

Unreasonably Persistent Complainants Policy 2021

The Unreasonably Persistent Complaints Policy (UPCP) deals primarily with Council service and officer related issues and differs distinctly from the legally required Code of Conduct complaint process which is engaged where allegations are raised and complaints made against councillors.

It is of vital importance that the UPCP serves two functions:

- (1) That the Borough Council, its staff and resources are protected from those who are truly unreasonable, those complainants to be managed in accordance with the Council's statutory health and safety and financial obligations by the use of this policy.
- (2) To ensure that complaints are assessed by means of a process that is both fair and transparent which can, if administered properly, provide an effective method to scrutinise the Council, that scrutiny being provided from external sources which are in this case the complainants.

A complaint that was raised with the LGO in 2018 deemed the treatment that a complainant had received under this policy was "*unjust*". The LGO advised that the complainant in this case be granted an appeal and that the Council review its UPCP annually.

With regard to the LGO ruling, the 2013 policy in force at that time does explain under section 5, the right of the complainant to an appeal; the Council in this case had failed to provide such an appeal and had failed to do so for a significant period of time. Without any need or desire to labour over the possible reasons for that failure, the fact of the matter is that the policy was managed at that time by only one officer and as such, there was an unacceptable deficit in respect of scrutiny accountability and transparency. The complaints process from start to finish was in fact dealt with entirely by officers of the Council with no policy based or constitutional requirement to involve councillors for the purposes of overview and scrutiny to the use of that policy.

There have been three versions of the Council's UPCP since March 2013. The March 2013 policy was essentially a 'copy and paste' from the website of the the Local Government Ombudsman (LGO) at that time.

The March 2013 policy is on the whole a well intentioned document written for the purpose of managing, as the name suggests, unreasonably persistent complainants. The March 2013 UPCP is not overly complicated and it is easy for officers, councillors and laypersons alike to understand.

The March 2013 policy does though differ significantly from the LGO policy on two points under the heading "**Unreasonable Persistence – Examples include:**" being:

- (1) The definition of a "scattergun" approach.
- (2) The right of a complainant to present further evidence supporting their complaint.

In respect of item (1), the scattergun approach of the March 2013 policy states:

"• Adopting a 'scattergun' approach: pursuing a complaint or complaints with the authority 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."

Raising a complaint with a local authority can prove to be an extremely complicated task in respect of understanding the Council's constitution, policies and legislation that may relate to that

complaint. The potential complexity of these issues may indeed require, quite reasonably, professional advice and at the very least, Borough councillor assistance. The actual intention of citing a 'scattergun' approach is to encourage a complainant to deal with only the Council's designated complaints handler rather than raising the same complaint at the same time or afterwards with other officers. The wording of the March 2013 policy and incidentally, also of the September 2018 policies would leave a complainant entirely unsupported under the threat of being deemed unreasonably persistent if they were to seek help. Further, the wording of the 2013/18 policies contradict the Council's own complaints policy wherein a complainant is advised to seek the assistance of their Borough councillor. This wording was clearly quite unacceptable and was quite rightly debated and an alternative proposed by the Corporate Performance Panel at its October 2019 meeting.

In respect of item (2), the proposed UCP of 2019 re-established a complainant's right to present further evidence in support of their complaint. The proposed 2019 policy did not include a time limit to produce such evidence; at the Corporate Performance Panel meeting of October 2019, a time limit was discussed but was not agreed and yet a time limit was presented to the Cabinet at its meeting of November 2019.

Part 2 of the Council's constitution states:

"13.04 The Council, councillors and officers, when acting as a tribunal or in any quasi-judicial capacity or deciding or considering the civil rights and obligations or the criminal responsibility of any person, shall (rather than simply giving advice) follow a process which respects the requirements of natural justice and fair trial in accordance with Article 6 of the European Convention on Human Rights."

Denying an individual the right to present new evidence/information at any time contravenes this constitutional requirement.

Appeals Process

The process of appeal against the UCP was debated and agreed at the October 2019 meeting of the Corporate Performance Panel. It was decided by the Corporate Performance Panel that the appeal process was to be administered by the Standards Committee, thereby removing as far as is reasonably possible within the authority, the likelihood of a conflict of interests arising. Unfortunately, the wishes of the committee were not carried forward to Cabinet or beyond.

The Standards Committee is a politically proportioned body of elected representatives and as such, those members will not find themselves under the same peer or employment related pressures that will in some cases be unavoidably associated where complaints relating to officers are dealt with by those officers' work colleagues. Imagine if you will a complaint being raised against a senior officer and a subordinate officer being tasked with deciding upon that complaint; as councillors, it is not beyond our responsibilities or powers to prevent such a staff related conflict from arising.

Further to its responsibilities under the Localism Act 2011, the Standards Committee is afforded the authority to hear appeals of this nature under section 54 of the Local Government Act 2000 thus:

"54 Functions of standards committees

- (3) *A relevant authority may arrange for their standards committee to exercise such other functions as the authority consider appropriate."*

Human nature unfortunately dictates that there will always be a risk of dishonesty and also a possibility of individuals seeking to protect their own positions. A policy such as the UPCP can be very effectively underpinned by a robust appeals process. The likelihood of an independent appeal process can only result in the tightening up of the whole complaints system; the prospect of independent scrutiny helping to ensure that not only the handling of, but also the decisions on complaints will remain objective.

From a logistical point of view and according to Council records, the Standards Committee has only met three times in the last eight years. In the same period, I am aware of only seven individuals being placed under the UPCP. In view of these figures and even in the worst case scenario, the Standards Committee will by no means be overly burdened.

It is my proposal that:

- The UPCP be returned to the March 2013 wording with three amendments. Subsequent amendments to that policy currently in force, whilst being negated will in fact be inherently satisfied by a proper appeal process.
- Under bullet point 9, the 'scattergun' definition be narrowed in accordance with this report.
- Under bullet point 12, new and relevant evidence/information can be presented at any time during the period in which an individual's complaint is registered under the policy.
- The Standards Committee be employed to administer appeals to the UPCP in a process commensurate with that of the Localism Act 2011 standards regime whereby both parties to the complaint are afforded the opportunity to present their evidence to the committee either personally or through a representative. Additionally, it has already been established that the role description of the Council's Localism Act 2011, section 28 Independent Person allows for that individual to be nominated to a role commensurate with the Localism Act 2011 standards regime and as such, the Independent Person can be approached by either or both of the parties to the complaint in order for the Independent Person to provide an independent opinion before the Standards Committee reaches its decision.

For reference, my proposal reflects debates and proposals that have already been agreed although subsequently, not carried forward. Please find attached the March 2013 policy.

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