

DELABOLE PARISH COUNCIL
POLICY FOR DEALING WITH UNREASONABLY PERSISTENT AND/OR
VEXATIOUS COMPLAINANTS

Policy on Unreasonably Persistent and/or Vexatious Complainants

1. Introduction

- 1.1 Generally, dealing with a complaint is a straightforward 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 the Council. This can happen either while their complaint is being investigated, or once the council has finished dealing with the complaint.
- 1.2 If a complainant behaves in a way that is unreasonably persistent or vexatious, the council will follow this policy.

2. Principles

- 2.1 The council is committed to dealing with all complaints equitably, comprehensively, and in a timely manner.
- 2.2 The council does not normally limit the contact which complainants have with its staff.
- 2.3 The council does not expect staff to tolerate unacceptable behaviour by complainants or any other. Unacceptable behaviour includes behaviour which is abusive, offensive or threatening. The council will take action to protect staff from such behaviour.

3. Aim of this policy

3.1 The aim of this policy is to help parishioners and staff to understand how the council manages unreasonably persistent and unreasonable behaviour. It gives clear guidance as to the definition of unreasonable behaviour and explains what actions staff should take when presented with such behaviour or when they receive unreasonable or vexatious requests for information. This policy will apply to Delabole Parish Council and has been based on the Cornwall Council Policy which is taken from the guidance issued by the Local Government and Social Care Ombudsman (LGSCO) and the Information Commissioner's Office (ICO).

- 3.1 The aim of this policy is to contribute to the council's overall aim of dealing with all complainants in ways which are demonstrably consistent and equitable.
- 3.2 It sets out how the council will decide which complainants will be treated as vexatious or unreasonably persistent, and what the council will do in those circumstances.
- 3.3 The policy is for the information of staff and all others, and should be read together with the guidelines (see below).

4. Definition

- 4.1 The council defines unreasonably persistent and vexatious complainants as those complainants 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. The descriptions 'unreasonably persistent' and 'vexatious' may apply separately or jointly to a particular complainant.
- 4.2 There is a difference between 'persistent' complainants and 'unreasonably persistent' complainants. The guidelines which accompany this policy give examples of 'unreasonable' and 'vexatious' behaviour to help staff determine this difference. Examples include the way or

frequency that complainants raise their complaint with staff, or how complainants respond when informed of the council's decision about the complaint.

- 4.3 There is a difference between 'unreasonably persistent' and 'vexatious' complainants. A vexatious person in this context is 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.
- 4.4 Unreasonably persistent complainants or vexatious complainants may have justified complaints or grievances but are pursuing them in inappropriate ways. Alternatively, they may be intent on pursuing complaints 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.

5. Decision

- 5.1 Before making the decision to apply this policy, some or all of the following steps may be taken:
 - a) The council will ensure that the complaint is being, or has been, investigated properly according to the council's complaints procedure.
 - b) 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.
 - c) The council will contact the complainant to:
 - i. discuss his or her behaviour,
 - ii. explain why this behaviour is causing the council concern,
 - iii. ask him or her to change this behaviour, and,
 - iv. explain about the actions that the council may take if his or her behaviour does not change.
 - d) Further guidance is set out in the accompanying guidelines.
- 5.2 The decision to apply this policy:
 - a) will be an exceptional step, and
 - b) will be taken at Full Council level in consultation with Members as set out in the accompanying guidelines.

6. Actions

- 6.1 Any restriction that is imposed on the complainant's contact with the council will be appropriate and proportionate. The options we are most likely to consider are included in the guidelines.
- 6.2 When the decision has been taken to apply this policy to a complainant, the council will contact the complainant in writing (and/or as appropriate) to explain:
 - a) why the council has taken the decision,
 - b) what action the council is taking,
 - c) the duration of that action,
 - d) the review process of this policy, and
 - e) the right of the complainant to contact the Monitoring Officer, Cornwall Council.
- 6.3 The council will enclose a copy of this policy and the guidelines which accompany it in the letter to the complainant, or if it is necessary that contact with the complainant is not primarily in writing, the council will offer appropriate support to explain the policy and guidelines to the complainant.

- 6.4 Where a complainant continues to behave in a way which is unacceptable, the council may decide to refuse all contact with the complainant and stop any investigation into his or her complaint. This will include blocking emails and phone calls.
- 6.5 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.
- 6.6 New complaints from people who have come under this policy will 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.
- 6.7 The fact that a complainant is judged to be unreasonably persistent or vexatious, and any restrictions imposed on the council's contact with him or her, will be recorded. For further information please refer to the guidelines.

7. Review

- 7.1 The status of the complainant judged to be unreasonably persistent or vexatious will be reviewed by the Full Council after six months and at the end of every subsequent six months within the period during which the policy is to apply (see paragraph 6.2 (c)).
- 7.2 The complainant will be informed of the result of this review if the decision to apply this policy to him or her has been reversed earlier than expected.

8. Referring unreasonably persistent or vexatious complainants to the Monitoring Officer, Cornwall Council

In some cases, relations between councils and unreasonably persistent or vexatious 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 all the stages of the complaints procedure and where this occurs the Monitoring Officer may be prepared to consider a complaint before the procedure has run its course.

9. Associated policies, procedures and guidelines

- Complaints Policy and Procedure
- Guidelines for Unreasonably Persistent and Vexatious Complainants

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Guidelines on Unreasonably Persistent and/or Vexatious Complainants

1. Introduction

- 1.1 The council must expect pressure from its parishioners if they believe that the council has failed in its service to them or there have been unacceptable delays in the progress of their complaints. Such pressure may be persistent, and in many circumstances, this is reasonable and acceptable.
- 1.2 However, if a complainant behaves in a way that is unreasonably persistent and/or vexatious, the council will follow its policy on unreasonably persistent and/or vexatious complainants. These guidelines accompany that policy.

2. Features of an unreasonably persistent and/or vexatious complainant (paragraph 4.2 of the policy refers to this section)

- 2.1 The following list describes some of the features of a complainant who may be unreasonably persistent and/or vexatious. The list is not exhaustive, nor does one single feature on its own necessarily imply that the person will be considered as being in this category. The list merely includes examples of the behaviour and actions that the council experiences, either individually or in combination. An unreasonably persistent and/or vexatious complainant may:
 - a) have insufficient or no grounds for their complaint and be making the complaint only to annoy (or for reasons that he or she does not admit or make obvious)
 - b) refuse to specify the grounds of a complaint despite offers of assistance with this from the council
 - c) refuse to co-operate with the complaints investigation process while still wishing their complaint to be resolved
 - d) refuse to accept that issues are not within the remit of the complaints policy and procedure despite having been provided with information about the scope of the policy and procedure
 - e) refuse to accept that issues are not within the power of the council to investigate, change or influence (examples could be a complaint about a private car park, or something that is the responsibility of another organisation)
 - f) insist on the complaint being dealt with in ways which are incompatible with the complaints procedure or with good practice (insisting, for instance, that there must not be any written record of the complaint, despite offers of assistance with this from the council)
 - g) make what appear to be groundless complaints about the staff dealing with the complaints, and seek to have them dismissed or replaced
 - h) Raising numerous, detailed and unimportant questions and insisting they are all fully answered;
 - i) make an unreasonable number of contacts with the council, by any means¹ in relation to a specific complaint or complaints (it is impracticable to suggest a number in these guidelines, so staff must use their own judgement to determine what an unreasonable number is in any one case)
 - j) make persistent and unreasonable demands or expectations of staff and/or the complaints process after the unreasonableness has been explained in writing (or in another appropriate form) to the complainant (an example of this could be a complainant who insists on immediate responses to numerous, frequent and/or complex letters, telephone calls or emails)

¹ such as by telephone, letter, email or in person

- k) harass or verbally abuse or otherwise seek to intimidate staff dealing with their complaint, or their families and associates, in relation to their complaint
 - l) raise subsidiary or new issues whilst a complaint is being addressed that were not part of the complaint at the start of the complaint process
 - m) introduce trivial or irrelevant new information whilst the complaint is being investigated and expect this to be taken into account and commented on
 - n) change the substance or basis of the complaint without reasonable justification whilst the complaint is being addressed
 - o) deny statements he or she made at an earlier stage in the complaint process
 - p) electronically record meetings and conversations without the prior knowledge and consent of the other person involved
 - q) adopt an excessively 'scattergun' approach, for instance, pursuing a complaint or complaints not only with the council, but at the same time with a Member of Parliament, elected councillors of this and other councils, the Council's independent auditor, the Standards Board, the ICO, the police, solicitors, and the Local Government Ombudsman
 - r) refuse to accept the outcome of the complaint process after its conclusion, repeatedly arguing the point, complaining about the outcome, and/or denying that an adequate response has been given
 - s) make the same complaint repeatedly, perhaps with minor differences, after the complaints procedure has been concluded, and insist that the minor differences make these 'new' complaints which should be put through the full complaints procedure
 - t) persistently approach the council through different routes about the same issue
 - u) persist in seeking an outcome which the council has explained is unrealistic for legal or policy (or other valid) reasons
 - v) refuse to accept documented evidence as factual
 - w) complain about or challenge an issue based on a historic and irreversible decision or incident
- x) People should not seek to circumvent this policy by asking someone else who is connected to them, such as a family member, someone of close association, advocate, or use membership of a group or body to submit the same or identical complaints on their behalf. Should the council consider that someone is acting in place of or with a declared unreasonably persistent complainant, the person who has submitted the duplicate complaint will be treated in the same manner.
- y) Frequently using public participation at a meeting of the council to pursue a complaint or information requests
 - z) Combinations of some or all of the above.

3. Being reasonable

- 3.1 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 a vexatious or an unreasonably persistent complainant.
- 3.2 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 vexatious or unreasonably persistent.
- 3.3 The council will offer the complainant appropriate support.
- 3.4 It may be helpful to both parties if the complainant has an advocate. If he or she feels that they would like an advocate, the council must consider offering to help find an independent one.

- 3.5 If he or she has special needs, the council will offer relevant support, including, if appropriate, help with finding an advocate. There are specialist bodies (such as the Royal National Institute for the Blind, Cornwall Advocacy, Age Concern, and Language Line) which the council can contact for advice and help.

4. Decision-making (also see section 5 of the policy)

- 4.1 The decision to declare a complainant as unreasonably persistent and/or vexatious will be made by the Full Council after consideration of the nature and number of the complaint/s.
- 4.2 If more than one body is being contacted by the complainant, perhaps with different complaints, the council must consider:
- a) setting up a strategy meeting to agree a consistent approach by all, and
 - b) appointing a small committee of members to co-ordinate the council's response(s) should the complaint relate to the clerk.
- 4.3 Decision-making under this policy is an operational matter and will be made at its earliest meeting by the Full Council.

5. Options to restrict a complainant's contact with the council, and other actions (paragraph 6.1 of the policy refers to this section)

- 5.1 The options the council is most likely to consider are:
- a) requesting contact to be in a particular form (for example, letters only)
 - b) requiring contact to take place with a specific person
 - c) restricting telephone calls to specified days / times / duration
 - d) requiring any personal contact to take place in the presence of an appropriate witness
 - e) letting the complainant know that the council will not reply or acknowledge any further contact from him or her on the specific topic of that complaint (in this case, the clerk and the chair of the council will read future correspondence)
 - f) restricting the attendance of a complainant at meetings
- 5.2 These options are not exhaustive and often local or other factors 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.

6. Actions after a complainant has been judged to be unreasonably persistent or vexatious (also see section 6 of the policy)

- 6.1 The fact that a complainant is judged to be unreasonably persistent or vexatious, and any restrictions imposed on the council's contact with him or her, will be recorded and:
- a) held by the clerk on behalf of the council
 - b) personal details about the complainant and about the complaint will be managed and stored appropriately in line with data protection and records management principles and procedures.

7. FOI cases where it is deemed that a request is Vexatious under Section 14(1) of the Freedom of Information Act (FOIA)

The council does not have to deal with requests that are vexatious under s14(1) of the FOIA.

However, s14(1) can only be applied to the request and not the requestor and there needs to be careful consideration given as to whether the request is vexatious before it is classed as such.

Section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. Court cases have recognised the need to protect council resources from unreasonable requests. The Information Commissioner (ICO) sets out the following as indicators as to whether a request is vexatious or not;

- Abusive or aggressive language is used;
- The requests are placing an undue burden on the authority;
- The requests are part of a personal grudge;
- The requests are unreasonably persistent;
- The requestor is intransigent;
- There are frequent or overlapping requests on the same issue;
- The requests are designed to cause annoyance;
- The requests require a disproportionate effort to fill; and
- The requestor is using the information request route to pursue other complaints or grievances against the council.

This is not something that is to be used only as a last resort but should be considered where it is believed that the request is disproportionate or unjustified.

8. What actions can be taken to stop or limit the behaviour?

Where it becomes apparent that the nature of a request or string of requests is potentially making a request vexatious, consideration should be given to warning the requestor that if they are to submit any further requests on the same issue, it is likely that these requests will be deemed as vexatious under FOI. Consideration will be given to a form of dialogue with the requestor having regard to the facts of each matter and any specific history in relation to the issue.

9. What happens if a person continues to contact the council?

If a further request is received on the same or similar subject matter under FOI then a decision will be taken by the Council that the request is vexatious and the requestor will be informed of the decision, along with the reasons for the decision being taken. Only the request itself can be considered vexatious and not the individual who submitted it. Therefore any further requests from the same requestor should be treated and assessed independently.

10. What can a customer do to challenge the council's decision

If a requestor is unhappy with the decision to make their information request vexatious or manifestly unreasonable, they have the right to ask the council to carry out an Internal Review. The council will ask for the case to be considered by the Monitoring Officer who will review the case and notify the requestor of the decision. If following the Internal Review the requestor is still unhappy, they have the right to contact the Information Commissioner's Office (ICO) who will then decide on the evidence supplied, whether to investigate the case.

11. How does the council review the decision?

Where a request has been made vexatious or manifestly unreasonable, no further requests to similar matters raised will be considered within a 12 month timeframe. Any new request will be reviewed within this timeframe and a decision will be taken as to whether this is a new request (and dealt with as a fresh request) or falls within the subject matter made vexatious/manifestly unreasonable.

12. Dealing with requests that are manifestly unfounded or excessive

A request for personal information made under subject access granted by GDPR can be refused if it is considered that it is manifestly unfounded or excessive.

13. What does manifestly unfounded mean?

A request may be manifestly unfounded if:

- the individual clearly has no intention to exercise their right of access. For example an individual makes a request, but then offers to withdraw it in return for some form of benefit from the organisation; or
- the request is malicious in intent and is being used to harass an organisation with no real purposes other than to cause disruption.

For example:

- the individual has explicitly stated, in the request itself or in other communications, that they intend to cause disruption;
- the request makes unsubstantiated accusations against the council or specific employees;
- the individual is targeting a particular employee against whom they have some personal grudge; or
- the individual systematically sends different requests to the council as part of a campaign, eg once a week, with the intention of causing disruption.

This is not a simple tick list exercise that automatically means a request is manifestly unfounded. You must consider a request in the context in which it is made, and you are responsible for demonstrating that it is manifestly unfounded.

Also, you should not presume that a request is manifestly unfounded because the individual has previously submitted requests which have been manifestly unfounded or excessive or if it includes aggressive or abusive language.

The inclusion of the word “manifestly” means there must be an obvious or clear quality to it being unfounded. You should consider the specific situation and whether the individual genuinely wants to exercise their rights. If this is the case, it is unlikely that the request will be manifestly unfounded.

17. What does excessive mean?

A request may be excessive if:

- it repeats the substance of previous requests and a reasonable interval has not elapsed; or
- it overlaps with other requests.

However, it depends on the particular circumstances. It will not necessarily be excessive just because the individual:

- requested a large amount of information, even if you might find the request burdensome. Instead you should consider asking them for more information to help you locate what they want to receive, please see 'Can we clarify the request?';

- wanted to receive a further copy of information they have requested previously. In this situation a controller can charge a reasonable fee for the administrative costs of providing this information again and it is unlikely that this would be an excessive request;
- made an overlapping request relating to a completely separate set of information; or
- previously submitted requests which have been manifestly unfounded or excessive.
- When deciding whether a reasonable interval has elapsed you should consider:
 - the nature of the data – this could include whether it is particularly sensitive;
 - the purposes of the processing – these could include whether the processing is likely to cause detriment (harm) to the requester if disclosed; and
 - how often the data is altered – if information is unlikely to have changed between requests, you may decide you do not need to respond to the same request twice. However, if you have deleted information since the last request you should inform the individual of this.

18. Refusal to comply with a request

Where the council is refusing to comply with a request, you must inform the individual without undue delay and within one month of receipt of the request of:

- the reasons you are not taking action;
- their right to make a complaint to the ICO or another supervisory authority; and
- their ability to seek to enforce this right through a judicial remedy.

You should also provide this information if you request a reasonable fee or need additional information to identify the individual

19. Confidentiality, legal requirements and non-compliance

- All personal data provided to the council will be processed in accordance with GDPR and the Data Protection Act 2018;

20. Associated policies, procedures and guidelines

- Complaints Policy and Procedure
- Policy on Unreasonably Persistent and/or Vexatious Complainants

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