

MALVERN TOWN COUNCIL

Vexatious Behaviour and Complaints Policy

1. Introduction

This policy sets out the Town Council's approach to vexatious behaviour and unreasonably persistent complaints. The Council aims to deal fairly, honestly, consistently and appropriately with all complainants and requests for information but retains the right to restrict or change access to our services where we consider an individual's actions to be unacceptable.

This policy is consistent with anyone's rights under the Data Protection Act 1998, Freedom of Information Act 2000 and Environmental Information Regulations.

2. Purpose

The purpose of the document is to:

- Explain what the Town Council considers to be unreasonable behaviour and how this will be dealt with. (section 1)
- Define vexatious requests (section 2)
- Explain what the Town Council considers to be a vexatious request and how these will be dealt with.

This policy helps Councillors, Officers and Staff to understand what options for action are available, and who can authorise these actions. It also assists staff to manage the expectations and behaviour of complainants while their complaint is addressed and when we can refuse a request for information.

This policy applies to all forms of communication, including social media.

The Council welcomes feedback from service users and will always try to resolve any complaint or request for information as quickly as possible and therefore this policy should only be applied where absolutely necessary.

With each complaint we must consider whether it is persistent, unreasonably persistent or a new complaint. With each request for information we must consider whether it is manifestly unjustified, inappropriate or improper use of formal procedure.

This policy covers behaviour associated with general service complaints, complaints about the standards of our elected members, requests for information and general contact with members of the public.

We need to differentiate between those individuals whose concerns relate to a series of service failures and those whose behaviour is unreasonable. The use of the word “individual” as someone who may be acting unreasonably, refers, within the context of this document, to those who deal directly with the Town Council including members of the public, suppliers, customers and other stakeholders.

Whilst some complaints may relate to serious and distressing incidents, the Council does not tolerate abusive, offensive or threatening behaviour and will take steps to protect staff and town councillors who are subject to unreasonable behaviour.

SECTION 1 - UNREASONABLY PERSISTENT COMPLAINTS AND BEHAVIOUR

3. Definition of unreasonable behaviour

Individuals may act out of character when under stress and the Council does not view behaviour as unacceptable just because someone is forceful or determined. However, the actions of those who are angry, demanding or persistent may result in unreasonable demands on workloads and behaviour towards staff and town councillors.

Behaviour can be unreasonable and can turn into becoming unreasonably persistent. Unreasonable behaviour may include one or two isolated incidents. Unreasonably persistent behaviour is usually an accumulation of incidents or behaviour over a longer period.

We differentiate between ‘persistent’ individuals and ‘unreasonably persistent’ individuals.

Those making a complaint can be ‘persistent’ where they feel the Council have not dealt with their complaint properly and are not prepared to leave the matter there. For example, it is not unreasonable for an individual to criticise how their complaint is being handled when published procedures are not followed.

However, some individuals may have justified complaints or requests but may pursue them in inappropriate ways such as lengthy phone calls, emails expecting immediate responses, detailed letters or emails every few days. Others may pursue complaints or requests which have no substance or which have already been considered and dealt with. Their contacts with us may be amicable but still place very heavy demands on staff.

Some examples of the actions and behaviours of unreasonably persistent individuals are as follows; it is by no means an exhaustive list:

- Refusing to specify the grounds of a complaint, despite offers of assistance
- Refusing to co-operate with the complaints investigation process
- Refusing to accept that certain issues are not within the scope of a complaints process

- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or within good practice
- Making unjustified complaints about the staff dealing with the complaints, and seeking to have them replaced
- Introducing new information, at a late stage, expecting it to be taken into account and commented on, or raising large numbers of detailed, but unimportant, questions and insisting they are all fully answered
- Covertly recording meetings and conversations
- Submitting falsified documents from themselves or others
- Bringing complaints designed to cause disruption or annoyance or lacking any serious purpose or value
- Adopting a 'scattergun' approach: pursuing parallel complaints on the same issue with a variety of organisations
- Making excessive demands on the time and resources of staff and town councillors with lengthy and/or repeated telephone calls, emails to numerous Council officers, or detailed letters every few days and expecting immediate responses
- Causing distress to staff – including use of hostile, abusive or offensive language or an unreasonable fixation on an individual member of staff
- Refusing to accept the outcome decision of a complaint – repeatedly arguing the point and complaining about the decision, with no new evidence
- Behaviour which has a significant and disproportionate adverse effect on the Council's resources and other residents
- Inappropriate behaviour towards Council staff investigating or involved in the complaint such as inappropriate use of language, aggression or violence
- Persistently complaining about town councillors without grounds for complaint

Care must be taken not to discard new issues which are significantly different from the original issues; however these should be treated as a separate complaint issue.

4. Designating behaviour as unreasonable

It is vital that all attempts are made to maintain effective communication and relationships with those individuals who contact with the Town Council. Prior to taking action under this policy, the investigating officer should ensure that:

- Every reasonable effort has been made to investigate the complaint
- Every reasonable effort has been made to communicate with the individual

a) Prior warning

When the Council considers that an individual is unreasonably persistent in pursuing complaints or otherwise is acting unreasonably a risk assessment will be completed in line with health and safety policies and, if it is concluded that the behaviour is unacceptable/unreasonable, the Town Clerk will write to tell the individual why they find their behaviour unreasonable and/or unacceptable and ask them to change the behaviour.

b) Decision to restrict or terminate contact with the Council

If unreasonable behaviour continues, the Town Clerk will call a meeting of the Council's Emergency Decision Making Committee to review the case.

When making decisions on how to manage the unreasonable behaviour, all relevant factors should be taken into account to ensure that action taken is appropriate and proportionate to the nature and frequency of the contacts with the Town Council at that time.

Due consideration should be given to the individual's health, including any related illnesses or disabilities that may be impacting on behaviour (for example, dementia, learning disability, mental illnesses etc.).

If the individual has not responded appropriately to the prior warning letter a decision may be made to restrict contact with the Council. The individual involved will be notified in writing (or an appropriate alternative format) why it is believed their behaviour falls into the category of unreasonably persistent and/or unreasonable behaviour. They will also be notified what action will be taken and the duration of that action, as well as what they can do to have the decision reviewed.

The following is a list of possible options for managing an individual's involvement with the Council from which one or more might be chosen and applied, if warranted. Any action taken should be appropriate and proportionate. It is not an exhaustive list and often the specific circumstances of the individual case will be relevant in deciding what might be appropriate action:

- Placing limits on the number and duration of contacts with staff per week or month
- Offering a restricted timeslot for necessary calls
- Offering one medium of contact only (telephone, letter, email etc.)
- Requiring the individual concerned to communicate only with one named member of staff
- Requiring any personal contact to take place in the presence of a witness and in a suitable location
- Refusal to register further complaints about the same matter
- Where behaviour is unreasonable and threatens the safety and/or welfare of members, staff, or our partners the Council may decide to terminate contact with

the individual.

- Other action may be taken, for example reporting the matter to the police or taking legal action. Where such action is necessary the Council need not give prior warning

Where a decision on the complaint has been made, the individual can be informed that future correspondence will be read and placed on the file but not acknowledged, unless it contains material new information. The Town Clerk will be identified as the designated officer who will read future correspondence.

Where following restriction of access being implemented an individual continues to behave in a way that is unacceptable or where the behaviour is so extreme that it threatens the immediate safety and welfare of town councillors, staff or partners, the Council may:

- Terminate contact
- Temporarily or permanently restrict/not allow access to the Council offices
- Report the matter to the police
- Take legal action

c) Reviewing the decision to restrict contact

When imposing a restriction on access there will be a specified review date, usually 6 months from the initial decision. The review will be carried out by the Emergency Decision Making Panel in conjunction with the Town Clerk. Restrictions should be lifted and the relationship returned to normal unless there are good grounds to extend the restrictions.

The individual will be informed of the outcome of the review. If the restrictions are to continue, they will be given the reasons and told when the restrictions will next be reviewed.

d) Referral to the Local Government and Social Care Ombudsman

Relationships between organisations and individuals sometimes break down badly when complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances there may be nothing to gain from following through all stages of the Council's Complaints procedure. In these circumstances, the Ombudsman may, exceptionally, be prepared to consider complaints before complaints procedures have been exhausted – if the request is made by both sides to the dispute.

An individual who has been treated as behaving unreasonably may make a complaint to the Ombudsman about it. The Ombudsman is unlikely to be critical of the Council's action if it can show that it acted proportionately, reasonably and in accordance with its adopted policy.

e) Appeals against decisions

All individuals must be informed in writing when the Council wishes to apply a policy to restrict or terminate contact and must be given information on how to appeal the decision.

The appeal will be heard by a panel of three Town Councillors who have not previously been involved with the case.

An individual who is dealt with under this policy will be informed of their right to contact the Local Government and Social Care Ombudsman if they feel the Council has not acted correctly in the administration of the complaint.

f) Recording actions and contacts with the customer

Any decision to apply this policy must be recorded on the Council's complaints database and the Council must keep adequate records of all actions and contacts.

5. Confidentiality

Complaints made to the Council will be treated in confidence.

The Town Clerk will arrange that the details of unreasonably persistent complainants and/or unreasonable behaviour is only passed to those Council staff, town councillors and partner organisations who need to know in order to implement the policy or to protect staff safety.

Confidentiality cannot, however, be guaranteed where a vulnerable person is considered to be at risk and safeguarding procedures apply. In these circumstances, the Council may have to share the information with other external agencies.

Individuals who make their complaints public in the media may forfeit their right to anonymity and the right to confidentiality.

SECTION 2 – VEXATIOUS REQUESTS

6. Definition of Vexatious Behaviour

A vexatious request is: 'a request that is likely to cause distress, disruption, and irritation without any proper or justified cause'.

A vexatious request may include one or two individual requests for information or may form part of a wider pattern of vexatious behaviour. For example, if there is a wider dispute or it is the latest in a lengthy series of overlapping requests.

Examples of vexatious requests are:

- Abusive or aggressive language used by the requester
- Excessive burden is placed on us in dealing with the request

- Targeted correspondence towards one individual against whom they have some personal enmity
- Unreasonable persistent requests relating to matters which have already been dealt with
- The request makes completely unsubstantiated accusations against the authority or specific individuals
- The requester takes an unreasonably entrenched position, rejecting attempts to assist and advice out of hand and shows no willingness to engage with us.
- The requester makes frequent or overlapping requests
- The requester's intention and purpose is to deliberately to cause annoyance
- The requester has adopted a "scattergun" approach
- The request relates to a trivial matter and it is not proportionate to deal with the request.
- The requester is abusing their rights of access to information by abusing the legislation to vent anger or harass and annoy members, staff or partners
- The information requested affects the individual and has already been resolved by us or by independent investigation
- The request is made for the sole purpose of the amusement of the requester.

a) Designation of vexatious and decision to refuse to provide requested information

In some cases, it will be obvious to the Council that a request is vexatious, for instance the tone or content of the request is so objectionable that it would be unreasonable to expect the Council to tolerate it. In these circumstances the Council will consider making a decision to refuse the request under Section 14(1) Freedom of Information Act 2000 (or under the Environmental Information Regulations where relevant).

In other cases, it will not be so obvious then we will take into account if the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. To assess this, the Council will objectively judge the evidence of the impact and weigh this against any evidence about the purpose and value of the request.

However, the Council will not automatically refuse a request simply because it is made in the context of a dispute or if it forms part of a series of requests.

The Council will consider each request for information on its own merits and will not automatically refuse a request because the individual may have caused problems in the past. The Council will ensure that we consider whether the request (and not the requester) is vexatious

Where the request is considered to be vexatious the Council may make the decision not to provide the information and will issue a refusal notice to the requester.

The decision to classify a request as vexatious and to refuse the request will be taken by the Town Clerk in consultation with the Mayor and Deputy Mayor.

A refusal notice setting out why the Council is refusing the request will be issued, unless we have already given the requester a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one.

b) Application for Review

A Requester may request a review of the decision to classify a request as vexatious and to issue a refusal notice. Such a review will be carried out by the Council's Emergency Decision Making Panel.

A requester who has been dealt with under this policy will be informed of their right to contact the Information Commissioner if they feel the Council has not acted correctly in dealing with their request.

c) Recording Actions

Any decisions to apply this policy to the request must be recorded on the Council's information requests data base.