

Sefton Council

Vexatious or Unfocussed Complaints and Data Requests

Policy & Procedures

March 2017

Summary Sheet

Document Information

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| 1 | April 2016 | Ben Heal – Data Protection Officer | |
| 2 | April 2016 | Ben Heal – Data Protection Officer | Incorporation of comments from colleagues |
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Introduction

This policy and procedure describes how Sefton Council applies the Local Government Ombudsman and Information Commissioner's guidance on citizens who the Council perceive as vexatious or unfocused complainants in relation to specific issues. Where the complaints relate to data sharing this document has been prepared in terms of the Council's obligations as a "data controller" under the General Data Protection Regulation, Data Protection Act 2018 and the Freedom of Information Act 2000.

The Council consistently has a small number of complainants who act in a vexatious or unfocused way which makes resolution of their complaints or data enquiries impossible, while taking up a disproportionate amount of Council resources.

The Policy sets out a set of principles and procedures for both staff and complainants in an attempt to either resolve the difficulties encountered or gain sufficient evidence to cease responding to the complaints or data access request by means of defining them as vexatious. It aids in assessment, monitoring and processing of the difficulties and attempts to resolve them.

Organising Principles

The Council recognises that a small minority of complainants and data access seekers cannot work within the Councils usual procedures. Therefore there needs to be an equitable 'due process' offering equivalent rights to either facilitate resolution of the issues raised or where this is not possible conclude ongoing contact with the complainant over the specific concerns.

There is a consistent need to obtain clarity and focus on complaints and enquiries. This is applicable to both complainant and Council.

The Council has an obligation to protect its staff and resources from the complainant's unjustifiable actions.

The formalised assessment process is an opportunity to verify the Council has listened to the complainant, and evaluated its options and rationale when responding. It should evidence a review by senior Departmental and Corporate Council managers of the circumstance, context, and sufficiency of communication with the complainant.

The complainant should not be under or over serviced by the Council regarding the complaint or access sought.

Anticipated Outcomes

A formalised assessment of the issues will be undertaken. This should be overseen by senior managers from the relevant Council Department, the Senior Information Risk Owner, and the Corporate Information Management & Governance Executive Group. The findings will be recorded and shared with the complainant.

Potentially sufficient agreement and focus have been created to enable a Council response to the applicant's request.

Potentially the Council may eventually decide to protect its resources and staff by refusing to deal with the set of issues raised by the complainant as they can evidence they are vexatious in nature.

An overview of the process is outlined in Appendix 1.

Definitions

Unfocused

Where the complainant's issues are either too vague, imprecise as to time, place or personnel or constantly shifting as to what is sought to be resolved.

Vexatious

The regulatory bodies – the Local Government Ombudsman and the Information Commissioner's Office - have itemised what they consider vexatious. While not exhaustive the examples below illustrate the variety of behaviours to which the Council will respond to protect its staff and resources:

- Persistent complaining over the same issue. Persistence will be defined as the same or similar complaint made, irrespective of to whom in the Council, on a number of occasions. Persistently seeking an outcome that the Council has already explained is unrealistic for policy, legal or other valid reasons.
- Complaining about or challenging an issue based on a historic and/or irreversible decision or incident.
- Making persistent and unreasonable demands on Council staff after the unreasonableness has been explained. An example would be a complainant who insists on immediate responses or sets the Council unreasonable deadlines.
- Taking a 'scatter-gun' approach to their complaints, for example within the Council or using MPs, elected members, or regulatory bodies.
- Refusing to specify the grounds of their complaint despite offers of assistance.
- Refusing to cooperate with the Council's investigation of the complaint, insisting on their demands being met without such an investigation.
- Refusing to accept that issues are not within the power of the Council to investigate, change or influence. An example would be a problem caused by the private sector rather than the Council.
- Insisting that the complaint be dealt with in ways other than the Council's complaints policy or equivalent. For example, insisting there are no written records made of the complaint.
- Refusing to accept the outcome of the complaint or data access process after the Council's considered final response, repeatedly arguing the point, or denying that this was an adequate response.
- Insisting a minor variation in the original complaint means that it is a 'new' complaint requiring a new Council response.
- Where the complainant can be evidenced to be verbally or physical abusive, threatening or violent in their contact with the Council over the issue.
- Where the complainant keeps shifting the focus of the topic or relevant staff involved with the complaint.
- Where the complainant has been significantly partially or wholly untruthful in their complaint or data access request.

The Council's response to unfocussed or vexatious behaviours

Once sufficient evidence around seeming unfocused or vexatious behaviour is accrued by the relevant Council team/s the first step is take the issue with relevant evidence to the Corporate Information Management and Governance Executive Group. They will decide if the conditions are met to put one or other of the following two methods in place. Which method depends on the severity and longevity of the complainant's actions.

- Focusing and expectation agreement with complainant. Details provided below with a covering letter and template in Appendix 2.
- Where sufficient evidence already exists Council lawyers will be requested to draft a letter of vexatious status to the complainant. Template provided in Appendix 3.

A failure by the complainant to meet the focusing agreement requirements will lead to the vexatious status statement and be used as evidence of good will and intent by the Council to any subsequent regulator's investigation.

Focusing and expectation agreement with complainant

An agreement would be drawn up between the complainant and the Council. This will need to be visible to all parties and would ideally be signed.

The agreement should recognise that while the complainant has the same complainant rights as any other, there is a need for extra support to gain focus, clarity and structure. If these cannot be obtained the Council cannot resolve the complaint/s and will therefore not progress the complaint.

A central principle is the complainant should not be under or over serviced by the Council or its workforce.

The component elements of the agreement should be:

- Boundaries of relevant Council staff involvement
- Respective responsibilities of complainant and Council
- Forming realisable expectations with complainant
- Contact and authority structure for complainant
- Time frames, deadlines, key information required, communication methods, and closure steps
- List of options for action
- Mutual goals
- Signatures

Boundaries of Council staff involvement

There will be a single point of contact (SPOC) person for the complainant The SPOC will have a senior support supervisor for this specific case who overviews, reviews and supports the staff member.

Other organisation staff will keep to their specialist roles, but direct ALL communications relating to the complaint or data request via the SPOC. The SPOC may at times ask any Council staff to contact directly but the principle is that this is mainly the SPOC's decision. If the SPOC becomes unavailable the complainant will be informed of a replacement.

If the complainant complains about the SPOC, they will need to outline and evidence their complaint in writing, and send it to a specified senior manager. The senior manager will then communicate with the complainant as to whether they consider the complaint justified to the extent they replace the SPOC.

Respective responsibilities of complainant and Council

The complainant should:

- State their complaint in an organised manner without excessive or extraneous material. They should be signposted to advocacy services to support them to do this if necessary.
- Provide all required information in a timely and complete manner – not in dribs and drabs over time.
- Provide only factual and truthful material.
- Use the SPOC and not bring other organisational staff into responding to their complaint/s
- Refrain from personal remarks, offensive or threatening behaviour.

Council staff should:

- Respond via the SPOC in an accurate and timely and truthful manner.
- Unless agreed with the SPOC redirect all communications relating to the complaint back to the SPOC.
- Offer the complainant the same level of service as any other complainant.

Forming achievable expectations with complainant

A key function of the SPOC - with support from specialist staff - is to clarify WHAT the grounds for complaint are. Without this the complaint response cannot progress.

If the complainant subsequently compounds, confuses, or keeps adding complaints, they will explain this is not acceptable as it presents the Council with a shifting and unclear complaint.

If the complainant has further complaints these may await the outcome of the original complaint as this may answer all subsequent complaints.

It will be explained

- All further complaints around the same issue will not be considered until the initial one is completed
- The Council will not respond to a further complaint as this was outlined at the outset of the original complaint.
- It may be appropriate to bring complaints together at a later stage of the process.

Contact structure for complainant

Communications will be via

- Letter or email
- Phone calls
- In person interviews

The SPOC will be where the complainant is directed to go for ALL complaints – except a complaint about the SPOC. It will be explained while they may attempt to contact others in the organisation, including senior managers, they will only redirect them back to the SPOC.

Timeframes, deadlines, key information required, communication methods and closure steps

The SPOC will outline in written form what these expectations are. They are clearly interdependent. For instance, until key information is acquired from the complainant, time frames and deadlines cannot be established. Given the SPOC may be contacting busy operational sites for information it is important to be realistic to the complainant about time scales. If they complain further about non-response they will be directed to the agreed time scales.

List of options for action by the Council

The Council may highlight a number of options for action including:

- To refuse to process complaints which are persistent, confused, and / or contain excessive or extraneous material after the Council's attempt to clarify them with complainant.
- Refusing to register and process further complaints about what it perceives as the same matter.
- Placing of limits on the number and duration of contacts per week or month.
- Offer restricted time slot for necessary calls.
- Limiting the complainant to one contact medium – letter, email, and phone.
- Requiring the complainant only contact one member of staff.
- Any personal contact takes place with a staff witness.

In brief, the implementation sequence for any of the above options starts with SPOC liaising with relevant service manager who will write to complainant outlining why their behaviour is of concern and what actions will follow if it does not cease.

Restrictions will be proportionate and appropriate and recognise individual circumstances and inform the complainant of their right to refer to the Ombudsman or the Information Commissioner.

If progress is impeded by the complainant's actions the matter will be returned to the Corporate Information Management and Governance Executive Group for decision whether to escalate to Vexatious status.

Mutual goals (mutual where possible with the complainant)

Where possible the Council is keen that the above are mutual goals and principles shared between the complainant and the Council. It is the obligation of the complainant to briefly and clearly state what they cannot agree with and why. The Council will decide if they can modify it accordingly.

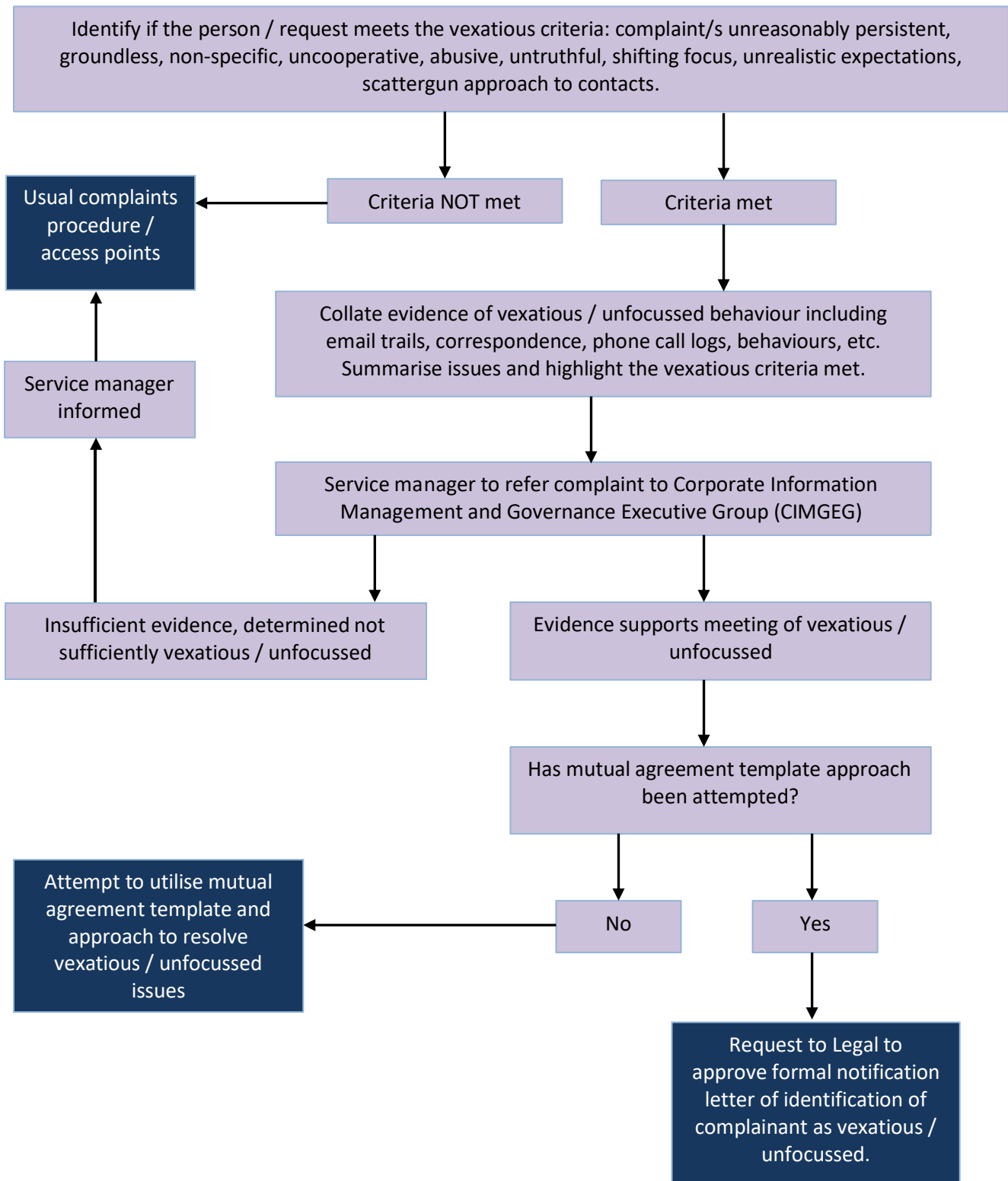
The agreement and any complainant response to it will potentially be shared with any regulator such as the Ombudsman, Information Commissioner's Office and professional body to whom the complainant may turn. It should provide evidence of Council goodwill and openness while requesting structure and clarity from the complainant.

Signatures to agreement

These will be sought where possible. If the complainant refuses to sign, it will be recorded for evidence to any regulatory body that they were offered the opportunity. It is acceptable for them to verbally agree to the agreement and the Council record such agreement.

Appendix 1

Background/Purpose
 To ensure proportionate and appropriate response to citizen complaints when seemingly unfocused or compromising Council staff or resources.



Appendix 2 – Mutual Agreement Template

If it is decided that it might be possible for the complainant and Council to come to a mutual agreement over a set of agreed components relating to their complaints/enquiries the following covering letter and agreement template should be used. The sections are described in more detail above. The following recognises while the complainant has the same complainant rights as any other, there is a need for extra support to gain focus, clarity and structure.

Covering letter to accompany Mutual Agreement Template

Re: Your Contact with Sefton MBC

I write with reference to your complaints to the Council/requests for information under the DPA /FOIA as detailed below:

- XXXX e.g. email of 6 June 2016 addressed to XXX
- XXXX email of 10 June 2016 addressed to YYYY
- XXX
- XXXX

Your contact with the Council has been considered in line with the Council's policy on 'Vexatious or Unfocused Complaints and Data Requests' and to assist in resolving your complaints / requests, the Council consider it appropriate to enter into an agreement with you on how your contact with the Council will be managed in the future.

Please find enclosed a draft agreement for your consideration and if you are happy with the contents I shall be very grateful if you could sign a copy and return it to me at your earliest convenience. Alternatively, you could confirm your agreement via email to:

xxxxxxxxxxxxxx@sefton.gov.uk.

I trust you will view this as a positive development in your relationship with the Council which is advanced as a way in which your complaint / request can be appropriately resolved.

Yours sincerely

Mutual Agreement Template

Boundaries of Council staff involvement

The Council and complainant agree to work through a single point of contact in order to ensure consistency and appropriateness of contact.

Single Point of Contact Details

Add in contact details ...

Job title

Contact details

E-mail

Phone No

Address

Person to contact if you wish to complain about the single point of contact.

Add in contact details ...

Job title

Contact details

E-mail

Phone No

Address

Respective responsibilities of complainant and Council

Adjust the following to include complainant name and add / remove any criteria as necessary.

Complainant agrees to:

- *State my complaint in an organised manner without excessive or extraneous material*
- *Provide all required information in a timely and complete manner – not in dribs and drabs over time*
- *Provide only factual and truthful material*
- *Use the single point of contact and not contact other organisational staff regarding my complaint/s*
- *Refrain from personal remarks, offensive or threatening behaviour*

The Council agrees to:

- *Respond via the single point of contact in an accurate, timely, and truthful manner*
- *Unless agreed with the single point of contact, redirect all communications from the complainant back to the single point of contact.*
- *Offer the complainant the same level of service as any other complainant.*

Forming achievable expectations

Use this section to clarify what the complainant's key issues are and identify the grounds for the complaint.

The primary complaint is:

Contact structure for complainant

Outline the expected way that contact with the single point of contact will be made (letter, email, phone, in person, etc.)

Contact structure

Time frames, deadlines, key information required, communication methods and closure steps

Complete specific details relating to these areas that are realistic and specific. Particular effort should be made to closure steps and definition of when the complaint will be considered closed and no further action will be taken. These elements should be clear and unambiguous.

List of options for action

Where appropriate agree limitations to the actions to be taken by both parties when dealing with the complaint. These could include but are not limited to:

- *To refuse to process complaints which are persistent confused and contain excessive or extraneous material after the agencies initial attempt to clarify them with complainant.*
- *Refusing to register and process further complaints about what it perceives as the same matter.*
- *Placing of limits on the number and duration of contacts per week or month.*
- *Offer restricted time slot for necessary calls.*
- *Limiting the complainant to one contact medium – letter, email, and phone.*
- *Any personal contact takes place with a staff witness.*

Mutual goals

Where possible the Council are keen that the above are mutual goals and principles shared between the complainant and the Council. It is the obligation of the complainant to briefly and clearly state what they cannot agree with and why and the Council will decide if they can modify it accordingly.

The agreement and any complainant response to it will potentially be shared with any Council regulator such as the Ombudsman, Information Commissioner's Office and professional body to whom the complainant may turn. It should provide evidence of Council goodwill and openness while requesting structure and clarity from the complainant.

Signatures to agreement

Signature

Date

Complainant/s

*Senior Information Risk Owner on
behalf of Council's Corporate
Information Management and
Governance Executive Group*

Once completed the agreement should be copied to: Complainant/s, Senior Information Risk Owner and single point of contact.

Appendix 3 – Vexatious Status Letter

Template for letter of vexatious status to complainant – to be completed by Legal and approved by CIMGEG.

Re: Your contact with Sefton MBC

I write in connection with your recent communications with Sefton Council which I consider to be vexatious. I will detail the action that we will take as a consequence of that decision.

I have reviewed the considerable amount / nature of communications and have summarised events in the attached document.

It is my decision that you should now be considered a vexatious complainant for the following reasons:

- You have made groundless complaints and claims against the Council and its officers
- You have made an unreasonable amount of contacts with the Council in relation to matters which have their origin in events of XXXXX
- You make the same complaints repeatedly
- You continually raise subsidiary issues / complaints
- Your complaints are often vague, not backed by evidence and / or difficult to comprehend
- You contact many officers within the Council
- You refuse to accept the outcome of the complaints process
- You refuse to accept documentary evidence
- Your repeated contacts with Council officers is placing unreasonable demands on staff time and resources
- You have threatened legal proceedings against the Council on a number of occasions but we have not been served with any court papers
- Your communication has included use of threats, intimidation or violence
- Your communication has included use of abusive, offensive or discriminatory language

Please note that in future Sefton Council will not reply to or acknowledge any further contact from you on any matter directly or indirectly related to the matters described above.

This decision will be reviewed by me in 6 months' time and you will be informed of the outcome of that review.

When making this decision I have considered the *Local Government Ombudsman's Guidance note on management of unreasonable complaint behaviour* issued in July 2014 and I consider this to be a just and proportionate response.

However, if you submit any further complaints not related directly or indirectly to matters referred to above those complaints will be considered on their merits according to the appropriate process.

Signed by relevant Senior Manager

Appendix 4

Background information from the Information Commissioner's Office and Local Government Ombudsman relating to vexatious requests.

Information Commissioner's Office

<https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

Local Government Ombudsman

www.lgo.org.uk/information-centre/reports/advice-and-guidance/guidance-notes/guidance-on-managing-unreasonable-complainant-behaviour