

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

11 February 2013

Protocol re Persistent/Vexatious Complainants

1.0 PURPOSE OF REPORT

- 1.1 To present to the Committee, for consideration, a revised Protocol re Persistent/Vexatious Complainants.

2.0 BACKGROUND

- 2.1 At the Committee's last meeting, it agreed the draft framework for a Protocol for dealing with persistent and/or vexatious complainants in relation to the standards regime, but requested that more detailed proposals, to include the requirement for the local Member to be kept informed, be submitted to the Committee's next meeting for consideration.

3.0 REVISED PROTOCOL

- 3.1 A revised Protocol is attached at **Appendix 1** to this report for Members' further consideration.

4.0 RECOMMENDATIONS

- 4.1 That, subject to any comments Members may have, the revised Protocol be approved.

CAROLE DUNN
Monitoring Officer

Background Papers:

None

County Hall
NORTHALLERTON

31 January 2013

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

**PROTOCOL FOR DEALING WITH UNREASONABLY PERSISTENT/VEXATIOUS
COMPLAINANTS**

The County Council has published a Policy on Unreasonably Persistent Complainants, with supporting Procedure and Checklist. Copies are attached in **Appendix 1** to this Protocol. Helpful general guidance on unreasonable persistence/vexatiousness is also given by the Information Commissioner's Office in its Guide "When can a request be considered vexatious or repeated?" in the context of Freedom of Information, a copy of which is attached at **Appendix 2**.

In adopting a new local ethical framework for the Council under the Localism Act 2011, the Council agreed that it would be appropriate for the Standards Committee to have a role in dealing with persistent and/or vexatious complainants and the handling of the complaints raised by them, in order to provide increased support to Officers and Members who are the subject of such complaints and who are dealing with such complaints, and to minimise the administrative and financial burden such complaints can impose upon the Council.

Whilst decisions in relation to imposing restrictions in relation to unreasonably persistent/vexatious complainants are taken by officers at senior level, the Standards Committee is the appropriate body for Member-level consultation and support (where deemed appropriate and requested by the relevant senior officer) for the designation of a complainant as unreasonably persistent or vexatious, in accordance with the Council's Policy and procedure: the Committee has a key role in relation to conduct and propriety matters and the Council's statutory Independent Persons for standards are invited to all meetings of the Committee and provide an independent viewpoint on all key standards issues.

The Standards Committee may also be consulted upon and be asked to consider whether any restrictive action needs to be taken in each particular case presented to it for designation, in accordance with the Council's Policy and procedure.

The Standards Committee will review any matters in which it has been involved at the end of the time period allocated or after six months, whichever is earliest.

The fact that a complainant has been identified as an unreasonably persistent/vexatious complainant, may be taken into account in determining the action taken in response to a complaint.

Where a matter is proposed to be referred to the Standards Committee under this Protocol, the local Member shall be informed and shall be kept updated as to the progress of the matter and the outcome of the Standards Committee's consideration of it under this Protocol and all future developments in the matter.

This Protocol has been instigated by the Council in good faith and aims to address issues with, and relating to, such complainants in a manner which is fair to all concerned.

North Yorkshire County Council

11 February 2013

Policy on Unreasonably Persistent Complainants

Status of Policy

Implemented July 2009

North Yorkshire County Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them.

We are accountable for the proper use of public money and must ensure that that money is spent wisely and achieves value for complainants and the wider public.

As part of the complaints service we do not normally limit the contact complainants have with our offices. However, there are a small number of complainants who, because of the frequency of their contact with our offices, hinder our consideration of their or other people's complaints, or delivery of services. We refer to such complainants as 'unreasonably persistent complainants' and, exceptionally, we will take action to limit their contact with our offices.

The decision to restrict access to our offices will be taken at a senior level and will normally follow a warning to the complainant. Any restrictions imposed will be appropriate and proportionate. The options we are most likely to consider are:

- requesting contact in a particular form (for example, in writing only);
- requiring contact to take place with a named officer;
- restricting telephone calls to specified days and times; and/or
- asking the complainant to enter into an agreement about their future contacts with us.

In all cases where we decide to treat someone as an unreasonably persistent complainant we will write to tell the complainant why we believe his or her behaviour falls into that category, what action we are taking and the duration of that action. We will also tell them how they can appeal against that decision if they disagree with it. If we decide to carry on treating someone as an unreasonably persistent complainant and we are still investigating their complaint six months later, we will carry out a review and decide if restrictions will continue.

Where a complainant whose case is closed persists in communicating with us about it, we may decide to terminate contact with that complainant. In such cases we will read all correspondence from that complainant, but unless there is fresh evidence which affects our decision on the complaint we will simply acknowledge it or place it on the file with no acknowledgement. The complainant will be informed that we will do this.

New complaints from people who have been identified as unreasonably persistent complainants in the past will be treated on their merits.

Complaints Procedure: Dealing with Unacceptable Behaviour Towards Staff and Unreasonably Persistent Complainants

Status of Procedure

Implemented July 2009

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Introduction

North Yorkshire County Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them.

Some complainants may be angry and upset, sometimes with good cause. However, we do not expect staff to tolerate unacceptable behaviour, for example that which is abusive offensive or threatening, and will take action to protect staff from such behaviour.

We will also address any persistent behaviour which may impede the investigation of complaints or have significant resource issues for the authority. This may be during the course of the investigation or following its conclusion.

Unreasonable behaviour may relate to one or two isolated incidents as well as an accumulation of incidents or behaviour over a period of time.

Complainants exhibiting this type of behaviour may sometimes also be referred to as vexatious complainants, where a person is not seeking to resolve a dispute between themselves and the Council, but is seeking to cause unnecessary aggravation or annoyance to the Council.

In reading this document it is important to note that its purpose in relation to persistent complainants is to address instances where the same complaint is continually raised by an individual in an unreasonable manner. If new issues or complaints arise these will be evaluated in the proper way and dealt with appropriately.

Definitions

Unacceptable Behaviour Towards Staff

North Yorkshire County Council is committed to a working environment throughout the organisation where harassment and threatening or abusive behaviour is deemed both unacceptable and intolerable.

The legal definition of harassment is “Unwanted conduct that violates a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment, having regard to all the circumstances and the perception of the victim.” (Employment Equality [Religion or Belief] Regulations December 2003)

Personal harassment is more difficult to describe, but can be defined as uninvited and unwanted actions or behaviour, by one or more individuals, which causes others offence or embarrassment.

Unreasonably Persistent Complainants

Unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with us, hinder our consideration of their or other people’s complaints.

Safeguarding the Council's Resources

It is important not to spend large amounts of time dealing with unacceptable behaviour or unreasonably persistent complainants. Inflaming an already difficult situation should be avoided. It may be worth spending some time defusing a situation, rather than taking a hard line and then spending much more time defending that position. Judgement and common sense are called for.

It is not necessary to meet a complainant's unreasonable demands, or to answer every single point in an unreasonable complaint. Again, judgement will be required to separate a complainant's legitimate queries from those that are unreasonable. Advice can be found with your Directorate Complaints Coordinator.

Unacceptable behaviour

The Council will not tolerate unacceptable behaviour towards its staff, for example that which is abusive, offensive or threatening. Examples of such behaviour include:

- Offensive sexual or racial remarks or offensive remarks about a person's disability
- Inappropriate personal remarks
- Unwanted physical contact or assault
- Intimidation
- Threats
- Excessive swearing or foul language

This list is not exhaustive, but gives an indication of the type of behaviour which can cause distress to someone through offence, embarrassment or fear.

What to do about unacceptable behaviour

Complaints on the telephone or in person

If a complainant is rude or abusive it is perfectly acceptable to terminate the conversation. Staff should bring to the complainant's attention that their behaviour is unacceptable and why that is so, and that if the behaviour persists then the conversation will be terminated. If after being advised twice the behaviour continues then the conversation should be terminated.

A note of what has happened and what was said should be made and forwarded to your line manager and the Directorate Complaints Coordinator who may decide in consultation with their Director that, for a set period of time, the Council will not accept telephone calls from the complainant, or meet with them and will only deal with them in writing. If appropriate the Directorate Complaints Coordinator may also decide to involve the Police.

It is advisable not to meet a complainant alone, but to have at least two officers present at all times. This is not only a safeguard against abuse or even violence, but having a witness to the conversation can be very useful and the second officer could also take notes of the meeting. If you must meet someone alone ensure that the room is safe and appropriate and identify an 'escape route' (for example, sit near the door).

Written complaints

If a written complaint is threatening or abusive it should be referred, via the Directorate Complaints Coordinator, to the Director for consideration. The Director may inform the complainant that the Council will not consider complaints that are threatening or abusive in tone and that the matter will be given no further consideration.

Conduct agreement

If it is felt that poor behaviour can be stopped without restricting access, but with a formal document, you can ask the complainant to enter into an agreement about their conduct. This must be agreed and signed by both the complainant and a relevant senior officer of the directorate. If other directorates or agencies are involved include them too.

Extreme behaviour

If a complainant's behaviour is so extreme it threatens the immediate safety and welfare of our staff other options will be considered, for example reporting the matter to the police or taking legal action. In such cases the complainant may not be given prior warning of this action.

Is a complainant unreasonably persistent?

It is important to differentiate between persistent and unreasonably persistent complainants. It could be argued that the majority of complainants are persistent as they want their complaint dealt with properly and are intent on achieving this.

However, unreasonably persistent complainants may have justified complaints, but are pursuing them in inappropriate ways, or may be pursuing complaints which have no substance, or have already been investigated and determined. Their contacts may be amicable, but place very heavy demands on staff time, or may be very emotionally charged and distressing for all involved.

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.

Actions and behaviours of unreasonably persistent complainants

These are some of the actions and behaviours of unreasonably persistent complainants. It is by no means an exhaustive list.

- Refusing to specify the grounds of a complaint, despite offers of assistance with this from Council staff.
- Refusing to cooperate with the complaints investigation process while still wishing their complaint 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 being dealt with in ways which are incompatible with the Council's procedure.

- Refusing to communicate with the officer allocated to deal with their complaint unless there is a genuine and acceptable reason.
- Making what appear to be groundless complaints about the staff dealing with the complaint, and seeking to have them replaced.
- Changing the basis of the complaint 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 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.
- Electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved.
- Adopting a 'scattergun' approach: pursuing a complaint or complaints with the authority and, at the same time, with a Member of Parliament/a councillor/our independent auditor/the Standards Committee/local police/solicitors/the Ombudsman; or a number of different officers/departments.
- Making unnecessarily excessive demands on the time and resources of 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.
- Submitting repeat complaints after complaints processes have been completed, essentially about the same issues, with additions/variations which the complainant insists make these 'new' complaints which should be put through our full complaints procedure.
- Refusing to accept the decision – repeatedly arguing the point and complaining about the decision.
- Combinations of some or all of these.

Before designating someone as an unreasonably persistent complainant

Different considerations will apply depending on whether the investigation of the complaint is ongoing or whether it has been concluded.

The decision to designate someone as an unreasonably persistent complainant is onerous and could have serious consequences for the individual. Before deciding whether the policy should be applied you should be satisfied that:

- the complaint is being or has been investigated properly;
- any decision reached on it is the right one;
- communications with the complainant have been adequate;
- the complainant is not now providing any significant new information that might affect the authority's view on the complaint; and
- no one will be put at risk of neglect or significant harm if it is decided to stop contact with the complainant.

If the authority is satisfied on these points it should consider whether further action is necessary prior to taking the decision to designate the complainant as unreasonably persistent. For example:

- A meeting with an officer of appropriate seniority may dispel misunderstandings and move matters towards a resolution. This should only be considered where a meeting has not already taken place with an officer/officers and providing that the Council knows nothing about the complainant which would make this unadvisable.
- If the complainant has special needs, an advocate might be helpful to both parties. Consider offering to help the complainant find an independent one.

Before applying any restrictions you must give the complainant a warning that if his/her actions continue then we may decide to treat him/her as an unreasonably persistent complainant and explain why.

What options for action are available?

The nature of the action decided to take should be appropriate and proportionate to the nature and frequency of the complainant's contacts with the Council at that time. The following list is of possible options from which one or more might be chosen and applied, if warranted. This is not exhaustive and other factors may result in other actions being taken.

- Placing time limits on telephone conversations and personal contacts.
- Restricting the number of telephone calls that will be taken (for example, one call on one specified morning/afternoon of any week).
- Limiting the complainant to one medium of contact (telephone, letter, email etc) and/or requiring the complainant to communicate only with one named member of staff. This is effective, for example, where a complainant telephones one or many members of staff on many occasions, or where they repeatedly give a different account of past conversations.
- Requiring any personal contacts to take place in the presence of a witness.
- Refusing to register and process further complaints about the same matter.
- Where a decision has been made, providing the complainant with acknowledgements only of letters, faxes or emails, or ultimately informing the complainant that future correspondence will be read and placed on file, but not acknowledged. An officer should be designated to read future correspondence for any significant new information or new complaints.

The decision to take any of the above action must be taken by an appropriately senior officer in consultation with the Directorate Complaints Coordinator. A letter should be sent to the complainant to inform them of:

- The decision that has been made and the reason for it
- Details of what restrictions will be placed on their contacts with us
- How long these restrictions will last
- How the complainant can appeal this decision

A copy of the Unreasonably Persistent Complainants policy should be enclosed with the letter.

There must never be any restriction of contact (of the complainant to us) for an unspecified period of time.

If the complainant continues to behave in an unacceptable way it may be decided to terminate all contact with them and to discontinue any investigations into their complaints.

Right to Appeal

Complainants must be given the right to appeal any decision to take any of the above actions. They should contact the relevant Directorate Complaints Coordinator who will consult a senior officer (other than the one who made the initial decision) to review the decision. The complainant must then be advised of the outcome of this review. If restrictions are still to be made, reasons must be given and the date when it will be reviewed.

Review

Whatever action is taken, this must be for a limited time. At the end of this period a review of the decision must be carried out. It should be carried out by a different and senior officer to that which made the initial decision. When it has been completed the complainant must be informed of the outcome and if restrictions are to continue the date when this will next be reviewed.

If the period the restrictions apply to is longer than six months, arrangements should be made for a check to be made every six months whether there has been any further contact from the complainant. If there has been no contact then the position should be reviewed and a decision taken on whether any restrictions should be lifted. The outcome should be noted on the records and if changes are to be made the complainant must be notified. If restrictions are lifted and the behaviour which led to the original decision recommences urgent consideration should be given to reintroduce the restrictions.

Coordinating Contacts Across the Council

Unreasonably persistent complainants often contact many different people in the Council and can try to take advantage of the differing responses they may receive. It is helpful to provide one key officer (with perhaps a second name only for when they are not available) for the complainant to contact.

Informing Relevant Officers

If restrictions are put in place any relevant officers should be informed. These should include:

- The Directorate Complaints Coordinator for any service involved, if they have not initiated the process themselves;

- The Corporate Complaints Coordinator if they have not initiated the process themselves;
- Customer Services Centre Manager; and
- Any officers involved in the complaint.

Record Keeping

Records of all contacts with the complainant should be kept. Other records that should be kept include:

- when a decision is taken not to apply the policy when a member of staff asks for this to be done, or to make an exception to the policy once it has been applied;
- when a decision is taken not to put a further complaint from such a complainant through its complaints procedure for any reason;
- Key members of staff; and
- Records of reviews and decisions made.

Future Contacts

Bearing in mind any restrictions still in place each further contact should be considered and assessed on its own merits. This need not be time consuming, but it must be done.

Complaints about the same issue

1. No new information

- If the complaint has not already exhausted the Council's complaints procedure the complaint can be escalated in the normal way. Contact your Directorate Complaints Coordinator; or
- If the Council's complaints procedure has been exhausted, but the matter has not been to the Local Government Ombudsman (LGO), refer it there; or
- If it has been to the LGO and the complainant does not agree with the LGO's decision they should be referred back to the LGO

If the complainant persists in corresponding with no significant new information and declines to follow the complaints procedure, they should be warned that the Council will not enter into further correspondence on that issue as the matter has been dealt with appropriately. If they continue to contact the Council write to the complainant to say that any further correspondence that does not raise any significant new information will only be filed with no acknowledgement sent.

2. New information

If new information is supplied this must be evaluated by the investigating officer dealing with the complaint. A response should be sent to the complainant informing them of what will happen next.

Complaints about similar matters

Each complaint should be considered in the usual way and judged on its own merits. If the new complaints are about entirely trivial matters or matters that have clearly not caused the complainant any injustice it may be appropriate to close down the complaint. This must only be done by the Directorate Complaints Coordinator in agreement with their Director. The complainant needs to be informed and there is no right of appeal other than to the Ombudsman.

New complaints

New complaints should be assessed in the usual way and dealt with as appropriate following Council procedures.

Premature Referral to the Local Government Ombudsman

In some cases relations between the Council and unreasonably persistent complainants break down badly while complaints 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 complaints procedure and where this occurs the LGO may be prepared to consider complaints before the complaints procedure is exhausted. Contact your Directorate Complaints Coordinator for advice.

Further Help and Information

For more help or information please contact your Directorate Complaints Coordinator. Details can be found on the intranet.

Checklist for how to deal with Unreasonably Persistent Complainants

The following gives a brief outline of what should be done when considering how to deal with unreasonably persistent complainants.

- Identify whether the complainant is unreasonably persistent or not.
- Identify if there are any actions that can be taken to stop this, for example a conduct agreement.
- Designate the complainant as being unreasonably persistent. This must be decided by an appropriately senior officer and the Directorate Complaints Coordinator must be informed.
- Identify if any restrictive action needs to be taken and if so what this should be. This must be decided by an appropriately senior officer and the Directorate Complaints Coordinator must be informed.
- The complainant must be written to advising them of: the decision; the reasons for that decision; the length of time the restrictions will apply; and how they can appeal against that decision. A copy of the Policy on Unreasonably Persistent Complainants must be enclosed with this letter.
- Inform relevant officers of the decision.
- Review the decision at the end of the time period allocated or after six months, whichever is earliest. Keep the complainant informed of any decisions.
- Keep records of all contacts and decisions made.
- If relations become unworkable a complaint can be prematurely referred to the Local Government Ombudsman with their agreement.
- Even where contact is severely restricted all correspondence must be monitored for any relevant content. Any new complaints should be considered on its own merits.

For further advice please contact your Directorate Complaints Coordinator. Details can be found on the intranet.

When can a request be considered vexatious or repeated?

Freedom of Information Act

Vexatious or repeated requests

The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance will help public authorities understand when a request can be considered vexatious or repeated under section 14 of the FOIA, and how to use that section. See also [Vexatious requests – a short guide](#).

It first explains when requests may be vexatious (page 2) or repeated (page 10). It will then cover how to refuse these requests (page 11) and other procedural and good practice issues (page 12).

This guidance replaces Awareness Guidance 22.

Overview

- Under section 14(1), public authorities do not have to comply with vexatious requests. There is no public interest test.
- Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:
 - Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?

- Under section 14(2), public authorities do not have to comply with repeated requests for the same information from the same person. There is no public interest test.
- If the cost of compliance is the only or main issue, you should consider section 12 instead (exemption where cost of compliance exceeds appropriate limit).
- Remember that you can also avoid unwanted requests by voluntarily publishing any frequently requested information.

General principles of section 14

Section 14 of the FOIA is intended to protect public authorities from those who might abuse the right to request information. It states:

14.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

The section is similar to an absolute exemption. If a request is vexatious or repeated, you do not have to provide any information or confirm or deny whether you hold it. There is no need to consider a public interest test. However, you must in most cases issue a refusal notice.

We recognise that having to deal with clearly unreasonable requests can strain your organisation's resources, damage the credibility of the FOIA and get in the way of answering other requests. We would encourage you to consider section 14 where there are genuine grounds for considering a request to be vexatious or repeated.

Is the request vexatious?

The term "vexatious" is intended to have its ordinary meaning and there is no link with legal definitions from other contexts (eg vexatious litigants).

Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. There is no rigid test or definition, and it will often be easy to

recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.

To help you identify a vexatious request, we recommend that you consider the following questions, taking into account the context and history of the request:

- Can the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

To judge a request vexatious, you should usually be able to make relatively strong arguments under more than one of these headings.

The questions are likely to overlap, and the weight you can place on each will depend on the circumstances. You do not need to be able to answer yes to every question, and may also consider other case-specific factors. However, if you consider each of the questions in turn, you should be able to more easily and consistently assess the overall balance of the case.

Context and history

You should take account of the wider context and history of the request when considering the questions. A request may not be vexatious in isolation, but when considered in context (for example if it is the latest in a long series of overlapping requests or other correspondence) it may form part of a wider pattern of behaviour that makes it vexatious.

Example

In [Betts v Information Commissioner EA/2007/0109 \(19 May 2008\)](#), the request concerned health and safety policies and risk assessments. There was nothing vexatious in the content of the request itself. However, there had been a dispute between the council and the requester which had resulted in ongoing FOIA requests and persistent correspondence over two years. These continued despite the council's disclosures and explanations. Although the latest request was not vexatious in isolation, the Tribunal

considered that it was vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the council. The request on its own may have been simple, but experience showed it was very likely to lead to further correspondence, requests and complaints. Given the wider context and history, the request was harassing, likely to impose a significant burden, and obsessive.

The context of the request may also occasionally indicate that it should not be considered vexatious. For example, your previous dealings with a requester may show that they have a good reason for making persistent requests.

Your knowledge of the requester's circumstances may also affect your obligations as a service provider under the Disability Discrimination Acts.

Many previous cases of vexatious requests have been in the context of a longstanding grievance or dispute. However, a request will not automatically be vexatious simply because it is made in the context of a dispute or forms part of a series of requests. There may be genuine reasons for this. For example, a series of successive linked requests may be necessary where disclosures are unclear or raise further questions that the requester could not have foreseen. Similarly, in the context of a dispute, a request may be a reasonable way to obtain new information not otherwise available to the individual. You should not use section 14 as an excuse to avoid awkward questions that have not yet been resolved satisfactorily. You must always look at the effect of the particular request and consider the questions set out below.

An important point to note here is that it is the request – not the requester – that must be vexatious. You cannot judge a request to be vexatious just because the individual concerned has caused problems in the past. Nonetheless, the past behaviour of the requester will be relevant if the request continues that behaviour.

Can the request fairly be seen as obsessive?

Obsessive requests are usually a very strong indication of vexatiousness. An obsessive request will typically fall into several other categories as well.

The wider context and history of a request will be particularly important here, as it is unlikely that a one-off request could ever be obsessive. Relevant factors could include the volume and frequency

of correspondence, requests for information the requester has already seen, or a clear intention to use the request to reopen issues that have already been debated and considered.

Example

In [Ahilathirunayagam v Information Commissioner and London Metropolitan University EA/2006/0070 \(20 June 2007\)](#) the requester had been arguing with the university for 13 years over the award of his degree. He had already exhausted the university's appeal procedure, instructed two firms of solicitors, tried to pursue a court case, and complained to the ICO, his MP and the Lord Chancellor's Department. In finding his latest FOI request vexatious, the Tribunal took into account the fact that he was requesting information he already possessed and seemed to want simply to reopen issues that had already been disputed several times before.

Example

In [Hossack v Information Commissioner and DWP EA/2007/0024 \(18 December 2007\)](#) the requester had complained after a jobcentre revealed benefit details in breach of the Data Protection Act 1998. The complaint had been investigated and compensation had been paid, and an independent ombudsman's recommendations had been accepted. However, the requester continued a four-year public campaign against the authority, alleging corruption and fraud, threatening legal action and "naming and shaming" individuals. The Tribunal found that the latest FOI requests were obsessive and vexatious. The request was for information the requester already possessed, and was part of a wider campaign which was lengthy and aggressive and showed an endless wish to debate the original issue, each time trying to escalate its importance and gravity, despite the apology and compensation already provided.

It will be easiest to identify an obsessive request where an individual continues with a lengthy series of linked requests even though they already have independent evidence on the issue (eg reports from an independent investigation). The more independent evidence available, the stronger this argument will be.

Example

In [Welsh v Information Commissioner EA/2007/0088 \(16 April 2008\)](#), the requester had made a complaint against his GP. The GP's practice, the GMC, the primary care trust and the Healthcare Commission had all investigated the complaint and rejected it. He continued to write to the GP's practice reiterating the complaint and requesting details of the GP's training. The Tribunal found that the request was vexatious: "Mr Welsh simply ignores the results of three separate clinical investigations into his allegation... that unwillingness to accept or engage with contrary evidence is an indicator of someone obsessed with his particular viewpoint, to the exclusion of any other... it is the persistence of [the] complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious."

Example

In [Coggins v Information Commissioner EA/2007/0130 \(13 May 2008\)](#), the requester suspected that the council had fraudulently charged an elderly lady for care services not provided. Despite a council investigation, a Committee for Social Care investigation and the police all finding no evidence of dishonesty, the requester persisted with the allegations and submitted 20 requests in 73 letters and 17 postcards over a two-year period. The Tribunal found the request obsessive and vexatious.

If an individual repeatedly submits requests for information already provided, you should consider whether you could refuse these requests as repeated requests under section 14(2) instead (see page 8 below).

Is the request harassing the authority or causing distress to staff?

The focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing.

Relevant factors under this heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints.

Example

In [Gowers v Information Commissioner and LB Camden EA/2007/0114 \(13 May 2008\)](#) the requester made various requests and complaints about the alleged incompetence of the council in ongoing correspondence. He made personal accusations against a particular member of staff and attempted to identify their spouse through FOI requests and other means. In finding the latest request vexatious, one factor the Tribunal took into account was that the correspondence “would likely have been seen by any reasonable recipient as hostile, provocative and often personal” and that “the requests are likely to have been very upsetting to the staff and that they... are likely to have felt deliberately targeted and victimised”.

The relevant issue here is the request itself, not the information that might be disclosed in response. The question is whether having to deal with the request would be distressing or harassing, regardless of what the request is about. The fact that disclosure of certain information would be embarrassing or distressing cannot make a request vexatious. The Tribunal confirmed in [Betts](#) that: “distress, annoyance, irritation or worry arising from the possible consequences of disclosure cannot turn an otherwise proper request into a vexatious one; indeed that would defeat the purpose of FOIA”.

Would complying with the request impose a significant burden in terms of expense and distraction?

You need to consider more than just the cost of compliance. You will also need to consider whether responding would divert or distract staff from their usual work.

Example

In [Coggins](#), the requester had sent 20 requests, 73 letters and 17 postcards over a two-year period. The letters were to several different employees and overlapped with each other. Requests were repeated before any response could be issued. The

Tribunal decided that dealing with this correspondence would have been a significant distraction from the public authority's core functions and imposed a significant administrative burden.

The wider context of a request is likely to be relevant here. You may be able to conclude that responding to a relatively simple request would still impose a significant burden because any response would be very likely to lead to a significant number of further requests and complaints. However, you would need to be able to support this argument with evidence from extensive previous experience with the individual concerned.

This factor will not be enough on its own to show vexatiousness. If your only or main concern is the cost of compliance, you should consider section 12 rather than section 14. Under section 12, you can refuse a request if finding and extracting the relevant information would cost more than a set limit (currently £450, or £600 for central government). You can also combine the total cost for all requests received from one person (or from several people acting together) during a period of 60 working days – roughly three months – as long as the requests relate to similar information.

For more information on using section 12, see our guidance on [Using the Fees Regulations](#) and [Redacting and extracting information](#).

Is the request designed to cause disruption or annoyance?

As this factor relates to the requester's intention, it can be difficult to prove. Cases where this is a strong argument are therefore likely to be rare. However, if a requester explicitly states that they want to cause maximum inconvenience, the request will almost certainly be vexatious.

Example

In ICO decision notice [FS50151851](#) the request included the statement: "I am insincere and my purpose is mischievous subversion." Taking this statement with the volume, length and unfocussed nature of the correspondence, it was fair to conclude that the request was designed to cause disruption or annoyance.

Alternatively, if you have independent evidence that the requester wants to disrupt or deliberately annoy the authority by making

requests, this may be relevant. For example, a requester may have threatened to disrupt the authority during a previous complaint or dispute, or may be involved with a campaign group that has publicly stated it intends to disrupt an authority as part of its campaign.

Does the request lack any serious purpose or value?

If a request clearly lacks any serious purpose or value, it may help an argument that the request is vexatious when taken together with other factors (eg if the request is also obsessive, harassing or burdensome).

However, an apparent lack of serious purpose or value is not enough on its own to make a request vexatious. The FOIA is not generally concerned with the motives of the applicant, but with transparency for its own sake. You should therefore not dismiss a request solely for this reason, and should be aware that even a request that seems spurious or tedious to you may have genuine value to the individual.

It is not appropriate to use lack of value as an argument simply because you cannot imagine what the value might be. You must demonstrate that a request has no purpose or value, rather than simply suggest that because the requester did not provide a reason there cannot be one.

On the other hand, if a request does have a serious purpose or value, this may be enough to prevent it being vexatious, even if it imposes a significant burden and is harassing or distressing your staff. If the request forms part of a wider campaign or pattern of requests, the serious and proper purpose must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken.

Example

In [Coggins](#), the Tribunal found that the requester had a reasonable and genuine desire to uncover a fraud, and this amounted to a serious and proper purpose that could potentially override the harassing and burdensome nature of the request, so that it ought not to be considered vexatious. However, despite the original serious and proper purpose, the requests had now become obsessive after three independent enquiries into the issue and there came a time when the requester should have let the matter drop. Continuing his campaign

was no longer justifiable and, on balance, the latest request was vexatious.

The question of whether a serious and proper purpose can continue to justify an ongoing campaign or series of requests will overlap with the question of whether the latest request can fairly be seen as obsessive. If a request is obsessive (eg if the issue has already been fully considered and debated with the applicant) then it is unlikely that there can be any continuing justification for that request.

Is the request repeated?

There is also a separate provision relating to repeated requests. Under section 14(2)

A request can be refused as repeated if:

- it is made by the same person as a previous request;
- it is identical or substantially similar to the previous request; and
- no reasonable interval has elapsed since the previous request.

However, it is important to note that Section 14(2) can only be applied where the public authority has previously provided the applicant with the information they have requested.

If the authority has not previously supplied the information then they should deal with the request in the usual manner.

To be repeated, the requests must have been submitted by the same person. You cannot refuse similar requests as repeated if they are submitted by different requesters. However, you may be able instead to refuse them as vexatious (if part of a campaign to cause disruption or distress) or under section 12 (if the requesters are acting together and compliance would exceed the cost limit).

Identical or substantially similar

Both the wording of the request itself and the information that would be provided in response will be relevant here.

Where the wording of the request is identical to a previous request and it is asking for the same information (ie information already provided) you can regard the request as repeated. However, if the wording is identical but the request is actually asking for different information (eg a recurring request asking for "any new or amended information" on a particular subject, or for "last month's figures"), you cannot refuse the request as repeated.

Similarly, a request will be substantially similar to a previous request only if you would need to disclose substantially similar information to respond to both requests (ie with no meaningful differences). You should not refuse a request simply because it relates to the same subject or theme as a previous request, unless you would have to give the same information in response.

If only some of the information you need to disclose is different, you should comply with the request, but you may want to supply only the new information and class the rest of the request as repeated.

If the request is for information recently refused then it would be advisable to contact the applicant to clarify whether they wish this to be treated as a request for an internal review of the original decision.

Reasonable interval

Even if the request is the same as or substantially similar to a previous request, you cannot refuse it as repeated if a reasonable interval has passed.

What is a reasonable interval will largely depend on the circumstances, including:

- how likely the information is to change;
- how often records are updated; and
- any advice previously given to the requester (eg on when new information is likely to be available).

For example, it may be reasonable for a requester to resubmit a request after a relatively short time for statistics or other records that you would expect to be updated often, but not for purely historical records. On the other hand, if the requester has been told when information is due to change, it would not generally be reasonable for them to resubmit a request before that time.

Refusing the request

If you decide that a request is vexatious or repeated, you must issue a refusal notice to the requester within 20 working days. The refusal notice should state that you are relying on section 14(1) or 14(2) and give details of your internal review procedures and the right to appeal to the ICO.

However, section 17(6) says you will not need to issue a new refusal notice if:

- you have already given the same person a refusal notice for a previous vexatious or repeated request; and
- it would be unreasonable to issue another one.

Refusing a request as vexatious or repeated is particularly likely to lead to an internal review or an appeal to the ICO. Whether or not you issue a refusal notice, you should therefore keep written records clearly setting out the procedure you followed and your reasons for judging the request as vexatious or repeated, so that you can justify your decision to us if necessary.

For more information on refusals, see our guidance on [Refusal notices](#).

Good practice

In some circumstances you may be able to deal with difficult requests in a less contentious way. To help you avoid unnecessary disputes over vexatious requests, you may want to consider the following alternatives:

- Is the request clear enough? If the request is unclear and you are unsure what (if any) information has been requested, you can contact the requester and ask them to clarify the request. Under section 1(3), you will not then have to comply with the request until you have received that clarification. This may be particularly helpful for lengthy correspondence that contains a confusing mixture of questions, complaints and other content, or is otherwise incoherent or illegible.
- In borderline cases, you may want to consider complying with the request to prevent a more time-consuming dispute developing, but advising the requester that a future request could be seen as vexatious if they continue the same pattern of behaviour.
- If you are confident that the request is vexatious, you may choose to refuse the request but spell out what the requester could do differently in future to ensure you deal with their request.

For more information on clarification and the duty to provide advice and assistance, see [Advice and assistance: Awareness guidance 23](#).

If you receive lots of requests for information on a particular subject or similar theme, you should consider voluntarily publishing the information as part of your publication scheme. This may reduce the number of unwanted or repeated requests you receive.

You should be aware that you cannot use section 14 to refuse any request for information that should be published under your publication scheme. You will need to provide this information, or direct the requester to where it is available. For more information on publication schemes, see [our website](#).

Other considerations

You need to take care to distinguish between FOI requests and requests for the individual's own personal data. If a requester has asked for information relating to themselves, you should deal with the request as a subject access request under the Data Protection Act 1998. A subject access request cannot be vexatious (although there is an exception for repeated requests).

For more information on subject access requests, see our [Checklist for handling requests for personal information \(subject access requests\)](#).

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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