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## Table of contents

<b>1. Purpose of the Policy.....</b>	<b>3</b>
<b>2. Summary.....</b>	<b>3</b>
<b>3. Background .....</b>	<b>3</b>
<b>4. Scope .....</b>	<b>4</b>
<b>5. Examples of unreasonable behaviour and actions.....</b>	<b>5</b>
<b>6. What actions can be taken to stop or limit behaviour?.....</b>	<b>6</b>
<b>7. What happens if a customer continues to contact the Council?.....</b>	<b>7</b>
<b>8. What can a customer do to challenge the Council’s decision?.....</b>	<b>8</b>
<b>9. How does the Council review the decision? .....</b>	<b>8</b>
<b>10. Confidentiality, legal requirements and non-compliance.....</b>	<b>9</b>
<b>11. What actions can be taken to stop or limit the behaviour?.....</b>	<b>10</b>
<b>12. What happens if a customer continues to contact the Council?.....</b>	<b>10</b>
<b>13. What can a customer do to challenge the Council’s decision?.....</b>	<b>10</b>
<b>14. How does the Council review the decision? .....</b>	<b>11</b>
<b>15. Dealing with requests that are manifestly unfounded or excessive.</b>	<b>11</b>
<b>16. What does manifestly unfounded mean? .....</b>	<b>11</b>
<b>17. What does excessive mean?.....</b>	<b>12</b>
<b>18. Refusal to comply with a request.....</b>	<b>12</b>

## 1. Purpose of the Policy

The aim of this policy is to help customers and staff to understand how the Council manages unreasonably persistent and unreasonable behaviour by customers. It gives clear guidance as to the definition of unreasonable behaviour and explains what actions staff should take when presented with such behaviour or when they receive unreasonable or vexatious requests for information. This Policy will apply to Penryn Town Council and has been based on guidance issued by the Local Government and Social Care Ombudsman (LGSCO) and the Information Commissioner's Office (ICO).

## 2. Summary

Dealing with correspondence from customers, a complaint or information requests is usually a straightforward process. However, in a minority of cases, people pursue correspondence in a way that can impede the investigation of their complaint or can have significant resource implications for the Council. This policy has been formulated to deal with the small number of customers who make it necessary for special arrangements to be made. It should be noted that with regards to requests for information there are differences between Freedom of Information (FOI) and non-FOI related cases and these are outlined later, although the general principles below apply to both instances.

When referencing FOI in this Policy, this also applies to Environmental Information Regulation (EIR) requests. Requests that relate to the environment, land or property fall under the EIR regime rather than FOI but are dealt with in a similar manner. Requests for personal information may fall under the General Data Protection Regulation (GDPR) which are dealt with separately.

We always aim to deal with any correspondence or complaints in a way which is open, fair and transparent and we will always ensure that complaints, or requests for information are dealt with impartially. We have developed this policy so that people who complain and the staff who manage those complaints understand what to do if people start to behave unreasonably.

## 3. Background

We do not normally limit the contact people have with us. Whether they are complaining, making a request for service, a FOI request or seeking help and guidance, we are committed to dealing with all requests fairly and impartially and to providing a high quality of service. We are keen to resolve any dispute and/or complaint as early as possible.

Occasionally, the behaviour of some customers can make it very difficult for us to deal with their concerns. In a small number of cases the actions of some customers become unacceptable because they involve abuse or violence and aggression to staff or other people. When this happens, we have a duty to take appropriate steps to limit the customers contact with the Council. On other occasions we have to consider whether a customer's actions are having an

impact on our ability to do our work and to provide a service to others. Such actions can occur either while the complaint is being investigated, or once we have completed the investigation.

We understand that people sometimes feel frustrated about matters, but we will not tolerate behaviour which we deem to be unacceptable, threatening, abusive or unreasonably persistent towards staff or Councillors or imposes such a burden on the council that it is an unreasonable drain on our resources.

## 4. Scope

We define unreasonably persistent and unreasonable customers, referred to as Vexatious or Manifestly Unreasonable under FOI/EIR and Manifestly Unfounded under GDPR, as those customers, who because of the frequency or nature of their contacts with us, hinder our consideration of their or other people's issues or complaints.

These are generally covered under 2 key areas:-

- customers who feel that the Council has not dealt with their issue, complaint or information request properly and are not prepared to leave it there; and
- customers who may have a justified dispute, complaint, information request or grievance, but these are either being pursued in inappropriate ways, or customers may be intent on pursuing the issue which appears to have no substance, or which may have already been investigated and determined. Their contacts with the Council may be amicable but still place very heavy demands on employee time, or they may be very emotionally charged and distressing for all involved.

Sometimes a situation between the Council and a customer can escalate and the behaviour moves from being unreasonable and unreasonably persistent to behaviour which is unacceptable, for example, abusive, offensive or threatening behaviour. The Council is committed to ensuring that disruptive and abusive customers within its premises are managed in an appropriate and consistent manner, which provides a safe and pleasant environment, conducive to the effective access to and use of Council resources and services.

Any decision resulting from the use of the policy normally applies to the nature of the dispute, complaint or subject matter and not to the customer themselves. However, it is very likely that the customer's previous behaviour will have some bearing on how to proceed with unrelated future correspondence or contact with the Council, particularly where there has been an element of extreme behaviour or verbal abuse. The Council aims to provide a safe workplace for all staff, contractors and visitors to Council premises. The Council operates a zero-tolerance policy towards any harm, abuse or threats directed towards staff, and any behaviour which may be deemed disruptive or constitutes a criminal offence. Any conduct of this kind will be dealt with under our duty of care and occupational health and safety responsibilities.

It should be noted that it is not the substance of the complaint or information request that should be considered when this policy is used as there are routes that a customer can follow if they consider that the council has not resolved a matter to their satisfaction. The policy considers if the contact itself is unreasonably persistent, or in the case of information requests, vexatious or unreasonable.

## 5. Examples of unreasonable behaviour and actions

The following is a list of some of the actions and behaviours which may be deemed as unreasonable, unreasonably persistent, or vexatious/manifestly unreasonable under FOI/EIR. The list is by no means exhaustive and is designed to give an indication of the type of behaviour that is considered to be unreasonably persistent:-

- Refusing to specify the grounds of a dispute and/or complaint, despite offers of assistance from Council employees;
- Refusing to co-operate with the complaints investigation process while still wishing their complaint to be resolved;
- Refusing to accept that certain issues are not within the scope of the Council's complaints procedure;
- Insisting on the dispute and/or complaint being dealt with in ways which are incompatible with the Council's adopted complaints procedure or with good practice;
- Making unjustified complaints about employees who are trying to deal with the issues, and seeking to have them replaced or harbouring personal grudges;
- Changing the basis of the complaint as the investigation proceeds;
- Denying or changing statements made at an earlier stage;
- Introducing trivial or irrelevant new information at a later stage;
- Raising numerous, detailed and unimportant questions and insisting they are all fully answered;
- Covertly recording meetings and conversations without the prior knowledge and consent of other persons involved;
- Submitting falsified documents from themselves or others;
- Adopting a 'scattergun' approach: pursuing parallel disputes and/or complaint(s) on the same issue with a variety of officers, departments or services;
- Making unnecessarily excessive demands on the time and resources of employees whilst a dispute and/or complaint is being looked into. Making excessive telephone calls or sending emails to numerous Council employees, writing lengthy complex letters every few days and expecting an immediate response;
- Submitting repeat complaints or information requests after the complaints/information request process has been completed about the same issue(s) or with minor additions/variations which the customer insists make these a 'new' dispute and/or complaint;

- Being abusive or using aggressive language;
- Rejecting attempts by the Council to assist and advise and showing no willingness to engage with Council officers;
- Explicitly stating that it is their intention to cause disruption to the Council;
- Refusing to accept the decision; repeatedly arguing points with no new evidence;
- Using other family members or membership of a group or body to attempt to re-open a complaint already pursued by a complainant or to try to further requests or complaints already pursued or;
- Frequently using public questions at a meeting of the Council to pursue a complaint or information requests; or
- Combinations of some or all of the above.

## 6. What actions can be taken to stop or limit behaviour?

The actions we take will depend upon the nature and extent of the behaviours that are shown in this policy. Any violence or aggression that is demonstrated towards staff, Officers or Councillors, is dealt with under different provisions. Any action taken should be appropriate and proportionate to the nature and frequency of the customer's contacts with the Council. If the contact and its persistence adversely affects the Council's ability to do its work, is disproportionately resource intensive and/or adversely affects the Council's ability to provide a service to another, the Council may need to address their behaviour in the following ways.

- Initially the customer may be sent a letter which will explain that their conduct is becoming a concern. The letter will ask that the behaviour exhibited is moderated and will suggest, where appropriate, that a single point of contact is used to contact the Council and will set out who this will be.

Should this request not be heeded there are 2 stages which must be followed for a customer to be made unreasonably persistent or their unreasonable behaviour recognised as such.

### **Stage 1 (prior warning)**

If the customer ignores the initial letter and is deemed to be unreasonably persistent or demonstrating unreasonable behaviour, the Town Clerk will issue a prior warning letter, including the following points:

- A further explanation of why the customer's behaviour is deemed unacceptable;
- An offer of a meeting, if deemed appropriate by the Council, with an Officer from the Council to try and resolve the dispute / complaint / issue and explain to the customer why their behaviour is unacceptable;
- Advising of a named officer/point of contact for any further correspondence;
- A statement of future intent to apply restrictive action to the customer's contact should their behaviour continue;

- Referencing and including a copy of the Unreasonable Customer Behaviour policy.

Any arrangements for limiting a customer's contact must take account of the customer's individual circumstances. However, such actions may include blocking a customer's email address, denying the customer the ability to email the Council and/or refusing to take telephone calls from the customer.

Should such action be necessary the customer's name will be added to the Council's register as having been sent a prior warning letter.

### **Stage 2 (full implementation of the policy)**

- Full implementation of the policy will be undertaken by the Town Clerk, or nominated representative, in liaison with the Council on the provision of the following being undertaken and recorded;
- Before the policy can be fully implemented, the Town Clerk, or their nominated representative, must be satisfied that the customer is behaving in an unreasonable or persistent manner (as per the policy), that the complaint / issue / dispute has been dealt with properly and in accordance with this policy.
- Once satisfied, the Town Clerk, or their nominated representative will take a report (factual and unbiased) to the Council detailing a history of the dispute / complaint, the reasons why the customer's behaviour is felt to be unreasonable or persistently unreasonable, a log of contact with the customer (to include dates, times and nature of contact) and any other related information which is of relevance. The role of the Council is to consider if the customer's contact with the Council is unreasonably persistent, it will not examine the complaint overall.
- If the Council takes the decision to make the customer unreasonably persistent, the Town Clerk, or their nominated representative will write to the customer advising them of this, explaining how long the restrictions will remain in place and what the customer can do to have the decision reviewed;
- Should a customer who has been declared unreasonably persistent raise new issues or complaints, these will be reviewed on their own merits and consideration given to any restrictions on the customer which have previously been applied before the new issues are processed.
- The customer will be added to the Council's register as being declared by the Council as a persistent complainant, also ensuring relevant staff, Officers and Councillors are made aware.

## **7. What happens if a customer continues to contact the Council?**

A named Officer/Councillor should be appointed to deal with and review any future correspondence or contact from the customer. When reviewing any future correspondence, the

Officer/Councillor should consider whether this relates to an existing issue or whether it is a new concern.

Where a customer continues to contact us about an existing issue to which this policy has been applied but provides no further new evidence to support their complaint, no further action should be taken on the issue and a letter will be sent to the complainant advising of this and then no further correspondence will be entered into.

If a customer raises a new complaint or provides further new evidence to support their existing complaint, the Town Clerk, or their nominated representative will make a decision as to how this will be dealt with and whether any existing restrictions (as per this policy) are still appropriate.

If a customer's behaviour becomes abusive or threatening, we may take the decision to inform the police.

Customers should not seek to circumvent this policy by asking someone else who is connected to them, such as a family member, someone of close association, advocate, or use membership of a group or body to submit the same or identical complaints on their behalf. Should we consider that someone is acting in place of or with a declared unreasonably persistent complainant, the customer who has submitted the duplicate complaint will be treated in the same manner.

Should a customer seek to circumvent this policy by contacting their local MP or Cornwall Councillor, we will engage with the MP or Cornwall Councillor, and we will ask that they assist us in maintaining the customer's status, subject to their own investigations into the matter.

The ability for customers who are declared unreasonably persistent to ask questions during the public question sessions of Council or Committees of the Council will be considered on a case-by-case basis by the Town Clerk in accordance with the Council Procedure Rules.

Further, should a customer to whom the Policy has been applied, continue to act in breach of this policy, Councillors have the right to not reply or respond to this communication without this being considered as a breach of the Code of Conduct for Councillors.

## **8. What can a customer do to challenge the Council's decision?**

If a customer is unhappy with the decision the Council has taken under this policy or is unhappy with how they have been treated, they may make a complaint to the LGSCO about how they have been treated or they are free to seek their own independent legal advice.

## **9. How does the Council review the decision?**

Where restrictions (in line with this policy) have been applied to a customer, they will normally be in place for a year, but will be subject to a review at 6 months by the Town Clerk with the customer being advised of this in writing.

At the end of the restriction period, the Council will review the case; and the Town Clerk (or their nominated representative) will write to the customer to advise them of the outcome of the Council's deliberations in writing. Where any restrictions are to continue, the customer will be notified of this alongside an explanation of why and when the next review is scheduled to take place.

## 10. Confidentiality, legal requirements and non-compliance

- All personal data provided to the Council will be processed in accordance with GDPR and the Data Protection Act 2018;
- Any breach of the policy may result in the Council being referred to the LGSCO.

### **For FOI/EIR related cases (sections 11 – 14)**

The following sections cover FOI/EIR cases where it is deemed that a request is Vexatious under Section 14(1) of the Freedom of Information Act (FOIA) or Manifestly Unreasonable under regulation 12(4)(b) of the Environmental Information Regulations (EIRs).

The Council does not have to deal with requests that are vexatious under s14(1) of the FOIA.

However, s14(1) can only be applied to the request and not the requestor and there needs to be careful consideration given as to whether the request is vexatious before it is classed as such.

Section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. Court cases have recognised the need to protect council resources from unreasonable requests. The Information Commissioner (ICO) sets out the following as indicators as to whether a request is vexatious or not;

- Abusive or aggressive language is used;
- The requests are placing an undue burden on the authority;
- The requests are part of a personal grudge;
- The requests are unreasonably persistent;
- The requestor is intransigent;
- There are frequent or overlapping requests on the same issue;
- The requests are designed to cause annoyance;
- The requests require a disproportionate effort to fill; and
- The requestor is using the information request route to pursue other complaints or grievances against the council.

This is not something that is to be used only as a last resort but should be considered where it is believed that the request is disproportionate or unjustified.

If you are in any doubt as to whether a request is vexatious you should contact the Corporate and Information Governance Manager.

## **11. What actions can be taken to stop or limit the behaviour?**

Where it becomes apparent that the nature of a request or string of requests is potentially making a request vexatious or manifestly unreasonable, consideration should be given to warning the requestor that if they are to submit any further requests on the same issue, it is likely that these requests will be deemed as vexatious under FOI or manifestly unreasonable under EIR.

Consideration will be given to a form of dialogue with the requestor having regard to the facts of each matter and any specific history in relation to the issue.

## **12. What happens if a customer continues to contact the Council?**

If a further request is received on the same or similar subject matter under FOI/EIR then a decision will be taken by the Council that the request is vexatious/manifestly unreasonable and the requestor will be informed of the decision, along with the reasons for the decision being taken. Only the request itself can be considered vexatious and not the individual who submitted it. Therefore, any further requests from the same requestor should be treated and assessed independently.

Where the time (or cost) of dealing with the request is the main issue, consideration will be given to applying Section 12 of the FOIA or Regulation 12(4)(d) under the EIR where the time/cost of dealing with a request is unreasonable and consideration given to asking the requestor to narrow down or reduce the scope of the request to bring it within an appropriate time frame (18 hours under the FOIA).

The requestor will then be added to the Council's register of customers who have been made vexatious as defined by this Policy, also ensuring relevant staff, officers/Councillors are made aware.

Customers should not seek to circumvent this policy by asking someone else who is connected to them, such as a family member, someone of close association, MP, Cornwall Councillor or advocate, or simply to submit the same or identical complaints on their behalf. Should we consider that someone is acting in place of or with a declared unreasonably persistent complainant, the customer who has submitted the duplicate complaint will be treated in the same manner.

## **13. What can a customer do to challenge the Council's decision?**

If a requestor is unhappy with the decision to make their information request vexatious/manifestly unreasonable, they have the right to ask the Council to carry out an Internal Review. The case will then be considered by an independent Senior Officer who will review the case and notify the requestor of the decision. If following the Internal Review the requestor is still unhappy, they have the right to contact the Information Commissioner's Office (ICO) who will then decide on the evidence supplied, whether to investigate the case.

## 14. How does the Council review the decision?

Where a request has been made vexatious or manifestly unreasonable, no further requests to similar matters raised will be considered within a 12-month timeframe. Any new request will be reviewed within this timeframe and a decision will be taken as to whether this is a new request (and dealt with as a fresh request) or falls within the subject matter made vexatious/manifestly unreasonable.

## 15. Dealing with requests that are manifestly unfounded or excessive

A request for personal information made under subject access granted by GDPR can be refused if it is considered that it is manifestly unfounded or excessive.

## 16. What does manifestly unfounded mean?

A request may be manifestly unfounded if:

- the individual clearly has no intention to exercise their right of access. For example, an individual makes a request, but then offers to withdraw it in return for some form of benefit from the organisation; or
- the request is malicious in intent and is being used to harass an organisation with no real purposes other than to cause disruption.

For example:

- the individual has explicitly stated, in the request itself or in other communications, that they intend to cause disruption;
- the request makes unsubstantiated accusations against you or specific employees;
- the individual is targeting a particular employee against whom they have some personal grudge; or
- the individual systematically sends different requests to you as part of a campaign, e.g., once a week, with the intention of causing disruption.

This is not a simple tick list exercise that automatically means a request is manifestly unfounded. You must consider a request in the context in which it is made, and you are responsible for demonstrating that it is manifestly unfounded.

Also, you should not presume that a request is manifestly unfounded because the individual has previously submitted requests which have been manifestly unfounded or excessive or if it includes aggressive or abusive language.

The inclusion of the word “manifestly” means there must be an obvious or clear quality to it being unfounded. You should consider the specific situation and whether the individual genuinely wants to exercise their rights. If this is the case, it is unlikely that the request will be manifestly unfounded.

## 17. What does excessive mean?

A request may be excessive if:

- it repeats the substance of previous requests and a reasonable interval has not elapsed; or
- it overlaps with other requests.

However, it depends on the particular circumstances. It will not necessarily be excessive just because the individual:

- requested a large amount of information, even if you might find the request burdensome. Instead, you should consider asking them for more information to help you locate what they want to receive;
- wanted to receive a further copy of information they have requested previously. In this situation a controller can charge a reasonable fee for the administrative costs of providing this information again and it is unlikely that this would be an excessive request;
- made an overlapping request relating to a completely separate set of information; or
- previously submitted requests which have been manifestly unfounded or excessive.
- when deciding whether a reasonable interval has elapsed you should consider:
  - the nature of the data – this could include whether it is particularly sensitive;
  - the purposes of the processing – these could include whether the processing is likely to cause detriment (harm) to the requester if disclosed; and
  - how often the data is altered – if information is unlikely to have changed between requests, you may decide you do not need to respond to the same request twice. However, if you have deleted information since the last request you should inform the individual of this.

## 18. Refusal to comply with a request

Where the Council is refusing to comply with a request, you must inform the individual without undue delay and within one month of receipt of the request of:

- the reasons you are not taking action;
- their right to make a complaint to the ICO or another supervisory authority; and
- their ability to seek to enforce this right through a judicial remedy.

You should also provide this information if you request a reasonable fee or need additional information to identify the individual.

