



## Preston City Council

### Policy on Unreasonably Persistent Complainants/Customers and Unreasonable Complainant/Customer Behaviour

#### Introduction

It has been recognised by the Local Government Ombudsman and Social Care Ombudsman that certain people pursue complaints in a way which can impede an investigation **or can have significant resource implication for authorities.**

This policy has been produced to assist the Council to ensure that all complainants/customers receive a proportional amount of officer time and certain individuals do not take up disproportionate amounts of time, to the extent that it inhibits a service to others. Certain complainants/customers may be abusive, offensive or threatening and the Council will not tolerate this type of behaviour. In addition such complainants/customers can cause undue stress to staff which has a detrimental impact on the Council's workforce.

#### Statement of Intent

The Council will make every effort to deal with its complainants consistently and fairly. However, there are certain situations where the behaviour of a complainant/customer will not be tolerated. This policy aims to ensure that staff are assisted when dealing with complainants/customers who are unreasonable or who exhibit unreasonable behaviour.

#### Scope of the Policy

Having a policy on 'unreasonably persistent' complainants/customers and 'unreasonable complainant/customer behaviour' and corresponding guidance for staff on procedures should help Preston City Council deal with complainants/customers in ways which are demonstrably consistently and fair. It also helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. In the absence of such guidance the Council is likely to have greater problems with unreasonable and with unreasonably persistent complainants/customers. In addition, it provides a yardstick against which performance can be assessed for monitoring purposes.

It is worth noting that there is a difference between ‘persistent’ complainants/customers and ‘unreasonably persistent’ complainants/customers and the Council needs to remember that anyone who is aggrieved may be persistent, but some people will pursue the matter in an inappropriate way.

Finally there may be times when there is nothing further that can be done to assist complainants/customers to resolve matters e.g. when they have an independent right of appeal of the complainant/customer can take appropriate legal action. Where this is the case investigations may be drawn to a close and action may be taken to terminate the contact on a case.

## **Definition**

The Local Government Ombudsman and Social Care Ombudsman (LGSCO) states that **“For us, unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with an authority, hinder the authority’s consideration of their, or other people’s complaints”**.

This policy therefore 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.

## **Further Guidance**

The Council has an existing complaints procedure, which gives residents the opportunity to make a complaint about a service received (or not). 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/customer. Similarly, the fact that a complainant/customer 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.

## **Examples of unreasonably persistent complaints and unreasonable complainant/customer behaviour**

Below are some of the examples of unreasonable persistent complaints and unreasonable complainant/customer behaviour which officers at Preston City Council may find problematic. (N.B. this list is not exhaustive).

- Refusing to specify the grounds of a complaint/allegation, despite offers of assistance from Council staff.

- Refusing to co-operate with the investigation process while still wishing their complaint/allegation to be resolved.
- Refusing to accept that issues are not within the remit of the Council's complaints procedure despite having been provided with information about the procedure's scope.
- Insisting on the complaint/allegation being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- Making what appear to be groundless complaints/allegations about the staff dealing with the complaints/allegations, and seeking to have them replaced.
- Changing the basis of the complaint/allegation as the investigation proceeds and/or denying statements he or she made at an earlier stage.
- Introducing trivial or irrelevant new information which the complainant/customer 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.
- Covertly recording meetings and conversations.
- Adopting a 'scattergun' approach: pursuing a complaint(s) or allegation(s) with the Council and, at the same time, with a Member of Parliament/a Councillor/the Council's External Auditor/local Police/Solicitors/the Ombudsman.
- Making unnecessarily excessive demands on the time and resources of staff whilst a complaint/allegation is being looked into, for example, excessive telephoning or sending emails to numerous Council staff, writing lengthy complex letters every few days and expecting immediate responses.
- Submitting repeat complaints/allegations, after processes have been completed, essentially about the same issues, with additions/variations which the complainant/customer insists make these 'new' complaints or allegations which should be thoroughly investigated.
- Submitting falsified documentation/evidence.
- Refusing to accept the decision – repeatedly arguing the point and complaining about the decision, with no new evidence.
- Using foul or abusive language or making threats to Council officers (consideration should also be given to taking appropriate action under the Council's Health and Safety policies).

- Combinations of some or all of these.

These actions (and potentially others) are therefore ‘triggers’ for an officer to consider whether the policy is applicable.

## Options

The Council has a number of options available to it, if it wishes to refer to a complainant/customer as being unreasonable or unreasonably persistent. If the Council is considering pursuing action under this policy, consideration should be given to what action is appropriate balanced against the rights of the individual. In particular when considering what action might be appropriate the Council must meet its legal duties under the Equality Act 2010 and related legislation. The Council must comply with its legal duties under:

- Section 149 of the Equality Act 2010 (the public sector equality duty) and
- The Equality Act 2010 (Specific Duties) Regulations 2011

In summary the Council when exercising its functions must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not

The general equality duty covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In addition the Council’s equality policies should be fully complied with.

It cannot be stressed enough that the precise nature of the action that the Council decides to take in relation to an unreasonable or unreasonably persistent complainant/customer should be appropriate and proportionate to the nature and frequency of the complainant’s/customers contact with the Council at that time.

The following list is a ‘menu’ of possible options for managing a complainant’s involvement with the Council from which one or more might be chosen and applied **if warranted**. It is not exhaustive and often local factors will be relevant in deciding what might be appropriate action.

- Placing time limits on telephone conversations and personal contacts.

- Restricting the number of telephone calls that will be taken (for example, one call on a specified morning/afternoon of any week).
- Limiting the complainant/customer to one medium of contact (telephone, letter, email etc.) and/or requiring the complainant/customer to communicate only with one named member of staff.
- Requiring any personal contacts to take place in the presence of a witness and in a suitable location.
- Refusing to register and process further complaints/allegations about the same matter.

N.B. Evidence of an impairment which could restrict the use of a particular communications medium must be taken into account under the Equality Act 2010 (and related legislation) and may alter a decision.

Where a decision on the complaint/allegation has been made, providing the complainant/customer with acknowledgements only of communications, or ultimately informing the complainant/customer that future correspondence will be read and placed on the file but not acknowledged should be considered. This officer will usually be the original line manager who made the referral.

### **Operation of the Policy**

If an officer, having read the policy, thinks it is applicable, they should discuss the matter with their line manager. Members of staff and their line manager may have particular views on complainants/allegations, as they may have been affected by their actions. It is therefore considered that a line manager wishing to invoke the policy should forward a file of evidence for their Head of Service to consider. If the Head of Service confirms that the policy should be invoked then he/she will discuss the case with their appropriate Director. The Head of Service will then make a decision (giving reasons) as to whether the policy should be invoked and, if so, what restrictions should be put on the complainant's/customers contact with the Council. If the Head of Service advises that he/she has a conflict of interest then another Head of Service, who is not conflicted, should consider the matter.

If a decision is taken to apply the policy the Head of Service (or other Head of Service, if the Head of Service is conflicted) will:-

- Inform the relevant Line Manager of the decision and what (if any) restrictions are to be put in place.
- Write to the complainant informing them of the decision, the reasons for it, what it means for his or her contacts with the Council, how long the restriction will last and what the complainant/customer can do to have the decision reviewed.

- Enclose a copy of the policy with the letter to the complainant/customer.
- Keep a record of the decision.
- Inform CMT and the Council's Information Governance Officer of the decision.

If the decision is taken not to apply the policy, a record will be kept of this decision and why the decision was made.

## **Appeals**

Any complainant/customer considered to be acting in an unreasonable way or who exhibits 'unreasonable behaviour' will have the opportunity to appeal the decision in writing to the Chief Executive and the Council's Monitoring Officer, within 14 days of the date of the decision of the Head of Service (or other Head of Service if the Head of Service is conflicted).

Within 14 days of the receipt of the appeal the Chief Executive, after discussing the matter with the Council's Monitoring Officer, will respond to the complainant/customer dismissing or upholding the appeal and giving reasons.

If the appeal is rejected the complainant/customer will be advised that they can make a complaint to the relevant Ombudsman.

If the appeal is upheld the complainant/customer and Head of Service should be informed.

Once the policy has been applied to a complainant/customer, records of all future correspondence from them must be kept and checked to pick up any potential new information which must be acted on if necessary.

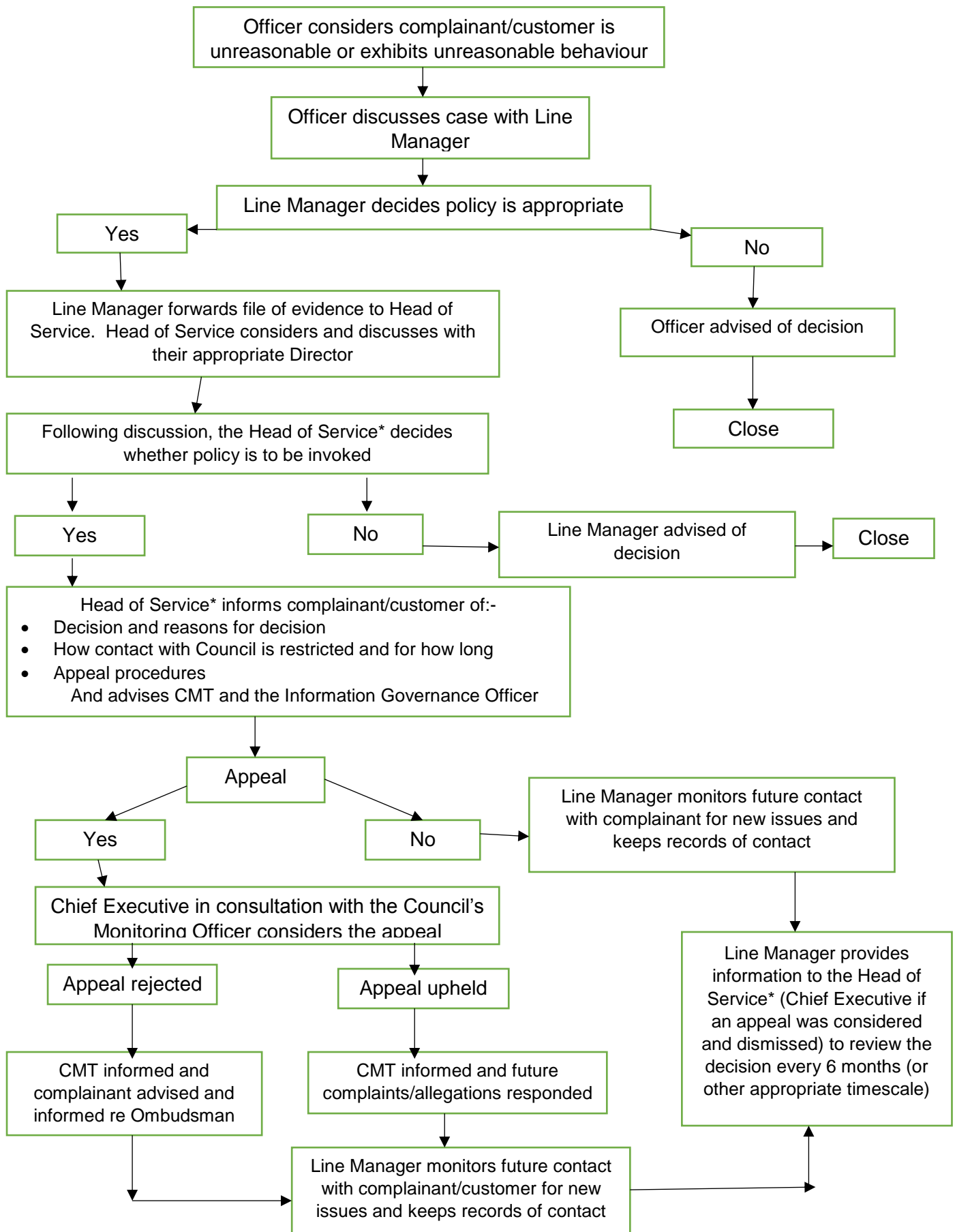
Decisions taken to invoke the policy should be reviewed every six months (or where appropriate another timescale, if necessary) and, if appropriate, restrictions lifted. The line manager will make a diary note of the review date and provide, in good time, sufficient information to enable the Head of Service (or the Head of Service who took the decision in the event of the Head of Service being conflicted) to review the decision. If an appeal was made then the review of the decision should be taken by the Chief Executive in consultation with the Council's Monitoring Officer.

Once a decision has been made it should be disseminated to CMT so that relevant Heads of Service can be notified of the outcome.

## **Referring Unreasonably Persistent Complainants/Customer and Unreasonable Complainant/Customer Behaviour to the Local Government and Social Care Ombudsman or Housing Ombudsman (for housing complaints)**

In some cases, relations between the Council and unreasonable and unreasonably persistent complainants/customers break down badly while complaints/allegations are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances there is often little purpose in following through all stages of the Council's complaints procedure and where this occurs the relevant Ombudsman may be prepared to consider complaints/allegations before the Council's investigation procedures have been exhausted. This is the case even in respect of statutory complaints procedures. The appropriate Head of Service is the appropriate person to make this decision in consultation with their appropriate Director.

A complainant/customer who is considered to be acting unreasonably or being unreasonably persistent in the pursuit of their complainant/allegation may make a complaint to the relevant Ombudsman about the way in which he or she has been treated. The Ombudsmen are unlikely to be critical of the Council's action if it can show that its policy has been operated properly and fairly.



\*or other Head of Service in the event of the Head of Service having a conflict of interest