



POLICY FOR DEALING WITH HABITUAL OR VEXATIOUS COMPLAINANTS

TOTNES TOWN COUNCIL
MAY 2019 COUNCIL MATTERS
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Concept: Totnes Town Council (both Councillors and the Council Offices) experience a small number of persistent complainants. Whilst Totnes Town Council has a robust complaints procedure in place, it is felt that adopting a policy to deal with vexatious complaints and complainants could assist in dealing with the small number of individuals who refuse to accept the Council position on a matter and continue to raise the same issue on multiple occasions.

Recommendation – That the Council Matters Committee considers adopting a policy which will help free up Councillor and officer time. The draft policy covers the following elements:

- What is considered to be unreasonable action and behaviour.
- The process for dealing with unreasonable complainants, including who will be involved in making this decision.
- Imposing restrictions.
- Review of a complainants vexatious status

Background - The Local Government and Social Care Ombudsman has produced guidance for Council's in how to develop a proportionate approach when responding to unreasonable complainant behaviour, which the policy below is based on. The number of persistent complainants that the Council has is small, but their identical complaints take up a disproportionate amount of Councillor and staff time when the answer they receive is unchanged.

1. Background

1.1 This document sets out guidance and procedures to help deal with people who repeatedly complain to the Council or who complain in an unreasonable way.

1.2 There are times when nothing further can be done to solve a real or perceived problem and continual contact with the person complaining is time consuming and costly for the Council in both Councillor and officer time.

1.3 This document explains how to decide if a complaint should be classed as habitual or unreasonable. It then gives advice about how the complaint should be recorded. Finally, options are listed to help process such complaints or cease contact with particular complainants.

2. Introduction

2.1 As with any organisation, there will be times when Totnes Town Council receives complaints from members of the public, also calls on staff time from people who may visit and raise issues more often than others. Some complaints are received by telephone or in writing, and some by a visit to the Town Council Offices. To set out the procedure for dealing with complaints, the Town Council has an established Complaints Policy.

2.2 In the event that a complainant or a visitor/correspondent begins to make an unreasonable level of contact with the Town Council and has the potential to impact on/hinder the normal day to day running of the Town Council, the Town Clerk will implement a policy for dealing with frequent or vexatious complainants/correspondents.

2.3 Habitual or vexatious complainants can be a problem for Council Officers and Councillors. The difficulty in handling such complainants is that they are time consuming and can be wasteful of resources in terms of Officer and Member time. While the Council endeavours to respond with patience and empathy to the needs of all complainants there are times when there is a need to be realistic about the extent to which the matter can reasonably be resolved, to assist or to rectify a real or perceived problem.

2.4 It is recognised that complainants can use repeated Freedom of Information (FOI) or Subject Access Requests (SAR) as a means of perpetuating a complaint which has been determined and therefore the term complaint in this policy includes requests made under the Freedom of Information Act 2000 and the Data Protection Act 1998 as well as those made under the Council's complaints procedure.

3. Habitual or Vexatious Complainants

3.1 Definitions. For the purposes of this policy, terms used are clarified below:

Complainant – a person raising a complaint.

Correspondent – a person contacting the Town Council to notify of matters, ask questions or request information (in writing, email, by phone or in person).

Habitual – 'done repeatedly or as a habit'.

Unreasonable - it is the element of unreasonableness that means that complaints or complainants may be treated in accordance with this policy.

Vexatious – a term recognised in law and means ‘denoting an action or the bringer of an action that is brought without sufficient grounds for winning, purely to cause annoyance to the defendant’.

3.2 For Totnes Town Council, unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with the Council, hinder the Council’s consideration of their complaints or of the Council’s day to day business.

3.3 A complaint in itself may be reasonable or unreasonable. Similarly, the persistent nature of a complainant may be reasonable or unreasonable. In some situations a complainant needs to be persistent to achieve the right outcome. This is why some complaints get referred to the Local Government Ombudsman and are upheld. In other situations, the level of persistent behaviour becomes unreasonable. It is appreciated therefore that there needs to be a balance when applying this policy.

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

3.5 Sometimes the situation between the Council and a complainant can escalate and the behaviour moves from being unreasonable and unreasonably persistent to behaviour which is unacceptable, for example, abusive, offensive or threatening. Such complainants are in a very small minority, but their behaviour may result in the Council having to restrict access to Council premises.

3.6 This policy covers behaviour which is unreasonable, which may include one or two isolated incidents, as well as unreasonably persistent behaviour, such as an accumulation of incidents or behaviour over a longer period.

4. Process

4.1 Stage 1. Where complaints continue and are considered to be habitual or vexatious in accordance with the criteria set out in Schedule A, the Clerk of the Council will inform the individual informally that their behaviour is considered by the Council to be unreasonable or unacceptable, and request a changed approach.

4.2 Stage 2. After taking into account the considerations set out in Schedule B and if there is no improvement in behaviour the Council will consider the matter, and, if considered necessary, will inform the complainant in writing that their behaviour falls under the terms of the habitual and vexatious complaints policy.

4.3 A copy of the Policy will be sent to the individual with a letter giving details of any restrictions which will apply. Schedule C details the options available for dealing with such complainants.

4.4 The letter should also state the length of time the restrictions are to apply and that any legitimate new complaint made in an acceptable manner will always be considered.

4.5 Review. Once a complainant has been determined to be habitual or vexatious, their status will be kept under review for one year. If a complainant subsequently demonstrates a more

reasonable approach then their status will be reviewed. The status of a complainant judged to be unreasonably persistent or vexatious will be reviewed by the Town Clerk and three of the Members listed in Schedule C after six months and, if applicable, at the end of any extension period agreed. The complainant will be informed if the review results in an extension of restrictions to their contact with the Council.

4.6 Stage 3. Where there is dispute about action taken or not taken by the the complainant may refer the matter to the Local Government Ombudsman.

5. Schedule A - Criteria for Determining Habitual or Vexatious Complainants

5.1 Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious where previous or current contact with them shows that they meet any of the following criteria:

5.2 Where complainants:

- a. Persist in pursuing a complaint where the Council's complaints process has been fully and properly implemented and exhausted.
- b. Persistently change the substance of a complaint or continually raise new issues or seek to prolong contact by continually raising further concerns or questions whilst the complaint is being addressed. Care must be taken, however, not to disregard new issues which are significantly different from the original complaint as they need to be addressed separately.
- c. Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.
- d. Repeatedly do not clearly identify the precise issues which they wish to be investigated, despite the reasonable efforts of staff to help them specify their concerns, and/or where the concerns identified are not within the remit of the Council to investigate.
- e. Regularly focus on matters which are not sufficiently serious to an extent which is out of proportion to their significance and continue to focus on these points. It is recognised that determining what is 'not sufficiently serious' can be subjective and careful judgement will be used in applying this criterion.
- f. Have threatened verbally, or used physical violence towards employees at any time. This will, in itself, cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, thereafter, only be continued through written communication. A complainant who threatens either verbally or in writing or uses actual physical violence towards an employee will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made. It should also be noted that Totnes Council in consultation with the affected individuals will refer any actual or threatened verbal or physical abuse to Devon and Cornwall Police for investigation.
- g. Have, in the course of addressing a registered complaint, had an excessive number of contacts with the Council – placing unreasonable demands on employees. A contact may be in person, by telephone, letter, email or fax or any other means. excessive contact will be determined taking into account the specific circumstances of each individual case.
- h. Have harassed or been verbally abusive towards employees dealing with the complaint. Employees recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants

may have a mental health problem and there is a need to be sensitive in circumstances of that kind.

- i. Are known to have recorded meetings or face-to-face/telephone conversations without the prior knowledge and consent of other parties involved.
- j. Make unreasonable demands on the Council and fail to accept that these may be unreasonable, for example, insist on responses to complaints or enquiries being provided more urgently than is reasonable or within the Council's complaints procedure or normal recognised practice.
- k. Make unreasonable complaints which impose a significant burden on the resources of the Council and where the complaint:
 - clearly does not have any serious purpose or value; or
 - is designed to cause disruption or annoyance; or
 - has the effect of harassing the Council; or
 - can otherwise fairly be characterised as obsessive or manifestly unreasonable
- l. Make repetitive complaints and allegations which ignore the replies which have been supplied in previous correspondence.

6. Schedule B – Considerations Prior to Taking Action under the Policy

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

6.2 The decision to designate someone as a habitual and vexatious complainant is onerous and could have serious consequences for the individual. Before deciding whether the policy should be applied Councillors 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 Council's view on the complaint or that the way in which the complainant has acted is unreasonable.

7. Schedule C – Options for Dealing with Habitual or Vexatious Complainants

7.1 When complainants have been identified by the Clerk as potentially fulfilling the criteria set out later in this document, the Clerk will convene a panel of three Members drawn from: the Mayor, Deputy Mayor, Chairman of Council Matters Committee (or the Deputy Chair), to seek agreement to treat the complainant as a habitual or vexatious complainant and for the appropriate course of action to be taken.

7.2 The Clerk on behalf of the Council will notify complainant, in writing, of the reasons why their behaviour has been treated as habitual or vexatious and the action that will be taken unless the behaviour is changed.

7.3 If the disruptive behaviour continues, the Town Clerk will issue a reminder letter (or other means of notification if absolutely necessary) to the complainant, advising them that they way in

which they will be allowed to contact the Town Council in future will be restricted. The Town Clerk will make this decision in consultation with three Members drawn from those listed at the start of this section.

7.4 Any restriction imposed on the complainant's contact with the Council will be appropriate and proportionate and the complainant will be advised of the period of time over which the restriction will be in place. In most cases restrictions will apply for 6 months at which time they will be reviewed. (Restrictions may be lifted sooner if the complainant's behaviour merits this.)

7.5 Where a complainant continues to behave in a way that is unacceptable, the Town Clerk, in consultation with the panel of three Members set out above, may decide to refuse all contact with the complainant and stop any investigation into his or her complaint.

7.6 The fact that a complainant is judged to be unreasonably persistent or vexatious, and any restrictions imposed on Council's contact with them, will be recorded and notified to those who need to know within the Council.

7.7 Examples of restrictions - restrictions will be tailored to the individual circumstance and may include:

- a. Banning the complainant from making contact either in person or by telephone except through a third party (eg solicitor, Councillor or friend acting on their behalf).
- b. Banning the complainant from sending emails to individuals and/or all Council Officers and insisting they only correspond by postal letter.
- c. Requiring contact to take place with one named member of staff only.
- d. Restricting telephone calls or personal visits to the Council to specified days and/or times and/or duration.
- e. Requiring any personal contact to take place in the presence of an appropriate witness.
- f. Letting the complainant know that the Town Council will not reply to or acknowledge any further contact from them on the specific topic of that complaint.