

UNREASONABLE COMPLAINANT CONDUCT POLICY

Policy statement

Blue Mountains City Council ('Council') is committed to being accessible and responsive to all complainants who approach it for assistance and/or with a complaint.

When responding to complaints, Council will treat all complainants with respect and will investigate their complaints fairly while protecting the safety and wellbeing of its staff and other customers and ensuring Council resources are used responsibly. Council will achieve this by having in place a robust and transparent system for dealing with unreasonable complainant conduct.

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

Definitions

Term	Definition
Code of Conduct	The current Code of Conduct as adopted by Blue Mountains City Council.
complainant	A person who makes a complaint. Can include Council staff, such as those who make public interest disclosures.
complaint	Expression of dissatisfaction made to or about Council, its services, staff or the handling of a complaint where a response or resolution is explicitly or implicitly expected or legally required.
Complaints Coordinator	The person who is delegated by the Chief Executive Officer to be the primary administrator of Council's complaint-handling process and this policy. The Chief Executive Officer may also nominate a member of staff to be an Alternate Complaints Coordinator.
Council	Blue Mountains City Council
Council official	Includes Councillors, members of staff of Council, administrators, Council committee members, and delegates of Council.
Employee Assistance Program	A confidential service available to all Blue Mountains City Council employees that provides short-term counselling and support for eligible employees and their immediate family members.
external agency	A government agency that is not Council and, in the context of this policy, is a potential alternative avenue for a complaint. Examples may include the NSW Police, the Independent Commission Against Corruption (ICAC), or the NSW Ombudsman.
HPE RM	Council's records management system, in which case files and records relating to a complainant's conduct are stored.
NSW Ombudsman	An independent agency that holds NSW government agencies and certain non-government organisations accountable to the people of NSW.
person the subject of a complaint	The person about whom a complainant makes a complaint.
rights	In this context, refers to guarantees of certain standards of service and behaviour that Council's complaint-handling system provides to each party to a complaint.
right to be heard	The complainant's 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.
staff	Any Council employee – including full-time, part-time and casual employees, contractors, trainees, contingent workers and apprentices – and any volunteer working on behalf of Council.
unreasonable complainant conduct	Behaviour by a complainant that is considered 'unreasonable' as described in this policy.

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Scope

This policy applies to all Council officials receiving or managing complaints from the public made to or about Council, regarding Council services, staff and complaint handling. It also applies to those making complaints. Anyone who has contact with Council staff, Council facilities, or utilises any Council services is eligible to provide feedback or make a complaint. This may be a visitor, a resident, an external contractor or any other external stakeholder.

At the same time, Council's success depends on:

- its ability to do its work and perform its functions in the most effective and efficient ways possible;
- the health, safety and security of its staff; and
- its ability to allocate its resources fairly across all the complaints it receives.

This policy deals specifically with unreasonable complainant behaviours by members of the public. Complaints by staff members are dealt with under other policies specific to staff, such as the *Grievance Resolution Policy*. Unreasonable behaviours by staff in making grievances will be dealt with under the relevant staff behavioural policy such as the *Code of Conduct* and *Discipline Policy*.

Policy details and information

1. Objectives

This policy has been developed to help all staff members to better manage unreasonable complainant conduct ('UCC'). Its aim is to ensure that all staff:

- feel confident and supported in taking action to manage UCC;
- act fairly, consistently, honestly and appropriately when responding to UCC;
- are aware of their roles and responsibilities in relation to the management of UCC and how this policy will be used;
- understand 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's *Managing Unreasonable Complainant Conduct: Practice Manual 2012* ('practice manual'), including the strategies to change or restrict a complainant's access to Council's services;
 - alternative dispute resolution strategies to deal with conflicts involving complainants and members of Council; and/or
 - legal instruments such as trespass laws/legislation to prevent a complainant from coming onto Council premises and orders to protect specific staff members from any actual or apprehended personal violence, intimidation or stalking;
- have a clear understanding of the criteria that will be considered before Council decides to change or restrict a complainant's access to its services;

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- are aware of the processes that will be followed to record and report UCC incidents as well as the procedures for consulting and notifying complainants about any proposed actions or decisions to change or restrict their access to Council's services; and
- are familiar with the procedures for reviewing decisions made under this policy, including specific timeframes for reviews.

2. Defining unreasonable complainant conduct

2.1. Unreasonable complainant conduct

Most complainants who come to Council premises act reasonably and responsibly in their interactions with Council, even when they are experiencing high levels of distress, frustration and anger about their complaint. However, in a very small number of cases, some complainants behave in ways that are inappropriate and unacceptable despite Council's best efforts to help them. They are aggressive and verbally abusive towards Council staff. They threaten harm and violence, bombard Council with unnecessary and excessive phone calls and emails, make inappropriate demands on staff time and Council resources and refuse to accept Council's decisions and recommendations in relation to their complaints. When complainants behave in these ways, Council considers their conduct to be 'unreasonable'.

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 Council, its 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; and/or
- unreasonable behaviours.

2.2. Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on Council and its staff, services, time and/or resources. Some examples of unreasonably persistent behaviour include:

- an unwillingness or inability to accept reasonable and logical explanations, including final decisions that have been comprehensively considered;
- persistently demanding a review simply because it is available and without presenting a case for one;
- pursuing and exhausting all available review options when it is not warranted and refusing to accept that further action cannot or will not be taken on a complaint;
- reframing a complaint in an effort to get it taken up again;

- bombarding Council with phone calls, visits, letters, emails (including cc'd correspondence) after repeatedly being asked not to do so; and/or
- contacting different people within Council and/or externally to get a different outcome or a more sympathetic response to a complaint (internal and external forum shopping).

2.3. Unreasonable demands

Unreasonable demands are any demands (express or implied) made by a complainant that have a disproportionate and unreasonable impact on Council and its staff, services, time and/or resources. Some examples of unreasonable demands include:

- issuing instructions and making demands about how Council have handled/should handle a complaint, the priority it was/should be given, or the outcome that was/should be achieved;
- insisting on talking to a senior manager or the Chief Executive Officer personally when it is not appropriate or warranted;
- emotional blackmail and manipulation with the intention to guilt trip, intimidate, harass, shame, seduce or portray themselves as being victimised when this is not the case;
- insisting on outcomes that are not possible or proportionate in the circumstances – e.g. for someone to be sacked or prosecuted, an apology and/or compensation when there is no reasonable basis for expecting this; and/or
- demanding services that are of a nature or scale that Council cannot provide when this has been explained to them repeatedly.

2.4. Unreasonable lack of cooperation

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with Council, its staff or its complaints system and processes that results in a disproportionate and unreasonable use of Council's services, time and/or resources. Some examples of unreasonable lack of cooperation include:

- sending a constant stream of excessive, incomprehensible and/or disorganised information without clearly defining any issues of complaint or explaining how the information relates to the core issues being complained about (when the complainant is capable of defining their complaint/explaining the information's relevance);
- providing little or no detail with a complaint or presenting information in dribs and drabs;
- refusing to follow or accept Council's instructions, suggestions, or advice without a clear or justifiable reason for doing so;
- arguing frequently and/or with extreme intensity that a particular solution is the correct one in the face of valid contrary arguments and explanations; and/or
- displaying unhelpful behaviour such as withholding information, acting dishonestly, misquoting others, and so forth.

2.5. Unreasonable arguments

Arguments are unreasonable when they:

- are incomprehensible or fail to follow a logical sequence;
- are not supported by any evidence and/or are based on conspiracy theories;
- lead a complainant to reject all other valid and contrary arguments;
- are trivial when compared to the amount of time, resources and attention that the complainant demands, and therefore unreasonably impact on Council's staff, services, time and resources; and/or
- are false, inflammatory or defamatory.

2.6. Unreasonable behaviour

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

- acts of aggression, verbal abuse, or derogatory, racist, or grossly defamatory remarks;
- harassment, intimidation or physical violence;
- rude, confronting and threatening correspondence;
- threats of harm to self or third parties, threats with a weapon or threats to damage property (including bomb threats);
- stalking (in person or online); and/or
- emotional manipulation.

All staff should note that Council has a zero-tolerance policy towards any harm, abuse or threats directed towards them. Any conduct of this kind will be dealt with under this policy and in accordance with Council's duty of care and workplace health and safety responsibilities. Acts of violence, aggression or threats to persons or property will be reported to the police.

3. Roles and responsibilities

3.1. All staff

All staff are responsible for familiarising themselves with this policy as well as the *Individual rights and mutual responsibilities of the parties to a complaint* in Appendix A. Staff are also encouraged to explain to complainants who engage in (or exhibit the early warning signs of) UCC that they must treat Council staff courteously and respectfully, as set out in Appendix A.

Staff are also encouraged and authorised to use the strategies and scripts provided in [Managing unreasonable complainant conduct: Practice Manual 2012](#)

However, it must be emphasised that any strategies that effectively change or restrict a complainant's access to Council's services must be considered at the Complaints Coordinator level or higher, as provided in this policy.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to the WHS unit (with notification to the Complaints Coordinator) within 24 hours of the incident. Staff are encouraged to use the WHS Incident Notification form.

3.2. The Complaints Coordinator

The Complaints Coordinator, in consultation with relevant staff, has the responsibility and authority to change or restrict a complainant's access to Council's services in the circumstances identified in this policy. When doing so, they will take into account the criteria in Part 7.2 and will aim to impose any service changes/restrictions in the least restrictive ways possible. Their aim, when taking such actions, will not be to punish the complainant but rather to manage the impacts of their conduct.

When applying this policy, the Complaints Coordinator will also aim to keep at least one line of communication with a complainant open. However, Council recognises that in extreme situations all forms of contact may need to be restricted for some time to ensure the health, safety and security of Council staff and/or third parties.

The Complaints Coordinator is also responsible for recording, monitoring and reviewing all cases where this policy is applied to ensure consistency, transparency and accountability for the application of this policy. They will also manage and keep records of cases where this policy is applied.

When the complaint is about the Complaints Coordinator's conduct, the complainant should be referred to the Executive Business Manager or the Chief Executive Officer. If the complaint is not about the Complaints Coordinator's conduct but the complainant cannot make the complaint to the Complaints Coordinator because of restrictions placed on his/her contact with the Complaints Coordinator, the complainant should be referred to the Executive Business Manager.

3.3. Managers

All managers are responsible for supporting staff to apply the strategies in this policy as well as those in the practice manual. Managers are also responsible for ensuring compliance with the procedures identified in this policy and ensuring that all staff members are trained to deal with UCC, including at induction.

Following a UCC incident and/or stressful interaction with a complainant, managers are responsible for providing affected staff members with the opportunity to debrief their concerns either formally or informally. Managers will also ensure that staff are provided with proper assistance, including medical and/or police assistance, and support through programs such as the Employee Assistance Program, if necessary.

Depending on the circumstances, managers may also be responsible for arranging other forms of support for staff that are detailed in Part 12 of this policy.

4. Responding to and managing UCC

4.1. Changing or restricting a complainant's access to Council's services

UCC incidents will generally be managed by limiting or adapting the ways that Council interacts with and/or delivers services to complainants by restricting:

- **whom they have contact with** – e.g. limiting a complainant to a sole contact person/staff member at Council;
- **what they can raise with Council** – e.g. restricting the subject matter of communications that Council staff will consider and respond to;
- **when they can have contact** – e.g. limiting a complainant's contact with Council to a particular time, day, or length of time, or limiting the frequency of their contact with Council;
- **where they can make contact** – e.g. limiting the locations where Council staff will conduct face-to-face interviews to secured facilities or areas of the office; and/or
- **how they can make contact** – e.g. limiting or modifying the forms of contact that the complainant can have with Council. This can include modifying or limiting face-to-face interviews, telephone and written communications; prohibiting access to Council premises; restricting contact so that it is made through one representative only; taking no further action; or terminating Council services altogether.

When using the restrictions provided in this section, Council recognises that discretion will need to be used to adapt them to suit a complainant's personal circumstances, level of competency, literacy skills, etc. In this regard, Council also recognises that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

4.2. Who: Limiting the complainant to a sole contact point

Where a complainant tries to forum-shop internally within Council, changes their issues of complaint repeatedly, reframes their complaint, or raises an excessive number of complaints, it may be appropriate to restrict their access to a single staff member (a sole contact point) who will exclusively manage their interactions with Council. This may ensure they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

To avoid staff burn-out, the sole contact officer's supervisor will provide them with regular support and guidance as needed. Also, the Complaints Coordinator will review the arrangement every six months to ensure that the officer is managing/coping with the arrangement.

Complainants who are restricted to a sole contact person will, however, be given the contact details of one additional staff member whom they can contact when their primary contact is unavailable (e.g. has gone on leave or is otherwise unavailable for an extended period).

4.3. What: Restricting the subject matter of communications that Council will consider

Where complainants repeatedly send written communications, letters, emails, or online forms that raise trivial or insignificant issues, contain inappropriate or abusive content or relate to a complaint/issue that has already been comprehensively considered and/or reviewed (at least once) by Council, Council may restrict the issues/subject matter the complainant can raise or that Council will respond to. For example, Council may:

- refuse to respond to correspondence that raises an issue that has already been dealt with comprehensively, that raises a trivial issue, or is not supported by clear/any evidence. The complainant will be advised that future correspondence of this kind will be read and filed without acknowledgement unless Council decides it needs to pursue it further – in which case, Council may do so on its own terms;
- restrict the complainant to one complaint/issue per month. Any attempts to circumvent this restriction, for example by raising multiple complaints/issues in the one complaint letter, may result in modifications or further restrictions being placed on their access; and/or
- return correspondence to the complainant and require them to remove any inappropriate content before Council will agree to consider its contents. A copy of the inappropriate correspondence will also be made and kept for Council's records to identify repeat/further UCC incidents.

4.4. When: Limiting when and how a complainant can contact Council

4.4.1. Telephone and email restrictions

If a complainant's telephone, written or face-to-face contact with Council places an unreasonable demand on Council's time or resources because it is overly lengthy (e.g. disorganised and voluminous correspondence) or affects the health, safety and security of staff because it involves behaviour that is persistently rude, threatening, abusive or aggressive, Council may limit when and/or how the complainant can interact with staff. This may include:

- limiting the complainant's telephone calls or face-to-face interviews to a particular time of the day or days of the week;
- limiting the length or duration of telephone calls, written correspondence or face-to-face interviews, e.g.:
 - telephone calls may be limited to 10 minutes at a time and will be politely terminated at the end of that time period;
 - lengthy written communications may be restricted to a maximum of 15 typed or written pages, single sided, font size 12 or will be sent back to the complainant to be organised

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and summarised (note: this option is appropriate only in cases where the complainant is capable of summarising the information and refuses to do so);

- limiting face-to-face scheduled interviews to a maximum of 45 minutes; and/or
- limiting the frequency of the complainant's telephone calls, written correspondence or face-to-face interviews. Depending on the nature of the service(s) provided, Council may limit:
 - telephone calls to one every month;
 - written communications to one every month;
 - face-to-face interviews to one every month.

For irrelevant, overly lengthy, disorganised or frequent written correspondence, Council may also:

- require the complainant to clearly and concisely identify how the information or supporting materials they have sent relate to the central issues that Council has identified in their complaint;
- restrict the frequency with which complainants can send emails or other written communications to Council; and/or
- restrict a complainant to sending emails to a particular email account (e.g. Council's corporate email address) or block their email access altogether and require that any further correspondence be sent through Australia Post.

4.4.2. Writing-only restrictions

A complainant's communications with Council may be restricted to written communications through:

- Australia Post;
- email to a specific staff email address or Council's corporate email account;
- fax to a specific fax number; or
- some other relevant form of written contact, where appropriate.

If a complainant's contact is restricted to writing only, the Complaints Coordinator will clearly identify the specific means that the complainant can use to contact Council. If it is not suitable for a complainant to enter Council premises to hand-deliver their written communications, this must be communicated to them as well.

Any communications that are received by Council in a manner that contravenes a writing-only restriction will be either returned to the complainant or read and filed without acknowledgement or response.

Council may hide or delete posts or comments the complainant makes on its social media accounts and may ask administrators of non-Council accounts to do so as well (if the complainant mentions or tags Council on those accounts). Council may also block the complainant from its social media accounts.

4.5. Where: Limiting face-to-face interviews to secure areas

If a complainant is violent or overtly aggressive, unreasonably disruptive, threatening or demanding or makes frequent unannounced visits to Council premises, Council may consider restricting its face-to-face contact with them.

These restrictions may include:

- restricting the complainant's access to particular secured premises or areas of the office, such as the customer service counter or a secured room/facility;
- restricting the complainant's ability to attend Council premises to specified times of the day and/or days of the week – for example, when additional security is available or to times/days that are less busy;
- allowing the complainant to attend Council offices on an appointment-only basis and only with specified staff (note: during these meetings, staff should always seek the support and assistance of a colleague for added safety and security); and/or
- banning the complainant from attending Council premises altogether and possibly restricting them to some other form of contact – e.g. writing only or telephone only.

4.6. Contact through a representative only

In cases where Council cannot completely restrict its contact with a complainant whose conduct is particularly difficult to manage, Council may restrict the complainant to contact through a specific support person or representative. The support person may be nominated by the complainant but must be approved by the Complaints Coordinator. When assessing a representative/support person's suitability, the Complaints Coordinator should consider factors like: the nominated representative/support person's competency and literacy skills, their demeanour/behaviour and the representative's relationship with the complainant. If the Complaints Coordinator determines that the representative/support person may exacerbate the situation, the complainant will be asked to nominate another person. Council may assist the complainant in this regard.

4.7. Completely terminating a complainant's access to Council's services

In rare cases, and as a last resort after all other strategies have been considered and/or attempted, the Complaints Coordinator and/or the Chief Executive Officer may decide that it is necessary for Council to terminate a complainant's contact/access to Council's services.

A decision to have no further contact with a complainant will be made only if it appears that the complainant is unlikely to modify their conduct and/or their conduct poses a significant risk for Council staff or other parties because it involves one or more of the following types of conduct:

- acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking and/or assault;
- damage to property while on Council premises;

- threats with a weapon or other items that can be used to harm another person or themselves;
- physically preventing a staff member from moving around freely either within their office or during an off-site visit – e.g. entrapping them in the complainant's property; and/or
- conduct that is otherwise unlawful.

In these cases, the complainant will be sent a letter notifying them that their access has been terminated as outlined in Part 7.4 below.

A complainant's access to Council's services and premises may also be restricted (directly or indirectly) using legal mechanisms such as trespass laws/legislation or legal orders to protect members of staff from personal violence, intimidation or stalking. Acts of violence, aggression or threats to persons or property will be reported to the police.

The Council may apply legal mechanisms when dealing with UCC, for example the provisions of the *Inclosed Lands Protection Act 1901* or orders to address violence, threats, intimidation and/or stalking by complainants.

5. Alternative dispute resolution

5.1. Using alternative dispute resolution to manage conflicts with complainants

If the Complaints Coordinator and the Chief Executive Officer (in consultation with the relevant Director, as required) determine that Council cannot terminate its services to a complainant in a particular case or that its staff bear some responsibility for causing or exacerbating the complainant's conduct, Council may consider using alternative dispute resolution strategies such as mediation and conciliation to resolve the conflict and attempt to rebuild its relationship with the complainant. If alternative dispute resolution is considered to be an appropriate option in a particular case, it will be conducted by an independent third party to ensure transparency and impartiality.

However, Council recognises that in UCC situations, alternative dispute resolution may not be an appropriate or effective strategy, particularly if the complainant is uncooperative or resistant to compromise. Therefore, the facts of each case will be assessed to determine the appropriateness of this approach.

6. Procedure for changing or restricting a complainant's access

6.1. Consulting with relevant staff

When the Complaints Coordinator receives a UCC incident form from a staff member, they will contact the staff member (and/or, if appropriate, the staff member's manager) to discuss the incident. (Note that incident management with staff members is a WHS process.) They will discuss:

- the circumstances that gave rise to the UCC/incident;

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- the impact of the complainant's conduct on Council, relevant staff, time, resources, etc;
- the complainant's responsiveness to the staff member's warnings/requests to stop the behaviour;
- the actions the staff member has taken to manage the complainant's conduct, if any; and
- the suggestions made by relevant staff on ways that the situation could be managed.

6.2. Criteria to be considered

Following a consultation with relevant staff, the Complaints Coordinator will search the HPE RM record system and other Council databases for information about the complainant's prior conduct and history with Council. They will also consider the following criteria:

- whether the conduct in question involved overt anger, aggression, violence or assault (which is unacceptable in all circumstances);
- whether the complainant's case has merit;
- the likelihood that the complainant will modify their unreasonable conduct if they are given a formal warning about their conduct;
- whether changing or restricting access to Council's services will be effective in managing the complainant's behaviour;
- whether changing or restricting access to Council's services will affect the complainant's ability to meet their obligations, such as payment of rates;
- whether changing or restricting access to Council's services will have an undue impact on the complainant's welfare, livelihood or dependants etc;
- whether the complainant's personal circumstances have contributed to the behaviour, if the complainant is a vulnerable person who is under significant stress as a result of one or more of the following:
 - homelessness;
 - physical or intellectual disability;
 - illiteracy or other language or communication barrier;
 - mental or other illness;
 - personal crises; and/or
 - substance or alcohol abuse;
- whether the complainant's response/conduct in the circumstances was moderately disproportionate, grossly disproportionate or not at all disproportionate; and
- whether there are any statutory provisions that would restrict the types of limitations that can be put on the complainant's contact/access to Council's services.

Once the Complaints Coordinator has considered these factors, they will decide on the appropriate course of action. They may suggest formal or informal options for dealing with the complainant's conduct that may include one or more of the strategies provided in the practice manual and this policy. Monitoring will occur to assess the frequency and impact of the complainant's behaviours.

6.3. Providing a warning letter

Unless a complainant's conduct poses a substantial and/or immediate risk to the health and safety of staff or other third parties, the Complaints Coordinator will provide them with a written warning about their conduct in the first instance.

The warning letter will:

- specify the date, time and location of the UCC incident/s;
- explain why the complainant's conduct/UCC incident is problematic;
- list the types of access changes and/or restrictions that may be imposed if the behaviour continues (note: not every possible restriction should be listed, only those that are most relevant);
- include an attachment of Council's ground rules and/or briefly state the standard of behaviour that is expected of the complainant (see Appendix A);
- seek to gain assurance from the complainant that the behaviour will cease; and
- provide the name and contact details of the staff member whom the complainant can contact about the letter.

6.4. Providing a notification letter

If a complainant's conduct continues after they have been given a written warning, the Complaints Coordinator has the discretion to send a notification letter immediately restricting the complainant's access to Council's services. In extreme cases of overt aggression, violence, assault or other unlawful/unacceptable conduct, the Complaints Coordinator can send such a letter without prior written warning, or refer the complainant directly to the police without notification.

This notification letter will:

- specify the date, time and location of the UCC incident(s);
- explain why the complainant's conduct/UCC incident(s) is/are problematic;
- identify the change and/or restriction that will be imposed and what it means for the complainant;
- specify the duration of the change or restriction imposed
- indicate a time period for review, which will not exceed 12 months; and
- provide the name and contact details of the senior officer whom they can contact about the letter and/or to request a review of the decision.

6.5. Notifying relevant staff about access changes/restrictions

The Complaints Coordinator will notify relevant staff (including Councillors, as necessary) about any decisions to change or restrict a complainant's access to Council's services. Reception and security staff will be instructed in cases where a complainant is prohibited from entering Council premises.

The Complaints Coordinator will also update HPE RM with a record outlining the nature of the restrictions imposed and their duration.

6.6. Continued monitoring/oversight responsibilities

Once a complainant has had restrictions placed on their access to Council's services, the Complaints Coordinator will review the complainant's record/restriction every 12 months or as necessary to ensure that the complainant is complying with the restrictions/the arrangement is working.

If the Complaints Coordinator determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise inappropriate, they may decide to modify the restrictions, impose further restrictions or terminate the complainant's access to Council's services altogether. The complainant's contact and behaviour will continue to be monitored.

7. Appealing a decision to change or restrict access to Council's services

7.1. Right of appeal

Complainants are entitled to one appeal of a decision to change/restrict their access to Council services. This review will be undertaken by the Executive Business Manager, who will consider the complainant's arguments along with all relevant records regarding the complainant's past conduct. They will advise the complainant of the outcome of their appeal by letter.

The Executive Business Manager will then save any materials/records relating to the appeal in the appropriate file and bring these to the attention of the Complaints Coordinator.

If a complainant continues to be dissatisfied after the appeal process, they may seek an external review from an oversight agency such as the NSW Ombudsman. The Ombudsman may determine the matter (in accordance with its administrative jurisdiction) to ensure that Council has acted fairly, reasonably and consistently and has observed the principles of good administrative practice, including procedural fairness.

8. Non-compliance with a change or restriction on access to Council services

8.1. Recording and reporting incidents of non-compliance

All staff members are responsible for recording and reporting incidents of non-compliance by complainants. This should be recorded in a file note in HPE RM and notified to the Complaints Coordinator, who will decide whether any action needs to be taken to modify or further restrict the complainant's access to Council services. This information is also used to review the restrictions (see Part 7.1).

9. Periodic reviews of all cases where this policy is applied

9.1. Period for review

All UCC cases where this policy is applied will be reviewed every 12 months after the service change or restriction was imposed or continued/upheld (depending on the nature of the service provided).

9.2. Notifying the complainant of an upcoming review

The Complaints Coordinator will invite all complainants to participate in the review process unless they determine that this invitation will provoke a negative response from the complainant (i.e. further UCC). The invitation will be given and the review will be conducted in accordance with the complainant's access restrictions (e.g. if contact has been restricted to writing-only, then the invitation to participate in the review will be done in writing).

9.3. Criteria to be considered during a review

When conducting a review, the Complaints Coordinator will consider:

- whether the complainant has had any contact with the organisation during the restriction period;
- the complainant's conduct during the restriction period;
- any information/arguments put forward by the complainant for review; and
- any other information that may be relevant in the circumstances.

The Complaints Coordinator may also consult any staff members who have had contact with the complainant during the restriction period.

Note: Sometimes a complainant may not have a reason to contact Council during their restriction period. As a result, a review decision that is based primarily on the fact that the complainant has not contacted Council during their restriction period (apparent compliance with the restriction) may not be an accurate representation of their level of compliance/reformed behaviour. This should be taken into consideration in relevant situations.

9.4. Notifying a complainant of the outcome of a review

The Complaints Coordinator will notify the complainant of the outcome of their review using the appropriate/relevant method of communication as well as a written letter explaining the outcome, as applicable. The review letter will:

- briefly explain the review process;
- identify the factors that have been taken into account during the review; and
- explain the decision/outcome of the review and the reasons for it.

If the outcome of the review is to maintain or modify the restriction, the review letter will **also**:

- indicate the nature of the new or continued restriction;
- state the duration of the new restriction period; and
- provide the name and contact details of the Complaints Coordinator or the relevant officer whom the complainant can contact to discuss the letter.

9.5. Recording the outcome of a review and notifying relevant staff

As with all other decisions made under this policy, the Complaints Coordinator is responsible for keeping a record of the outcome of the review, updating HPE RM and notifying all relevant staff or Councillors of the outcome, including if the restriction has been withdrawn. (See Parts 4.2 and 7.5 above.)

10. Managing staff stress

10.1. Staff reactions to stressful situations

Dealing with complainants who are demanding, abusive, aggressive or violent can be extremely stressful and at times distressing or even frightening for all staff – both experienced and inexperienced.

As an organisation, Council has a responsibility to support staff members who experience stress as a result of situations arising at work and it will do its best to provide staff with debriefing and counselling opportunities when needed. However, to do this, Council also needs help from all staff to identify stressful incidents and situations. As a result, all staff have a responsibility to notify relevant supervisors/managers of UCC incidents and any stressful incidents that they believe require management involvement.

10.2. Debriefing

Debriefing means talking things through following a difficult or stressful incident. It is an important way of off-loading or dealing with stress. Many staff members naturally do this with colleagues after a difficult telephone call, but debriefing can also be done with a supervisor or manager or as a team following a significant incident. Council encourages all staff to engage in an appropriate level of debriefing when necessary.

Staff may also access an external professional service as needed. All staff can access the Employee Assistance Program – a free, confidential counselling service. Brochures about this service are available in the Human Resources branch and on Council's intranet; see Council's *Employee Assistance Program Policy*.

10.3. Compensation for injury

Any staff member who suffers injury as a result of aggressive behaviour from complainants is entitled to make a workers' compensation claim. The WHS unit will assist wherever possible in processing claims.

Compensation for damage to clothing or personal effects

Where damage is suffered to clothing or personal effects as a result of aggression by a complainant, compensation may be sought and will be determined based on circumstances.

10.4. Legal assistance

If a staff member is physically attacked by a complainant, or is a victim of employment-generated harassment and the police do not lay charges, the Chief Executive Officer will consider providing reasonable legal assistance if the staff member wishes to take civil action.

10.5. Threats outside the office or outside working hours

Where threats are directed at a particular staff member and it appears those threats may be carried out outside normal working hours, the staff member will receive the support of Council. Staff should make requests for such assistance to their manager, Human Resources, the WHS unit or the Complaints Coordinator.

10.6. Escorts home

When a staff member fears for their safety following a threat from a complainant, another staff member may accompany them home or Council can meet the cost of the staff member going home in a taxi. Staff should ask their manager, Human Resources, the WHS unit or the Complaints Coordinator for more information.

10.7. Telephone threats on home numbers

If a staff member or their family have been harassed by telephone at their home and they believe it is connected with their employment, they may apply to have Council meet the cost of having their telephone number changed and/or made silent. The staff member should also contact their telephone carrier as it may provide an interception/monitoring service.

If assistance is approved, Council will meet the cost incurred for a period up to 12 months. Once approval is given, the staff member is responsible for making the necessary arrangements and will be reimbursed after producing a paid account.

Applications for reimbursement must be approved by Human Resources, the WHS unit or the Complaints Coordinator.

10.8. Other security measures

If other security measures are necessary, Council will give consideration to providing all reasonable support to ensure the safety and welfare of the staff member.

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11. Training and awareness

Council is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with complainants in the course of their work will also receive appropriate training and information on using this policy and on managing UCC, including at induction.

Related documents

This document should be read in conjunction with:

Legislation

- *Inclosed Lands Protection Act 1901* (NSW)
- *State Records Act 1998* (NSW)
- *Public Interest Disclosures Act 1994* (NSW)
- *Workplace Health and Safety Act 2011* (NSW)

Other documentation

This document is based on the NSW Ombudsman's Unreasonable Complainant Conduct Model Policy (adopted February 2013) and should be read in conjunction with Blue Mountains City Council's:

- *Complaints Handling Policy*
- *Workplace Health and Safety Policy*
- *Employee Assistance Program Policy*
- *Grievance Resolution Policy and Procedures*
- *Public Interest Disclosures Internal Reporting Policy*

It should also be read together with the NSW Ombudsman's *Managing unreasonable complainant conduct practice manual* (2nd edition, 2012) or any subsequent updates.

Acknowledgement

Wording from the NSW Ombudsman's Unreasonable Complainant Conduct Model Policy (adopted February 2013) has been used both directly and by adaptation. Council would like to thank the Ombudsman for making this document available.

Council policy - Version control information

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Contact position: Manager, Governance & Civic Services

Appendix A: Individual rights and mutual responsibilities of the parties to a complaint

In order for 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, the following rights and responsibilities must be observed and respected by all of the parties to the complaint process.

Individual rights

Complainants have the right:

- to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate;
- to a reasonable explanation of Council'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 case;
- to a fair hearing;
- to a timely response;
- to be informed in at least general terms about the actions taken and outcome of their complaint, provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings;
- to be given reasons that explain decisions affecting them;
- to at least one right of review of the decision on the complaint (note: such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision);
- to be treated with courtesy and respect; and
- to communicate valid concerns and views without fear of reprisal or other unreasonable response, 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.

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 (note: some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint);
- 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 (see, for example, WHS laws and the common-law duty of care on employers); and

- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.

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 Council staff;
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated¹;
- 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 made²;
- 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; and
- to be protected from harassment by disgruntled complainants acting unreasonably.

Mutual responsibilities

Complainants are responsible for:

- treating staff of the Council with courtesy and respect;
- clearly identifying, to the best of their ability, the issues of complaint, or asking staff of the Council to assist them in doing so;
- giving Council, reasonably and to the best of their ability, any relevant information available to them at the time of making the complaint;
- being honest in all communications with Council;
- informing Council of any other action they have taken in relation to their complaint (for example, whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings at foot); and
- cooperating with the staff who are assigned 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 any further dealings with the complainant (other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant). Any such conduct of a criminal nature will be reported to police and, in certain cases, legal action may also be considered.

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 made³;
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them (other than where an allegation is so lacking in merit that it can be dismissed at the outset) and the substance of any proposed adverse comment or decision that they may need to answer or address⁴;
- keeping complainants informed of the actions taken and the outcome of their complaints;
- 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 are not subjected to any detrimental action in reprisal for making their complaint; and
- giving adequate warning of the consequences of unacceptable behaviour.

If Council or its staff fail to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

Subjects of a complaint are responsible for:

- cooperating with Council staff 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 (note: this does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute);
- 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; and
- refraining from taking any detrimental action against the complainant in reprisal for their making the complaint.

If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws and/or codes of conduct.

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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;
- ensuring that staff treat all parties to a complaint with courtesy and respect;
- ensuring that the assessment and any investigation of a complaint is based on sound reasoning and logically probative information and evidence;
- finalising complaints on the basis of outcomes that Council, or its responsible staff, consider to be satisfactory in the circumstances;
- implementing reasonable and appropriate policies/procedures/practices to ensure that complainants are not subjected to any detrimental action in reprisal for making a complaint, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints; and
- 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.

If Council fails to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

Explanatory notes to Appendix A

¹ 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.

² 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.

³ See Endnote 1.

⁴ See Endnote 1.