

Vexatious and Unreasonably Persistent Guidance

Updated November 2022

Introduction

KCC is committed to putting Customers at the heart of everything we do. The Customer Service Policy states that ‘We will treat all customers equally, fairly and respectfully, and do all we can to ensure that customers are able to access services when and how they need to

This will be achieved by listening to customer feedback and ensuring we actively engage with customers to understand the changing nature of contact preferences and needs when accessing our services now and in the future.’

Dealing with complaint, comments and enquires from the public is generally a straightforward process. In a small number of cases, people pursue their complaints and enquires in a way which can either impede the investigation of their complaint or can have significant resource issues for the Council. This can happen either while their complaint or enquiry is being investigated, or once the Council has finished dealing with the complaint or enquiry.

It is important to distinguish between:

- people who make a number of complaints because they really think things have gone wrong;
- people who make unreasonably persistent complaints or enquiries.

If the customer is persisting because his complaint/enquiry has not been considered in full, then we must address this (normally by invoking the next stage of the complaints procedure).

However, if the Council has considered that matter fully and has demonstrated this to the customer, then we need to consider whether the customer is now acting in a manner considered to be unreasonably persistent.

Principles

This guidance is not intended to be used to restrict customers in making complaints or their rights in pursuing them, however Kent County Council has a duty to ensure that it provides value for money for all its residents and customers.

The Council is committed to dealing with all complaints equitably, comprehensively and in a timely manner. It does not normally limit the contact which complainants have with Council staff and offices. The Council does not expect staff to tolerate behaviour which is abusive, offensive or threatening and will take action to protect staff from such situations.

The aim of this guidance is to contribute to the Council's overall aim of dealing with all complainants in ways which are consistent and equitable.

It sets out how the Council will decide which customers will be treated as unreasonably persistent, and what the Council will do in those circumstances.

This guidance runs alongside existing corporate policies and guidance relating to equalities, health & safety, and dignity and respect at work, and should only be pursued where absolutely necessary.

Definition of unreasonable

The Council defines unreasonable behaviour as those who, because of the frequency or nature of their contacts with the Council, hinder the Council's consideration of their or other people's complaints/enquiries.

Customers who are displaying unreasonable behaviours, may have justified complaints or grievances but are pursuing them in inappropriate ways.

They may be someone who is not seeking to resolve a dispute between themselves and the Council but is seeking to cause unnecessary aggravation or annoyance to the Council.

Alternatively, they may be intent on pursuing complaints or enquiries which appear to have no substance, or which have already been investigated and settled. Their contacts with the Council may be amicable but still place very heavy demands on staff time, or they may be distressing for all involved.

Actions and Behaviours

Below are some of the actions and behaviours which the Council may experience. This policy can be invoked if one or more of the following triggers occur and depending on the individual merit of the case. This list is not exhaustive and one single feature on its own will not necessarily imply that a person will be considered unreasonable:

1. refusing to specify the grounds of a complaint, despite offers of help from staff
2. refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved
3. 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

4. refusing to accept that issues are not within the power of the Council to investigate, change or influence (examples could be something that is the responsibility of another organisation)
5. making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced
6. changing the basis of a complaint as the investigation proceeds and/or denying statements he or she made at an earlier stage
7. 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
8. electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved
9. persistently approaching the Council through different routes about the same issue
10. adopting a 'scattergun' approach; pursuing a complaint(s)/enquiry with the Council and at the same time with a department, the Head of Paid Service, the Leader, an M.P., Councillor, Auditor, Standards Board, Police, Solicitors or the Local Government Ombudsman
11. 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
12. submitting repeat complaints after the complaints process has 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
13. refusing to accept the decision – repeatedly arguing the point and complaining about the decision submitting falsified documents from themselves or others.
14. uses abusive or aggressive language - the tone or language of the complainant's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive
15. refuses an offer to refer the matter for independent investigation, or ignores the findings of an independent investigation.

Being reasonable

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 unreasonable in their behaviour.

Similarly, the fact that a customer is unhappy with the outcome of a complaint or enquiry and seeks to challenge it once, or more than once, should not necessarily cause their behaviour to be labelled unreasonable.

The Council will offer the customer appropriate support, as it would any other customer.

It may be helpful to both parties if the customer has an advocate or support worker. If the customer has indefinite accessibility needs and feel that they would like an advocate, the Council must consider offering to help find an independent one. If the customer has specific needs, the Council will offer relevant support. Specialist bodies such as the Royal National Institute for the Blind and Age Concern provide help and advice.

Where a customer whose case has been closed continues to pursue the same issue, we may decide to no longer communicate with that customer about the matter. In these instances, we will read all correspondence from that customer, but unless there is new evidence which the Council believes will affect their decision on the complaint, we will place it on the file with no acknowledgement.

The Decision

Before making the decision, some or all of the following steps need to be taken:

- The customer has been given a written warning, which advises what action the Council will take if unreasonable behaviour continues.
- The Council will ensure that the complaint/enquiry is being, or has been, investigated properly according to the Council's complaints procedure (including whether a customer has been referred to the appropriate independent body)
- Although each complaint is unique, the Council will deal with the complaint in line with other complaints of a similar nature in order to apply a consistent approach
- Ensure that the customer is not raising or providing any new information that the Council believes might affect the outcome of their complaint

The Council will contact the complainant to:

- discuss his or her behaviour
- explain why this behaviour is causing the Council concern

- ask him or her to change this behaviour
- explain about the actions that the Council may take if his or her behaviour does not change.
- If the complainant has not already had a meeting about the complaint/enquiry with a member or members of staff and provided that the Council knows nothing about the complainant which would make this inadvisable, the Council will consider offering the complainant a meeting with a senior member of staff. Sometimes such meetings can dispel misunderstandings and move matters towards a resolution.

The decision to declare behaviour as unreasonable or vexatious will be an exceptional step, and should be made by a Director, who has not been directly involved in the complaint or with the complainant/customer, with assistance from the Customer Experience and Relationship Manager. They should make a written note of the considerations and decisions. See Appendix A for flow chart.

The complainant should be told in writing:

- why we believe their behaviour falls into that category
- what action we are taking
- the duration of that action
- how the complainant can challenge the decision if they disagree with it (this should include information regarding the Local Government and Social Care Ombudsman)

Reviewing the restrictions

Towards the end of the period of action or within 6 months (whichever is soonest), there must be a review of the restrictions. The review should be undertaken by the Customer Experience and Relationship Manager and the relevant Corporate Director or Director.

The review must carry out the following actions;

- consider whether any restrictions are still necessary, should be modified or can be lifted entirely,
- inform the complainant of the outcome of the review,
- giving reasons for any continued limits and the date for the next review.

Where possible restrictions should be lifted unless there are sufficient grounds for them to continue.

Challenging the decision

The customer can challenge the decision by requesting a review, which should be requested within 20 working days of the decision being communicated. Reviews will be considered and carried out by the legal department who have not been involved in the case until this point.

Staff within KCC can also refer cases to legal for review.

Following the review customers will be informed of their right to an independent investigation by the Local Government and Social Care Ombudsman.

Taking Action

The precise nature of the action should be appropriate and proportionate to the nature and frequency of the customer's contacts with the Council at that time.

The following is a list of possible options:

- 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
- banning a complainant from one or more Council premises
- where a decision on the complaint has been made, 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
- where a complaint is closed and the complainant persists in communicating about the same issue, it may be decided to terminate contact with that complainant.

These options are not exhaustive and there may be other factors that will be relevant in deciding what might be appropriate action. For instance, any arrangements for limiting a complainant's contact must take account of the complainant's individual circumstances, bearing in mind such issues as age, disability, gender, race and religion or belief.

Where the behaviour is so extreme that it threatens the immediate safety and welfare of staff, the Council will consider other options, for example reporting the matter to the police or taking legal action. In such cases, the Council may not give the complainant prior warning of that action.

Further actions

Detailed records of all contacts with unreasonable persistent and vexatious complainants/customers must be kept. Information should be included on the record on the complaints system, to enable staff dealing with any feedback to respond appropriately. This information can also be shared with other staff if relevant to managing relationships and correspondence with individuals whose behaviour has been identified as unreasonably persistent or vexatious.

Personal details about the complainant/customer and about the complaint will be managed and stored appropriately in line with the Data Protection Act and records management principles and procedures.

The Local Member and the Cabinet Member for that service should be informed, ensuring that all parties are aware that the issue should not be discussed any further with the complainant.

Customers should be informed of their right to appeal which should be made 20 working days following the letter confirming the Council's position in declaring the customer unreasonably persistent.

When those customers make complaints about new issues or service requests, these should be treated on their own merits and decisions should be taken on whether any restrictions that have been applied before are still appropriate and necessary.

Source documents:

LGSCO Guidance on persistent and unreasonably persistent complainants

Information Commissioner's guidance on vexatious requests

Appendix A – Vexatious and Unreasonably Persistent Procedure

