

## UNACCEPTABLE BEHAVIOUR POLICY

Date policy adopted: 01/04/2020

Date of last review: 02/09/2021

### 1. Purpose and Scope

We believe that complainers and all other people who contact us ('complainers') have a right to be heard, understood and respected. We work hard to be open and accessible to everyone.

Occasionally, the behaviour or actions of individuals makes it very difficult for us to deal with their complaint or request. In a small number of cases the actions of individuals become unacceptable because they involve abuse of our staff or our process.

When this happens, we have to take action to protect our staff. We also consider the impact of the behaviour on our ability to do our work such as providing assistance to others.

This policy explains how we will approach these situations.

This policy applies to our engagement with the wider public and all those who interact with the work of the Commissioner.

### 2. Policy Statement

ESC is committed to carrying out its statutory functions in a fair and accessible manner. We believe that everyone who contacts us has the right to be treated with respect and dignity. We also believe that our staff have the same rights, and we must provide a safe working environment for our staff. We must also ensure that we carry out our functions efficiently and effectively.

We recognise that some people may have difficulties in expressing themselves or communicating clearly, especially when anxious or upset. We also understand that some people may find it difficult to identify what impact their behaviour might have on other people. We will always consider making reasonable adjustments if we are asked to do so – but we may still use the policy if actions or behaviours are having a negative effect on our staff or our work.

### 3. Definition of unacceptable behaviour

People may act out of character in times of trouble or distress. There may have been upsetting or distressing circumstances leading up to a complaint coming to our office. We do not view behaviour as unacceptable just because a complainer is forceful or determined. In fact, we accept that being persistent may sometimes be a positive advantage when pursuing a complaint. However, we do consider actions that result in unreasonable demands on our office or unreasonable behaviour towards ESC staff to be unacceptable. It is these actions that we aim to manage under this policy.

The following circumstances may be regarded as illustrative of unacceptable or unreasonable conduct by a complainer. This list is not exhaustive or conclusive.

#### **Aggressive or abusive behaviour**

We understand that many complainers are angry about the issues they have raised in their complaint. If that anger escalates into aggression towards ESC staff, we consider that unacceptable. Any violence or abuse towards staff will not be accepted.

Violence is not restricted to acts of aggression that may result in physical harm. It also includes behaviour or language (whether verbal or written) that may cause staff to feel offended, afraid, threatened or abused. We will judge each situation individually and appreciate individuals who come to us may be upset. 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 decide that comments aimed not at us but at third parties are unacceptable because of the effect that listening to 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 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 a 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 complainers, or people who otherwise rely on us, and prevents their own complaint and/or enquiry from being dealt with in good time.

#### **Unreasonable levels of contact**

Sometimes the volume and duration of contact made to our office by an individual causes 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 complaint when a complainer 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 complaint.

We consider that the level of contact has become unacceptable when the amount of time spent talking to a complainer on the telephone, or responding to, reviewing and filing emails or written correspondence impacts on our ability to deal with that complaint, or with other people's complaints or requirements.

## **Unreasonable refusal to co-operate**

When we are looking at a complaint, we will need to ask the individual who has complained to work with us. This can include agreeing with us the complaint we will look at; identifying the precise issues which the complainer wishes to have investigated; 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 complying with a request. However, we 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 have the right to pursue their concerns through a range of means. They also have the right to complain more than once if subsequent incidents occur.

This contact becomes unreasonable when the effect of the repeated complaints is to harass, or to prevent the Commissioner from pursuing a legitimate aim or implementing a legitimate decision where the Complaints Handling Procedure about the Commissioner and its staff has been fully and properly implemented and exhausted. We consider access to a 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.

We will also consider grossly excessive numbers of prior contacts with us and/or insisting that a complaint be reopened when the Commissioner has already reached a final decision to be representative of unreasonable behaviour.

## **4. Implementation, monitoring and review of the policy**

### **Examples of how we manage aggressive or abusive behaviour:**

The threat or use of physical violence, verbal abuse, in writing, in person or by telephone or harassment towards ESC staff is likely to result in a termination of all direct contact with the complainer. We may report incidents to the police. This will always be the case if physical violence is used or threatened.

ESC staff will end telephone calls if they consider the caller aggressive, abusive or offensive. ESC staff have 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.

In extreme situations, we will tell the complainer in writing that their name is on a 'no personal contact' list. This means that we will limit contact with them to through a third party.

### **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 complaint 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 complaint and the needs of the individual.

Actions we may take:

Where a complainer repeatedly phones, visits the office, raises repeated issues or sends large numbers of documents where their relevance isn't clear we may decide to:

- Limit contact to telephone calls from the complainer at set times on set days
- Restrict contact to a nominated member of ESC staff who will deal with future calls or correspondence from the complainer
- See the complainer by appointment only
- Restrict contact from the complainer to writing only
- Return any documents to the complainer or, in extreme cases, advise the complainer that further irrelevant documents will be destroyed
- File, but not respond to, further correspondence
- Take any other action that we consider appropriate

Where we consider continued correspondence on a wide range of issues to be excessive, we may tell the complainer that only a certain number of issues will be considered in a given period and we ask them to limit or focus their requests accordingly.

In exceptional cases, we reserve the right to refuse to consider a complaint or future complaints from an individual. We will take into account the impact on the individual and also whether there would be a broader public interest in considering the complaint further.

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

Any member of ESC staff who directly experiences aggressive or abusive behaviour from a complainer 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 ESC are only taken after careful consideration of the situation by a member of the Senior Management Team (SMT). Wherever possible, we will give a complainant the opportunity to change their behaviour or action before a decision is taken.

When an ESC employee makes an immediate decision in response to offensive, aggressive or abusive behaviour, the complainant is advised at the time of the incident. When a decision has been made by senior management, a complainant will always be given the reason in writing (this can be supplemented if written communication is not the most appropriate form for the individual) as to 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 complainant has a record of the decision.

Overall responsibility for policy implementation, monitoring and review lies with ESC. Everyone covered by the scope of the policy is obliged to adhere to, and facilitate implementation of the policy. Appropriate action will be taken to inform all new and existing employees and others covered by the scope of the existence of the policy and their role in adhering to it. The policy will be reviewed at such times as legislation or a change to the ESC policy position requires it. The policy will be made available to the general public.

## 5. Appeal Process

It is important that a decision can be reconsidered. A complainant can appeal a decision to restrict contact. If they do this, we will only consider arguments that relate to the restriction and not to either the complaint made to us or to our decision to close a complaint.

An appeal could include, for example, a complainant saying that:

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

The Commissioner, who will not have been involved in the original decision, will consider the appeal. They have discretion to quash or vary the restriction as they think best. They will make their decision based on the evidence available to them. They must advise the complainant in writing (this can be supplemented if written communication is not the most appropriate form for the individual) that either the restricted contact arrangements still apply, or a different course of action has been agreed.

There is no further route of appeal in cases in which the Commissioner has invoked the policy and once the Commissioner has made a final decision.

We may review the restriction periodically or on further request after a period of time has passed. Each case is different. We will explain in the letter or email setting out the restriction what review process will be in place for that restriction and in what circumstances they could request this be reconsidered.

Where a person claims there has been misconduct on the part of the Commissioner or their staff, a complaint may be made to the Scottish Public Services Ombudsman (SPSO) (see the Complaints Handling Procedure). The correspondent will be advised of their right (if appropriate) to complain to the SPSO.

## 6. Senior Management Team (SMT) Commitment

The Senior Management Team will show commitment to this policy through:

- Ensuring that the policy is always implemented in a fair manner and only after all matters are taken into consideration.
- Providing a safe working environment for all ESC staff.
- Ensuring the efficient and effective operation of our office for all who rely on us.

## 7. Expectations

It is expected that all employees will:

- Support and cooperate with this policy;
- Read and understand the contents of this policy and talk through any queries or concerns that they may have in relation to the content of it with a member of the senior management team.

It is expected that those who interact with the work of the Commissioner will:

- treat employees with respect, dignity, fairly and without bias.

### Equality Impact Assessment

Does this policy comply with the general Public Sector Equality Duty (s149 Equality Act 2010)? This policy applies to all employees, contractors and all who interact with the work of ESC. Its impact was considered when drafting and its core intention is to ensure that all employees and those who interact with the work of ESC are treated fairly and inclusively with dignity and respect. We consulted with all employees prior to publication to identify and address any issues.

### Data Protection Impact Assessment

Have we considered any effect the policy may have on the collecting, processing and storing of personal data?

The records generated by this policy will contain personal data and may contain sensitive and special category personal data. Suitable retention and destruction policies are in place to manage this material.

### Information Security Impact Assessment

Have we considered the impact any policy may have on our cyber-resilience?

This policy should have no impact on our cyber-resilience.

### Records Management Impact

Have we considered the impact any policy may have on our ability to manage our records?

This policy should have no impact on our ability to manage our records.

Version	Description	Date	Author
1.0	Final draft	02/09/2021	Corporate Services Officer