmental and corporate policies/procedures regarding equality and diversity.

## **Corporate Complaint Stage - 2**

If a complainant is dissatisfied with the response to a stage 1 complaint they may wish to pursue their complaint further and refer it to the Chief Executive. The Chief Executive (or nominated person) will obtain a copy of all relevant information from the department that dealt with the original complaint and use this information to decide if:

- the complaint has been investigated thoroughly, objectively and honestly;
- the conclusions reached have been based on evidence and logically follow the information obtained; and
- the response has been reasonable and appropriate with every effort being made to achieve resolution.

Should enquiries reveal that the complaint has been dealt with satisfactorily then a letter should be sent to the complainant. The letter should confirm any action taken, conclusions reached (with supporting evidence) and any action that will follow.

It is possible that even if a department has responded appropriately without satisfying a complainant, suggestions can be made at this stage for resolution.

Should enquiries reveal that the department has not dealt with the complaint satisfactorily then the reasons for this conclusion should be explained to the department concerned and any necessary action taken. It is possible that further enquiries should be made, a meeting arranged or a second full investigation be undertaken by a different person. Any further investigation should comply with the Good Investigative Practice described under Stage 1 Corporate Complaint.

Following completion of any necessary action, the Chief Executive (or nominated person) should write to the complainant as above and include a copy of any report completed.

In confirming the outcome of the complaint it should be remembered that any written material may be referred to in any subsequent Ombudsman investigations as evidence.

Copies of written responses and any reports should also be sent to the relevant department with specific comment as to any further action that may be necessary.

## Resolution and Remedy

Where a complaint has been upheld an apology, with comment on action taken to prevent reoccurrence in the future, is normally enough to achieve resolution. Most complainants are satisfied if they believe they have been taken seriously, their complaints have been investigated objectively, we apologise for mistakes made and demonstrate that change will follow.

Sometimes this is not enough and in considering other forms of action, the general principle should be that **“the remedy needs to be appropriate to the injustice or maladministration; and as far as possible complainants should be put in the position they would have been if things had not gone wrong”**.

Sometimes this may not be possible because of changed circumstances, the passage of time or the nature of the complaint. It is also possible that the complainant’s expectations are such that they will only accept resolution in financial terms. In all such cases it will be necessary to consider making a financial payment to the complainant.

When considering financial payment it is important not to think in terms of financial “compensation” which is more appropriately handled within legal and insurance procedures. In the context of resolving complaints we are referring to financial “recompense” or “ex-gratia” financial payment to reach resolution.

Recompense refers to the making good of financial loss such as travel expenses, missed pay after having to take time off work, actual costs of pursuing a complaint (phone calls, postage etc.) costs of paying for a service that should have been provided free of charge, and so on. Often receipts can be requested as evidence of costs incurred.

Ex-gratia payments are made to cover “time and trouble” legitimately incurred in pursuing a complaint for example:

- length of time taken to achieve resolution
- difficulties encountered
- appropriateness or otherwise of initial response to the complaint.

Extreme care needs to be taken in the use of the term “distress caused” as this is a term that has implications for legal and insurance claims.

Prompt and effective response to complaints will normally avoid the need for considering “time and trouble” payments which should not become the norm for achieving resolution. Legal advice should normally be requested before making such payments in order to have the benefit of any contemporary guidelines from the Local Government Ombudsman and avoid putting the council in a situation that leaves it open to further legal challenge or insurance claims.

Each department must have clear structures in place for the consideration of financial payments and identification of which senior staff have authority to action any payments made. You must also make sure that you can demonstrate a fairness and consistency in the way that resolution and remedy are achieved.

Further information available from The Local Government Ombudsman's Office includes "Guidance On Good Practice 6: Remedies"; Annual Reports; Special Reports; Digest of Cases ([www.lgo.org.uk](http://www.lgo.org.uk))

## **Policy on Unacceptable Behaviour**

Wigan Council recognises that the public must be able to challenge services provided by (or on behalf of) the Council. The Council also have a duty to ensure the safety and welfare of its staff.

Wigan 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 the Council does not normally limit the contact complainants have with our offices. However the Council does not expect its staff to tolerate behaviour by complainants which is unacceptable, for example, which is abusive, offensive or threatening, and we will take action to protect staff from that behaviour.

When the Council considers 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 offices.

The decision to restrict access to our offices will be taken at Chief Officer level or above. 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 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 which is unacceptable, we may decide to terminate contact with that complainant and discontinue any investigation into their complaint.

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.

## Policy on Unreasonably Persistent Complainants

Wigan Council recognises that the public must be able to challenge services provided by (or on behalf of) the Council.

Wigan 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 the Council does not normally limit the contact complainants have with our offices.

However there are a small number of complainants who, because of the frequency of their contact with the Council's offices, 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 offices.

The following are some of the actions and behaviours of unreasonable and unreasonably persistent complainants which are often problematic. The examples are not intended to be an exhaustive list:

- Refusing to specify the grounds of a complaint, despite offers of assistance with this from our 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 the Council's 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 the staff dealing with the complaints, and seeking to have them 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 Council and, at the same time, with a Member of Parliament/a councillor/the Council's independent auditor/the Standards Board/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.

The decision to restrict access to our offices will be taken at Chief Officer level or above and will normally follow a prior warning to the complainant. Any restrictions imposed will be appropriate and proportionate. In taking a decision to treat a person as an unreasonably persistent complainant the Chief Officer concerned will have regard to the guidance note issued by the Local Government Ombudsman regarding unreasonably persistent complainants. The options we are most likely to consider are:

- 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.

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 that there will be a right of appeal to the Council's Chief Executive if they disagree with it. If we decide to carry on treating someone as an unreasonably persistent complainant and we are still investigating their complaint six months later, we will carry out a review and decide if restrictions will continue.

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 complainants policy will be treated on their merits.

## Confidentiality

All complaints and written information about complaints must be dealt with confidentially and in accordance with legal requirements (for example, Data Protection Act, 1998; Freedom Of Information Act; Caldicott Guidelines etc.) As a general principle information must only be accessed by those people with a valid reason to do so. This means that care must be exercised to ensure that reports are securely filed, staff with no involvement with the complaint do not have access to information and all communication takes place discreetly. The principle of “need to know” should be applied vigorously.

### Sources:

This policy has been produced by the corporate working group comprising:

Jan Collier	Chief Executive's Department
George Ellis	Social Services Department
David Mather	Chief Executive's Department
Nicola Payne	Chief Executive's Department
Carmel Sollars	Engineering Services Department
Jim Taylor	Chief Executive's Department

The following sources were also used:

Local Government Ombudsman	<ul style="list-style-type: none"><li>• Running a Complaints System</li><li>• Guidance note on Unreasonably Persistent Complainants</li></ul>
Social Services Department	Customer Care and Complaints Procedures
Social Services Department	Customer Care Manual
Engineering Services Department	Customer Care Protocols
Wigan Council	Staff Handbook
Gloucestershire Council	The Corporate Complaints Policy and Procedures

## Wigan Council

### Corporate Complaint Monitoring Form For the period (date)

Overall details	
Department	
Complaints Officer	
Number of complaints received	
Number responded to within target times	

Reason(s) for being out of time	
Number	Reason

Number received under the following categories	
• Communication	
• Quality of Service	
• Decision	
• Staff	
• Delay in accessing service	
• Other (please specify)	

What corrective action or changes have occurred as a result of the complaints	
Number	Corrective action / change


**Overall satisfaction with the service**

Number sent out	
Number returned	
% satisfied	
% dissatisfied	
% neither satisfied nor dissatisfied	
% do not know	