Post course resources - Complaints — managing unreasonable and persistent behaviour

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hqn TRAINING

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In social housing, as in other areas, the vast majority of customers are polite and respectful and only a minority behave unreasonably. But that minority can often take up a disproportionate amount of staff time and energy. This prevents landlords from providing a good-quality service to others and can be a source of stress for those other customers and for a landlord's staff.

Managing unreasonable behaviour is a challenging aspect of complaint management, requiring soft skills and good judgement. The Housing Ombudsman's Complaint Handling Code requires landlords to publish a policy setting out how they will respond to and manage such behaviour.

The Housing Ombudsman is supportive of landlords who take formal action to deal with unreasonable behaviour, such as restricting access, so long as the steps taken are proportionate and the customers in question are dealt with fairly, respectfully and appropriately.

This guidance aims to ensure that landlords' policies and approaches are fair, meet the expectations of the Housing Ombudsman and reflect current best practice for the sector. The title of the policy is a matter for the landlord to decide – but the use of the word 'vexatious' in the title is not recommended, as this can be unnecessarily inflammatory. This point is underlined by the Housing Ombudsman in its own guidance for landlords: Managing unacceptable behaviour policy – Housing Ombudsman (housing-ombudsman.org.uk)

Aims and purpose

The purpose of an unreasonable behaviour policy is to provide customers with clear expectations about their behaviour and give staff a framework that enables them to feel confident and supported when deciding upon the appropriate course of action. The policy should clearly explain what constitutes unreasonable behaviour and set out the range of informal and formal actions that staff can take to address it or prevent it from escalating. The policy should also aim to ensure a consistent approach which is appropriate and proportionate to every situation. At the same time, it is important to ensure that all customers, regardless of their behaviour, are treated with respect and dignity and have the right to be heard.

Scope

The policy should clearly set out who it applies to, which should ideally be 'anyone', accounting for applicants, residents, non-residents and advocates acting on behalf of others. The policy should also state that it applies to unreasonable behaviour directed at third parties acting on behalf of a landlord, such as contractors or managing agents

Definition and examples

The policy should clearly define what constitutes unreasonable behaviour. This would normally involve the abuse of colleagues, a disregard for processes and when the actions of a customer take up a disproportionate amount of time, preventing others from accessing and receiving a service.

Set out some broad categorise which could include:

Aggressive or abusive behaviour – this includes physical acts of aggression, threats and behaviour or language (verbal, written or face-to-face) that is intended to insult, degrade or bully, or is otherwise derogatory.

Unreasonable demands – this can include demanding responses within an unreasonable timescale; insisting on dealing (or not dealing) with a specific member of staff; repeatedly changing the substance of a complaint; raising unrelated concerns; requesting old complaints be revisited; and requesting large volumes of information without good reason.

Unreasonable levels of contact – this can include an overload of correspondence or telephone calls; copying in several members of staff; repeatedly raising the same complaint; and refusing to accept a decision.

Unreasonable refusal to co-operate – this can include refusing to provide further details, evidence, clarity or a summary of the concerns raised, or not co-operating with normal procedures.

Abuse of social media – this can include contacting staff using their personal details or personal social media accounts and publishing personal and private information about staff online.

Your response

It is important to always consider the context of a customer's behaviour when considering whether it constitutes unreasonable behaviour and what steps to take. For example:

- Someone who is upset, angry or emotional is not (necessarily) behaving unreasonably
- It is not unreasonable to raise legitimate queries or criticisms about the handling of a request, enquiry or complaint
- Customers may act out of character at times due to upsetting circumstances leading up to them contacting the landlord
- Is the complainant's distress in reasonable proportion to the loss/wrong suffered?
- Does the customer have health issues or language/comprehension difficulties which is driving their behaviour or makes it difficult for them to request or access a service?

Unreasonable behaviour does not mean that the customer does not have a valid point. Each case should be looked at on its individual merits and circumstances.
Always be mindful of your responsibilities under the Equality Act 2010. It is a requirement of the Housing Ombudsman's Complaint Handling Code that landlords must satisfy themselves that their policies set out how they will respond to reasonable adjustment requests in line with the act.

It may sometimes be appropriate to make reasonable adjustments by going outside your normal policies, procedures and practices to accommodate a customer's needs. Consider the individual and their circumstances. Any restrictions you put in place must be appropriate to that person.

Informal action

In the first instance, try and reach an informal arrangement with a customer as to how they will modify their behaviour and communicate. This could include:

- Agreeing to call at a particular time
- Setting a limit on the length of telephone calls
- Agreeing to correspond once a week (or fortnight)
- Limiting the number of issues raised.

It is worth spending time trying to reach an informal arrangement as it can prove less resource intensive than enforcing any formal restrictions at a later stage. This will not always be possible and may not be an appropriate option in some circumstances.

A customer should be warned about their behaviour and provided with examples of where it has been unreasonable. A customer should be informed that formal action may be taken if the behaviour is not modified. It is a good idea to provide a copy of the unreasonable behaviour policy, or a link to it.

Other informal options include involving an advocate or representative who can act on the customer's behalf, or offering mediation. Mediation has been shown to be more effective when used early on.

Formal action

If attempts to reach an informal arrangement with the customer are unsuccessful, you may need to consider putting formal restrictions in place. Your policy should list all the options open to colleagues, which might include:

- A single point of contact
- Limiting contact to a single form, such as email, letter or telephone
- Restricting contact to certain times
- Only liaising through an advocate or representative
- Limiting the number of issues that will be considered
- Drawing a line under closed complaints
- Only responding on provision of new information or evidence, or further clarity on the issues being raised
- Limiting access to your premises.

There may be serious instances where you should consider involving the police, taking legal action or ending any direct contact.

If restrictions are put in place or direct contact is ended, the customer should be made aware of how and where to report any emergency incidents (such as a gas leak or flood).

When deciding on the appropriate course of action, it is important to try and remain impartial and objective to ensure that a fair decision is reached. It is useful to get a second opinion, particularly from someone who has had no direct involvement in the case.

For audit purposes, any decision to restrict access should be made in writing and records should be clearly updated (flagged) so that colleagues are aware of the restrictions in place. It is important to keep robust records to evidence the customer's behaviour and the steps taken to address it – this may need to be provided to the Housing Ombudsman Service if the customer complains to it.

The customer should be informed that they can contact the Housing Ombudsman Service at any time for advice about how to raise a complaint with the landlord or with the Ombudsman if they think the landlord has applied its policy unreasonably.

Social media

The policy should set out what actions, formal or informal, will be taken if the unreasonable behaviour relates to the use of social media. Actions might include hiding or deleting a post, blocking the user's access to social media accounts, reporting posts to the social media platform, legal action or involvement of the police.

Counter allegations

If the customer raises counter allegations about the behaviour of an employee, these should be investigated properly, even where they may appear to be solely raised in retaliation.

Appeals and reviews

Any fair process should include at least one opportunity for a customer to appeal against any restrictions that have been put in place. They should be told how to appeal, and the appeal should be undertaken by somebody senior who has ideally (but not essentially) not previously been involved in the case. The customer should be informed of the outcome of the appeal in writing.

Any restrictions should initially be in place for a set period, which will vary depending on the severity of the behaviour (eg, one, three or six months) and should not be in place indefinitely. The situation should then be reviewed and restrictions removed or relaxed if the behaviour has improved. If the behaviour has persisted, the restrictions can remain in place for another set period, followed by a further review. The customer should be informed of this in writing.

Other policies

It will sometimes be necessary to refer to other policies and procedures when deciding what course of action to take under the unreasonable behaviour policy. Those which would normally be relevant include the complaints policy, equality/diversity or reasonable adjustments policy, anti-social behaviour policy and hate crime policy.

Support for staff

The landlord should ensure that appropriate training and support are in place for staff who may have to deal with unreasonable behaviour. It may not be appropriate to include this in the public policy, but staff should be aware of the training and support that is available. Support might include immediate access to and support from a manager when necessary, the ability to take time away from the phone or other frontline contact or access to an independent employee assistance service.

Checklist

Below is a checklist of key points:

- Make sure your policy defines unreasonable behaviour and sets out the steps you might take to address it
- Try to reach an informal arrangement
- Consider whether any informal intervention would be appropriate
- Warn the customer before introducing formal restrictions, providing examples
- Consider what formal action is appropriate to the person, with particular regard to the Equality Act 2010
- Consider the context, remain impartial, seek a colleague's opinion
- Provide the opportunity to appeal any restrictions

- Set a review period and if the behaviour improves, relax or lift the restrictions
- Keep accurate records and an audit trail as evidence of the behaviour being experienced and the steps taken to try and address it
- **Treat each case on its individual merits – remember that customers who exhibit unreasonable behaviour often have a valid complaint**

We would welcome your comments on this guidance and any of your own suggestions, to inform future versions of the guidance.
If you have a question or feedback for our Complaints Hub leads, John Goodwin and Dave Simmons, please send it to networks@hqnetwork.co.uk.

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