

Policy

Unreasonable Complainant Conduct

Responsible Manager (Title)	Manager Organisational Development		
Adopted by Council	Date: 26 May 2020	Minute Number: 6c.20.065	
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Document(s) this policy Supersedes	Unreasonable Complainant Conduct Policy V1.0		
Community Plan Linkage	5 Leadership		
	5.2 We will have an effective and efficient organisation		
	5.2.3 Fosters an organisational culture focused on customer service excellence, innovation and continuous improvement		

1. Purpose

Clarence Valley Council is committed to being accessible and responsive to all complainants who approach us for assistance and/or with a complaint. At the same time the success of our Council depends on:

- Our ability to do our work and perform our functions in the most effective and efficient ways possible
- The health, safety and security of our staff
- Our ability to allocate Council's resources fairly across all the complaints it receives

When complainants behave unreasonably in their dealings with Council, their conduct can significantly affect our success. As a result, Clarence Valley Council will take proactive and decisive action to manage any complainant conduct that negatively and unreasonably affects us and will support our staff to do the same in accordance with this policy.

2. Definitions

Unreasonable complainant conduct (UCC): is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for our organisation, our staff, other service users and complainants or the complainant himself/herself.

UCC can be divided into five categories of conduct:

- Unreasonable persistence
- Unreasonable demands
- Unreasonable lack of cooperation

- Unreasonable arguments
- Unreasonable behaviours

Unreasonable persistence - Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources.

Unreasonable demands - Unreasonable demands are any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources.

Unreasonable lack of cooperation - Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with our organisation, staff, or complaints system and processes that result in a disproportionate and unreasonable use of our services, time and/or resources.

Unreasonable arguments - Unreasonable arguments include any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon our organisation, staff, services, time, and/or resources.

Unreasonable behaviour - Unreasonable behaviour is conduct that is unreasonable in all circumstances - regardless of how stressed, angry or frustrated that a complainant is - because it unreasonably compromises the health, safety and security of our staff, other service users or the complainant himself/herself.

3. Background/legislative requirements

[Ombudsman NSW - Managing unreasonable complainant conduct - a model policy and procedures - Feb 2013](#)

[Managing Unreasonable Complainant Conduct Practice Manual \(2nd edition\) 2012](#)

Unauthorised entry onto agency premises - [Inclosed Lands Protection Act 1901 \(NSW\)](#).

Orders to address violence, threats, intimidation and/or stalking by complainants - [Crimes \(Domestic and Personal Violence\) Act 2007 \(NSW\)](#).

4. Policy statement

This policy has been developed to assist Clarence Valley Council constituents and staff members to better understand and manage UCC. Its aim is to identify the types of circumstances when it may be appropriate to manage UCC using one or more of the following mechanisms:

- The strategies provided in the NSW Ombudsman publication, Managing Unreasonable Complainant Conduct Practice Manual (2nd Edition), including a number of suggested strategies to change or restrict a complainant's access to Council services, and this policy has been devised to complement the practice manual.
- Alternative dispute resolution strategies to deal with conflicts involving complainants and members of Council.

- Legal instruments such as trespass laws/legislation to prevent a complainant from coming onto our premises and orders to protect specific staff members from any actual or apprehended personal violence, intimidation or stalking.

5. Implementation

Responding to and managing UCC

UCC incidents will generally be managed by limiting or adapting the ways that we interact with and/or deliver services to complainants by restricting:

- **Who they have contact with** - e.g. limiting a complainant to a sole contact person/staff member in our organisation.
- **What they can raise with us** - e.g. restricting the subject matter of communications that we will consider and respond to.
- **When they can have contact** - e.g. limiting a complainant's contact with our organisation to a particular time, day, or length of time, or curbing the frequency of their contact with us.
- **Where they can make contact** - e.g. limiting the locations where we will conduct face-to-face interviews to secured facilities or areas of the office.
- **How they can make contact** - e.g. limiting or modifying the forms of contact that the complainant can have with us. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to our premises, contact through a representative only, taking no further action or terminating our services altogether.

A separate procedure and instructional information has been developed for enacting this policy and is detailed at the attachments.

6. Audit and Policy review

Ombudsman may request copies of our records

Clarence Valley Council will keep records of all cases where this policy is applied, including a record of the total number of cases where it is used every year. This data may be requested by the Ombudsman to conduct an overall audit and review in accordance with its administrative functions and/or to inform its work on UCC.

Policy Review

All Staff are responsible for forwarding any suggestions they have in relation to this policy to the Manager Organisational Development. It is to also to be reviewed and updated in accordance with legislative change and/or update of source manuals as noted in Section 3 of this policy.

7. Supporting Documents and Policies

This policy is compliant with and supported by the following documents:

- Clarence Valley Council Access to Council Documents Policy

- Clarence Valley Council Complaints Management Policy
- Clarence Valley Council Customer Services Policy
- Clarence Valley Council Code of Conduct
- Clarence Valley Council Work Health and Safety WHS Policy
- Clarence Valley Council Excluding Abusive or Disruptive Customers from Council Premises Policy
- AS/NZ 10002:2014
- Clarence Valley Employee Assistance Program

8. Appeal/objections process

In order for Clarence Valley Council to ensure that all complaints are dealt with fairly, efficiently and effectively and that occupational health and safety standards and duty of care obligations are adhered to, Appendix A - Individual Rights and Responsibilities of the Parties to a Complaint, must be observed and respected by all of the parties to the complaint process.

9. Attachments

- A. Appendix A: Individual Rights and Mutual Responsibilities of the Parties to a Complaint
- B. Procedure - Unreasonable Complainant Conduct

Appendix A: Individual Rights and Mutual Responsibilities of the Parties to a Complaint

In order for Clarence Valley Council to ensure that all complaints are dealt with fairly, efficiently and effectively and that occupational health and safety standards and duty of care obligations are adhered to, Council notes that the following rights and responsibilities must be observed and respected by all of the parties to the complaint process.

Individual rightsⁱ

a) Complainants have the right:

- to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriateⁱⁱ
- to a reasonable explanation of the organisation's complaints procedure, including details of the confidentiality, secrecy and/or privacy rights or obligations that may apply
- to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the caseⁱⁱⁱ
- to a fair hearing^{iv}
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint^v
- to be given reasons that explain decisions affecting them
- to at least one right of review of the decision on the complaint^{vi}
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response^{vii}

b) Staff have the right:

- to determine whether, and if so how, a complaint will be dealt with
- to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances^{viii}
- to expect honesty, cooperation and reasonable assistance from complainants
- to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint
- to be treated with courtesy and respect
- to a safe and healthy working environment^{ix}
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.^x

c) Subjects of a complaint have the right:

- to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them
- to be treated with courtesy and respect by staff of the *Clarence Valley Council*
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated^{xi}
- to be informed about the substance of any proposed adverse comment or decision
- to be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made^{xii}
- to be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them
- to be protected from harassment by disgruntled complainants acting unreasonably.

Mutual responsibilities

a) Complainants are responsible for:

- treating staff of Council with courtesy and respect
- clearly identifying to the best of their ability the issues of complaint, or asking for help from Council staff to assist them in doing so
- providing to the best of their ability, all the relevant information available to them at the time of making the complaint
- being honest in all communications with the Council
- informing Council of any other action they have taken in relation to their complaint^{xiii}

- cooperating with staff who are assigned responsibilities to assess/investigate/ resolve/determine or otherwise deal with their complaint.

If complainants do not meet their responsibilities, Council may consider placing limitations or conditions on their ability to communicate with staff or access certain services.

Council has a zero tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.^{xiv} Any such conduct of a criminal nature will be reported to police and in certain cases legal action may also be considered.

b) Staff are responsible for:

- providing reasonable assistance to complainants who need help to make a complaint and, where appropriate, during the complaint process
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly and impartially
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made^{xv}
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them^{xvi} and the substance of any proposed adverse comment or decision that they may need to answer or address^{xvii}
- keeping complainants informed of the actions taken and the outcome of their complaints^{xviii}
- giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances
- taking all reasonable and practical steps to ensure that complainants^{xix} are not subjected to any detrimental action in reprisal for making their complaint^{xx}
- giving adequate warning of the consequences of unacceptable behaviour.

c) Subjects of a complaint are responsible for:

- cooperating with the staff of Council who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction^{xxi}
- providing all relevant information in their possession to Council or its authorised staff when required to do so by a properly authorised direction or notice
- being honest in all communications with Council and its staff
- treating Council staff with courtesy and respect at all times and in all circumstances
- refraining from taking any detrimental action against the complainant^{xxii} in reprisal for them making the complaint.^{xxiii}

If a subject or subjects of a complaint fail to comply with these responsibilities, action may be taken in accordance with any breaches of Council's Codes of Conduct.

d) Council is responsible for:

- having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints
- decisions about how all complaints will be dealt with
- ensuring that all complaints are dealt with professionally, fairly and impartially^{xxiv}
- ensuring that staff treat all parties to a complaint with courtesy and respect
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances^{xxv}
- implementing reasonable and appropriate policies/procedures/practices to ensure that complainants^{xxvi} are not

- subjected to any detrimental action in reprisal for making a complaint^{xxvii}, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

ENDNOTES

- i The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint.
- ii Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums.
- iii While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.
- iv The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.
- v Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.
- vi Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.
- vii Provided the concerns are communicated in the ways set out in relevant legislation, policies and/or procedures established for the making of such complaints/allegations/disclosures/etc.
- viii Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint [see also Endnote 25].
- ix See for example WH&S laws and the common law duty of care on employers.
- x Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.
- xi Other than where there is an overriding public interest in curtailing the right, for example where to do so could reasonably create a serious risk to personal safety, to significant public funds, or to the integrity of an investigation into a serious issue. Any such notifications or opportunities should be given as required by law or may be timed so as not to prejudice that or any related investigation.
- xii Depending on the circumstances of the case and the seriousness of the possible outcomes for the person concerned, a reasonable opportunity to put their case, or to show cause, might involve a face to face discussion, a written submission, a hearing before the investigator or decision maker, or any combination of the above.
- xiii For example whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings at foot.
- xiv Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.
- xv See Endnote 11.
- xvi Other than where an allegation is so lacking in merit that it can be dismissed at the outset.
- xvii See Endnote 11
- xviii See Endnote 5
- xix 'Complainants' include whistleblowers/people who make internal disclosures.
- xx 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.
- xxi This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.
- xxii See Endnote 19
- xxiii See Endnote 20
- xxiv See Endnote 2
- xxv Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc., the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.
- xxvi See Endnote 19
- xxvii See Endnote 20