

Unacceptable Actions Policy

Policy on action to take in relation to unacceptable actions and behaviour by individuals and others

Scottish Information Commissioner

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Glossary and abbreviations

Term used	Explanation
Commissioner	Scottish Information Commissioner
SMT	Senior Management Team

Unacceptable Actions Policy

Introduction

This document sets out the Scottish Information Commissioner's (the Commissioner) approach on the relatively few occasions we consider an individual's actions or behaviour to be unacceptable.

The approach applies to individuals, organisations and individuals on behalf of organisations who have contact with us. This includes, but is not restricted to, individuals, Scottish public authorities, officers within Scottish public authorities, those making general enquiries and third-parties. For ease of reference, throughout this document, we refer to an individual but the approach applies equally to our dealings with others.

Aims

We aim in all our dealings to:

- make it clear to individuals both at initial contact and throughout their dealing with our office, what the Commissioner can or cannot do in relation to their application, complaint or enquiry
- be open and not raise expectations that we cannot meet
- deal fairly, honestly, consistently and appropriately with all individuals, even those whose behaviour or actions we consider unacceptable. We believe that all individuals have the right to be heard, understood and respected. We also believe that the Commissioner's staff have the same rights
- provide a service that is accessible to all. However, we retain the right, where we consider an individual's actions to be unacceptable, to restrict or change access to our service and
- ensure that other individuals and the Commissioner's staff do not suffer any disadvantage from individuals who act in an unacceptable manner.

Defining Unacceptable Actions

Occasionally, the behaviour or actions of individuals using our service makes it very difficult for us to deal with an investigation, a request, application or complaint. In a small number of cases the actions of individuals become unacceptable because they involve abuse of our staff or our process. There can also be occasions when individuals pursue their appeal, request or complaint or public authorities respond in a way that impedes our investigation or has significant impact on the Commissioner and their staff.

The Commissioner understands that people may act out of character in times of trouble or distress. There may have been upsetting or distressing circumstances leading up to the contact with the Commissioner's office.

We do not view behaviour as unacceptable simply because an individual is forceful or determined. In fact, we accept that persistence can be a positive advantage when pursuing an appeal relating to a Freedom of Information request or a complaint.

However, we consider actions that result in unreasonable demands on our office or unreasonable behaviour towards the Commissioner's staff to be unacceptable. It is these actions that we consider unacceptable and aim to manage under this policy.

The Commissioner has grouped these actions under the following headings.

Aggressive or abusive behaviour

We understand that some appellants or complainants may be angry about the issues they have raised in their appeal or complaint. If that anger escalates into aggression towards the Commissioner's staff, we consider that unacceptable. Any violence or abuse towards the Commissioner's staff will not be accepted.

Violence and aggression are not restricted to acts which may result in physical harm. They also include behaviour or language (whether oral or written) that may cause staff to feel offended, afraid, threatened, harassed or abused. We will judge each situation individually and appreciate individuals who come to us may be upset.

Examples of such behaviour include threats, physical violence, personal verbal abuse, derogatory remarks, inflammatory statements, harassment and unsubstantiated allegations.

Language which is designed to insult or degrade, is racist, sexist or homophobic or which makes serious allegations that individuals have committed criminal, corrupt or perverse conduct without any evidence is unacceptable.

We may also decide that comments aimed not at us but at third parties are unacceptable because of the effect that listening or reading them may have on our staff.

Unreasonable demands

A demand becomes unacceptable when it starts to (or when complying with the demand would) impact substantially on the work of the Commissioner's office.

Examples of actions grouped under this heading include:

- repeatedly demanding responses within an unreasonable timescale
- insisting on seeing or speaking to a particular member of staff when that is not possible
- repeatedly changing the substance of an appeal or complaint or raising unrelated concerns.

An example of such impact would be that the demand takes up an excessive amount of staff time and in so doing disadvantages other complainants and prevents their own complaint from being dealt with quickly.

What amounts to unreasonable demands will depend on the circumstances surrounding the behaviour and the seriousness of the issues raised by the individual.

Unreasonable levels of contact

Sometimes the volume and duration of contact made to our office by an individual can cause problems. This can occur over a short period, for example, a number of calls in one day or one hour. It may occur over the life-span of a request, an appeal or complaint when an individual

repeatedly makes long telephone calls to us or inundates us with copies of information that has been sent already or that is irrelevant to the request, appeal or complaint.

The Commissioner considers that the level of contact has become unacceptable when the amount of time spent talking to a complainant on the telephone, or responding to, reviewing and filing emails or written correspondence impacts on our ability to deal with that request, appeal or complaint, or with other people's requests, appeals or complaints.

Unreasonable refusal to co-operate

When we are looking at a request, appeal or complaint, we will need to ask the individual who has complained to work with us. This can include agreeing with us what we will look at; providing us with further information, evidence or comments on request; or helping us by summarising their concerns or completing a form for us.

Sometimes, an individual repeatedly refuses to cooperate and this makes it difficult for us to proceed. We will always seek to assist someone if they have a specific, genuine difficulty in complying with a request. However, the Commissioner will consider it is unreasonable to bring a complaint to us and then not respond to reasonable requests.

Unreasonable use of the complaints process

Individuals with complaints about the Commissioner have the right to pursue their concerns through the Complaints Handling Procedures. This contact becomes unreasonable when the effect of the repeated complaints is to harass, or to prevent us from pursuing a legitimate aim or implementing a legitimate decision. We consider access to the Commissioner's complaints system to be important and it will only be in exceptional circumstances that we would consider such repeated use is unacceptable – but we reserve the right to do so in such cases.

Unreasonable persistence

We recognise that some individuals will not or cannot accept that the Commissioner cannot provide a level of service other than the one provided already or that the Commissioner is unable to assist them further. There are rare occasions where an individual may persist in disagreeing with the action or decision taken in relation to their appeal or complaint, or contact the office persistently about the same issue.

Examples of such behaviour include persistent refusal to accept the Commissioner's actions in relation to an appeal and persistent refusal to accept explanations given by the Commissioner's staff about what this office can or cannot do. We accept that the way in which these individuals approach us may be reasonable, but it is the persistent behaviour in continuing to do so that is not.

The actions of persistent individuals are unacceptable when they take up what the Commissioner considers to be a disproportionate amount of time or resources.

Managing Unacceptable Actions

There are relatively few individuals whose actions we consider unacceptable. How we aim to manage these actions depends on their nature and extent. If they affect adversely our ability to do our work and provide a service to others, we may need to restrict contact with our office in order to manage the unacceptable action. We aim to do this in a way wherever possible, that allows an appeal to progress to completion through our appeals process, a request to be responded or a complain to be considered.

We may restrict contact in person, by telephone, fax, letter or electronically or by any combination of these. We try to maintain at least one form of contact. In extreme situations, we tell the complainer in writing that their name is on a “no personal contact” list. This means that they must restrict contact with our office to either written communication or through a third party.

We will always tell the individual what action we are taking and why.

Examples of how we manage aggressive or abusive behaviour

The threat or use of physical violence, verbal abuse or harassment towards the Commissioner’s staff is likely to result in the ending of all direct contact with the individual. We may report Incidents to the police. This will always be the case if physical violence is used or threatened.

We do not deal with correspondence (letter, fax or electronic) that is abusive to staff or contains allegations that lack substantive evidence. If such correspondence is sent to us, we tell the individual that we consider their language offensive, unnecessary and unhelpful. We ask them to stop using such language and state that we will not respond to their correspondence if they do not stop. We may require future contact to be through a third party.

The Commissioner’s staff will end telephone calls if they consider the caller is aggressive, abusive or offensive. The Commissioner’s staff have the right to take this decision member taking the call has the right to make this decision, to tell the caller that their behaviour is unacceptable and end the call if the behaviour persists.

We will not respond to correspondence (in any format) that contains statements that are abusive to staff or contains allegations that lack substantive evidence. Where we can, we will return the correspondence. We will explain why and say that we consider the language used to be offensive, unnecessary and unhelpful and ask the sender to stop using such language. We will state that we will not respond to their correspondence if the action or behaviour continues.

Examples of how we deal with other categories of unreasonable behaviour

We have to take action when unreasonable behaviour impairs the functioning of our office. We aim to do this in a way that allows a matter to progress through our process.

We will try to ensure that any action we take is the minimum required to solve the problem, taking into account relevant personal circumstances including the seriousness of the matter and the needs of the individual.

Actions we may take

Where an individual repeatedly phones, visits the office, sends large numbers of documents where their relevance is not clear or raises the same issues, we may decide to:

- limit contact to telephone calls from the individual at set times on set days and/or set times
- restrict contact to a nominated member of the Commissioner's staff who will deal with future calls or correspondence from the individual
- see the individual by appointment only
- restrict contact from the individual to writing only
- return the documents to the individual or in extreme cases, advise the individual that further irrelevant documents will be securely destroyed; or
- take any other action that we consider appropriate.

Examples of how we deal with other categories of unreasonable behaviour

Where an individual continues to correspond on a wide range of issues, and this action is considered excessive, then the complainant is told that only a certain number of issues will be considered in a given period and asked to limit or focus their enquiries and requests accordingly.

If an individual's actions or behaviour are considered to be unreasonably persistent, the individual is told that no future phone calls will be accepted or interviews granted concerning their complaint. Any future contact by the individual must be in writing. Future correspondence is read and filed, but only acknowledged or responded to if the individual provides significant new information relating to the dealings with us.

The process we follow to make decisions about unreasonable behaviour

Any member of the Commissioner's staff who directly experiences aggressive or abusive behaviour from an individual has the authority to deal immediately with that behaviour in a manner they consider appropriate to the situation and in line with this Policy.

With the exception of such immediate decisions taken at the time of an incident, decisions to restrict contact with the Commissioner are only taken after careful consideration of the situation by a member of the Senior Management Team. Wherever possible, we will give an individual the opportunity to change their behaviour or action before a decision is taken.

Deciding to Restrict Individual Contact

How we let people know we have made this decision

When a member of the Commissioner's staff makes an immediate decision in response to offensive, aggressive or abusive behaviour, the individual is advised at the time of the incident.

With the exception of such immediate decisions taken at the time of an incident, decisions to restrict contact with the Commissioner are only taken after careful consideration of the situation by a member of the Senior Management Team.

Wherever possible, we give an individual the opportunity to modify their behaviour or action before a decision is taken.

When a decision has been made by senior management, an individual will always be provided with the following in writing:

- the reasons why a decision has been made to restrict future contact,
- the restricted contact arrangements and
- if relevant, the length of time that these restrictions will be in place.

This ensures that the individual has a record of the decision.

Appealing a Decision to Restrict Contact

It is important that a decision can be reconsidered.

An individual can appeal a decision to restrict contact. If they do this, we will only consider arguments that relate to the restriction and not the request, appeal or complaint made to us.

An appeal could include, for example, an individual saying that:

- their actions were wrongly identified as unacceptable
- the restrictions are disproportionate
- the restrictions will adversely impact on the individual because of personal circumstances.

A member of the Senior Management Team who was not involved in the original decision will consider the appeal and they will:

- have discretion to quash or vary the restriction as they think best
- make their decision based on the evidence available to them
- advise the individual in writing that either the restricted contact arrangements still apply or a different course of action has been agreed.
- advise the individual in writing that either the restricted contact arrangements still apply or a different course of action has been agreed.

Recording and Reviewing a Decision to Restrict Contact

We record all incidents of unacceptable actions by individuals. Where it is decided to restrict contact, an entry noting this is made on our Unacceptable Actions Register and in any relevant case file.

Guidance on the steps required to record a decision to restrict individual contact and the record management requirements are contained in the Unacceptable Actions Register.

A decision to restrict individual contact may be reconsidered either on request, by appeal or on review.

The Head of Corporate Services will review, on a regular basis, the status of each individual with restricted contact arrangements recorded on the Unacceptable Actions Register.

Policy Availability and Review

Copies of this Unacceptable Actions Policy are available on request and free of charge from the Commissioner's office.

The Commissioner will review the Unacceptable Actions Policy on a regular basis to make sure that the aims of the policy are being achieved.

Please contact us if you would like the Unacceptable Actions Policy in other language and format.

For further information please contact:

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife, KY16 9DS

Telephone: 01334 464610

Email: enquiries@itspublicknowledge.info

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS
Tel: 01334 464610
email: enquiries@itspublicknowledge.info

www.itspublicknowledge.info

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