

## Marden Parish Council Policy for dealing with Unreasonable Complainant Behaviour

Adopted by Marden Council on 12 August 2019

### INTRODUCTION

- 1.1 Complaints about and to Parish Councils should be processed in accordance with the Council's adopted Complaints Procedure. During this process, Council staff may come into contact with a small number of complainants who take up an unwarranted amount of Council resources or impede the investigation of their complaint. The aim of this policy is to identify situations where the complainant could be considered vexatious and to detail how to respond to such situations.
- 1.2 Careful judgement and discretion must be used in applying the criteria to identify potential vexatious complainants and in deciding what action to take in specific cases.
- 1.3 It must be recognised that complainants may sometimes act out of character at times of anxiety or distress and reasonable allowances should be made for this.

### DEFINITION OF UNREASONABLE COMPLAINANT BEHAVIOUR

- 2.1 The terms 'unreasonable complainant behaviour' and 'unreasonably persistent complainants' are used. **For the Parish 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, or other people's complaints.** It is important to differentiate between 'persistent' complainants and 'unreasonably persistent' complainants. Arguably, many of the people who submit complaints to the Council are 'persistent' on the entirely reasonable basis that they feel the Council has not dealt with their complaint properly and are not prepared to leave the matter there. This persistence will frequently be justified. Almost all complainants see themselves as pursuing justified complaints.

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 Officer time, or they may be very emotionally charged and distressing for all involved.

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 sometimes council finds itself in the position of having to restrict access to council premises or even having to resort to legal action to address such behaviour, for example, in the form of anti-social behaviour orders or injunctions.

**This guidance does not address the issues of health and safety but sits alongside existing Council policies as a means of addressing the full spectrum of behaviours which the Council might have to address.**

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

- 2.2 Complainants may be deemed to be vexatious as a result of their unreasonable behaviour where current or previous contact with them shows that they have met one or more of the following criteria:
  - 2.2.a Persisting in pursuing a complaint where the Council's Complaints Procedure has been fully and properly implemented and exhausted. The substance of a complaint is changed or new issues are raised persistently or complainants seek to prolong contact by unreasonably raising further concerns although care must be taken not to disregard new issues, which differ significantly from the original complaint.

- 2.2.b Complainants are unwilling to accept documented evidence of facts or deny receipt of an adequate response despite correspondence specifically answering their questions / concerns. This could also extend to complainants who do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
  - 2.2.c Complainants refuse to specify or do not clearly identify the precise issues or grounds they wish to be investigated despite reasonable efforts to help them to do so by staff.
  - 2.2.d Complainants focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It should be recognised that determining what is trivial can be subjective and careful judgement must be used in applying the criterion.
  - 2.2.e Complainants have, in the course of pursuing a registered complaint, had an excessive number of contacts (or unreasonably made multiple complaints) with the Council placing unreasonable demands on Council employees. Such contacts may be in person, by telephone, letter, fax or electronically. Discretion must be exercised in deciding how many contacts are required to qualify as excessive, using judgement based on the specific circumstances of each individual case.
  - 2.2.f Complainants have harassed or been abusive or verbally aggressive or threatening or bullying on one or more occasions towards staff dealing with their complaint – directly or indirectly – or their families and/or associates. All incidents of harassment or aggression must be documented, dated and reported to the Chair.
  - 2.2.g Complainants are known to have electronically recorded meetings or conversations without the prior knowledge and consent of the other parties involved. It may be necessary to explain to a complainant at the outset of any investigation into their complaint(s) that such behaviour is unacceptable and can, in some circumstances, be illegal.
  - 2.2.h Complainants making unnecessarily excessive demands on the time and resources of the Council or its 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.
  - 2.2.i Complainants refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved.
  - 2.2.j Complainant 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.
  - 2.2.k Complainant insisting on the complaint being dealt with in ways which are incompatible with the adopted Complaints Procedure or with good practice.
  - 2.2.l Complainant making what appears to be groundless complaints about the staff dealing with the complaints and seeking to have them replaced.
  - 2.2.m Complainant 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.
  - 2.2.n Complainant adopting a 'scattergun' approach: pursuing a complaint or complaints with the Council and, at the same time, with a Member of Parliament/a councillor/the authority's independent auditor/the Standards Board/local police/solicitors/the Ombudsman.
  - 2.2.o Combinations of some or all of these.
- 2.3 Complaints may be deemed to be vexatious in any situation where physical violence has been used or threatened towards staff or their families/associates at any time. This will cause personal contact with the complainant to be discontinued and the complaint will, thereafter, only be pursued through written communication. All such incidents should be documented, reported to the Council, and where appropriate to the Police.
- 2.4 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 an unreasonably persistent complainant. 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 unreasonably persistent. If complaints procedures are operating properly, then responding to expressions of dissatisfaction and requests for information should not cause the Council particular problems.

## **DEALING WITH UNREASONABLE COMPLAINANTS**

- 3.1 Once a complaint has been received by a Parish Clerk, which the Clerk considers could be unreasonable behaviour or unreasonably persistent, this should be passed on to the Chair or Vice Chair. The complainant should be informed that any further contact should be through the Chair or Vice Chair. The complainant(s) should also be informed that any course of action taken as a result only relates to contact with the Council over their specific complaint(s). It does not, and is not intended to, have any impact on any other dealings between the Council and the complainant(s) on other unrelated issues.
- 3.2 The Chair will have the responsibility for identifying complainants as vexatious, in accordance with the above criteria. The Council will decide what action to take and will implement such action and notify complainants promptly in writing the reasons why they have been classified as vexatious as a result of their unreasonable behaviour or unreasonably persistent behaviour and the action to be taken.
- 3.3 This notification must be copied promptly for the information of others already involved in the complaint. A record must be kept for future reference, of the reasons why a complainant has been classified as vexatious and the action taken.
- 3.4 The Council may decide to deal with vexatious complainants in one or more of the following ways:
  - 3.4.a Once it is clear that a complainant meets any one of the criteria in section 2 (above), it may be appropriate to inform them in writing that they are at risk of being classified as vexatious. A copy of this policy should be sent to them and they should be advised to take account of the criteria in any future dealings with Council officers. In some cases it may be appropriate at this point to copy this notification to others involved in the complaint and suggest that complainants seek advice in taking their complaint further.
  - 3.4.b Try to resolve matters by drawing up a signed agreement with the complainant (if appropriate, involving the Clerk) setting out a code of behaviour for the parties involved if the Council is to continue dealing with the complaint. If this agreement were breached consideration would then be given to implementing other actions as outlined below.
  - 3.4.c Decline further contact with the complainant either in person, by telephone, letter or electronically – or any combination of these – provided that one form of contact is maintained. Alternatively, further contact could be restricted to liaison through a third party.
  - 3.4.d Notify complainants in writing that the Council has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. Complainants should be notified that correspondence is at an end and that further communications will be acknowledged but not answered.
  - 3.4.e Inform complainants that if appropriate, the Council reserves the right to refer the behaviour of unreasonable or vexatious complaints to the police.
  - 3.4.f In exceptional circumstances, consideration can be given to the possibility of obtaining a High Court injunction to prevent the complainant harassing, threatening or distressing named or individual council employees.

## **VEXATIOUS STATUS**

- 4.1 If the complainant fails to comply with any arrangement in clause 3 and/or persists in their unreasonable behaviour as set out in clause 2 the complainant shall be considered to be vexatious and notified in writing by the Council.

## **WITHDRAWING VEXATIOUS STATUS**

- 5.1 Once complainants have been classified as vexatious such status will continue to apply for a period of six months, at the end of which period it will be reviewed by the Council. It will either be re-imposed for a further period of six months and all relevant parties informed or it will be withdrawn. However, this status can also be withdrawn at any time if, for example, complainants subsequently demonstrate a more reasonable approach. If they submit a further complaint, relating to a new matter(s) the normal complaints procedures would apply.

- 5.2 Where vexatious status is withdrawn, normal contact with complainants and application of the complaints procedures will be resumed.

## **REVIEW PROCESS**

- 6.1 If the Vexatious Complainant is unhappy about the decision to place their name on the vexatious complainants list they may write to the Council to review the decision setting out any reasons why in writing within 14 working days of being notified of the decision in writing.
- 6.2 The existence and operation of this procedure will be reviewed, shared with and explained to all relevant staff.

## **RETENTION OF DOCUMENTS**

- 7.1 The Clerk will ensure documents with personal data are retained and then destroyed in line with the Parish Council's General Data Protection Regulation policies and documents.

Review by: September 2020

Signed:

Dated:

David Bennett, Chair Marden Parish Council