

Policy Name:	Managing Unreasonable Complainant Conduct Policy
Classification:	Public - Council Policy
Adopted:	28 May 2024
Frequency of Review:	After each general election of Council
Last Review:	New Policy
Next Review Due:	May 2027
Responsible Officer(s):	Chief Executive Officer Executive Manager Finance & Corporate Governance Team Leader Governance
Policy and Code of Practice Manual File Ref:	CC10/2601
Council File Reference:	CR24/37548
Legislation Authority:	Not applicable
Related Policies and Codes:	Complaints Policy Internal Review of a Council Decision Policy
Related Procedures:	Managing Unreasonable Complainant Conduct Procedure Complaints Resolution Procedure Internal Review of a Council Decision Procedure

1. STATEMENT OF INTENT

Council is committed to being accessible and responsive to all complainants who attend Council offices and interact with staff and/or Council Members, regardless of ethnic identity, national origin, religion, linguistic background, sex, gender expression, sexual orientation, physical ability or other cultural or personal factors.

At the same time, the success of Council depends on:

- the ability to do work in the most effective and efficient ways possible,
- the health, safety, and security of staff and Council Members, and
- the ability to allocate resources fairly across all the complaints received.

When complainants behave unreasonably, their conduct can significantly affect the successful undertaking of Council business. Unreasonable complainant conduct (UCC) refers to any actions exhibited by a complainant that, due to their nature or frequency, pose significant concerns related to the health, safety, resources, or equity within the organisation. These concerns may impact staff, Council Members, other service users, as well as the complainant themselves.

Council supports staff to act proactively and decisively to manage any complainant behaviour consistent with actions constituting UCC, in accordance with this Policy and the associated

Managing Unreasonable Complainant Conduct Procedure (the Procedure).

Strategies that can be utilised to manage UCC include changing or restricting the way a complainant communicates and accesses services with Council on a specified matter or in severe cases a total restriction, prohibiting all contact from a complainant may be required. In some situations, an Alternative Dispute Resolution (ADR) mechanism may be appropriate, such as mediation or conciliation. These strategies and processes are covered in depth in the Procedure and Council's overarching position in relation to UCC and the management of such, is summarised in this Policy.

2. OBJECTIVES

This Policy and the Procedure is developed to assist staff to manage unreasonable conduct by complainants and provide information for members of the public regarding Council's position and the process utilised to deal with UCC.

This Policy seeks to:

- outline Council's position in dealing with UCC;
- circumstances where statutory rights provide for a complainant to take a prescribed course of action;
- define the types of behaviours and actions that may constitute UCC;
- assist staff to feel confident and supported in taking action to manage UCC; and
- assist staff to apply a fair, consistent and appropriate assessment of UCC and respond in accordance with the principles of this Policy, understanding that the mechanisms available in the framework should only be implemented when required to manage UCC.

3. SCOPE

3.1. This Policy covers UCC across the full range of Council services and all communication channels, including but not limited to, face to face, telephone, mail, email, letters to the media, posts and comments on various social media applications.

3.2. This Policy will not be applied where a person has a legal right to take a particular course of action. Examples include but are not limited to:

- To apply for the review of a Council decision under section 270 of the *Local Government Act 1999*;
- To take action available under the *Development Act 1993*, *Planning, Development and Infrastructure Act 2016* or the *Expiation of Offences Act 1996* and any applicable, associated regulations;
- To make a deputation request to address the Council or a committee that receives deputations, under the *Local Government Act 1999* and associated *Local Government (Procedures at Meetings) Regulations 2013*, noting that presiding members may refuse to allow a deputation to appear at a meeting as per regulation 11;
- To apply for access to information under the *Freedom of Information Act 1999*; or
- To make a disclosure report of public interest information under the *Public Interest Disclosure Act 2018*.

Most of the legislation referenced in these examples, contain appeal processes, which provide a pathway for complainants or aggrieved persons should they be dissatisfied with the original outcome.

- 3.3. If a complainant remains dissatisfied and unhappy with a decision after proceeding through the relevant appeal process (if available); resulting in behaviour that meets the definition of UCC, this Policy in conjunction with the Managing Unreasonable Complainant Conduct Procedure may be utilised.

4. RESPONSIBILITIES

- 4.1 All staff are responsible for familiarising themselves with this Policy, the Managing Unreasonable Complainant Conduct Procedure, and **Appendix A** to the Procedure, the 'Individual Rights and Mutual Responsibilities of the Parties to a Complaint' document.
- 4.2 Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) and per the process outlined in the Procedure.
- 4.3 Council Members are responsible for reporting UCC incidents they experience or witness (as appropriate), providing as much information as possible to a member of the Executive Management Team (Chief Executive Officer and Executive Managers) to manage in-line with the process outlined in the Procedure.
- 4.4 Any strategies that change or restrict a complainant's access to our services must be considered at the Executive Manager level in consultation with the Chief Executive Officer (CEO).
- 4.5 Any decision to restrict or change a complainant's access to services must be communicated to Council Members via memo, by the Executive Manager responsible for the management of a UCC matter or by the CEO.

5. DEFINING UNREASONABLE CONDUCT BY COMPLAINANTS

Most complainants act reasonably and responsibly in their interactions with Council, even when experiencing high levels of distress, frustration, and anger about their complaint. However, despite best efforts to help them, in a very small number of cases complainants display inappropriate and unacceptable behaviour.

Complainants may be aggressive and verbally abusive towards staff, threaten harm and violence or bombard Council offices with unnecessary and excessive phone calls and emails. They may make inappropriate demands on time and resources or refuse to accept decisions and recommendations in relation to their complaint/s.

When complainants behave in these ways (and where there are no cultural factors that could reasonably explain their behaviour) their conduct may be considered to be 'unreasonable'.

Unreasonable complainant conduct can be grouped into five (5) categories:

- unreasonable persistence
- unreasonable demands
- unreasonable lack of cooperation
- unreasonable arguments
- unreasonable behaviours.

5.1 Unreasonable persistence

5.1.1 Unreasonable persistence is persistent, incessant, and relentless actions by a complainant, resulting in an unjustifiably disproportionate impact on Council, staff and Council Members, services, time, and/or resources.

5.1.2 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 and dealt

with.

- Persistently demanding a review simply because it is available and without arguing or presenting a case for one.
- Pursuing and exhausting all available review options when it is not warranted and refusing to accept further action cannot or will not be taken on their complaints.
- Reframing a complaint to get it taken up again.
- Bombarding employees/organisation with phone calls, visits, letters, emails (including cc'd correspondence) after repeatedly being asked not to do so.
- Contacting different people within the organisation and/or externally to get a different outcome or more sympathetic response to their complaint.

5.2 Unreasonable demands

5.2.1 Unreasonable demands are any demands made by a complainant that have a disproportionate and unreasonable impact on the organisation, staff, Council Members, services, time and/or resources.

5.2.2 Some examples of unreasonable demands include:

- Issuing instructions and making demands about how we have/should handle their complaint, the priority it was/should be given, or the outcome that was/should be achieved.
- Insisting on talking to the Chief Executive Officer or Mayor 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 appropriate in the circumstances – e.g. for someone to be sacked or prosecuted, an apology and/or compensation when no reasonable basis for expecting this.
- Demanding services that are of a nature or scale that we cannot provide when this has been explained to them repeatedly.

5.3 Unreasonable lack of cooperation

5.3.1 Unreasonable lack of cooperation refers to a complainant's unwillingness and/or inability to cooperate with the organisation, staff, complaints system and processes that results in a disproportionate utilisation of services, time and/or resources.

5.3.2 Some examples of unreasonable lack of cooperation include:

- Sending a constant stream of comprehensive and/or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues being complained about – only where the complainant is clearly capable of doing this.
- Providing little or no detail with a complaint or presenting information in 'drips and drabs', such that this hinders the process.
- Refusing to follow or accept our 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.
- Displaying unhelpful behaviour – such as withholding information, acting dishonestly and misquoting others.

5.4 Unreasonable arguments

- 5.4.1 Unreasonable arguments include any arguments that are lacking a basis in reason or logic, that are incomprehensible, false, inflammatory, trivial or delirious, resulting in a disproportionately and unjustifiable impact upon the organisation, staff, Council Members, services, time and/or resources.
- 5.4.2 Arguments are unreasonable when they:
- 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 (often referred to as *frivolous* complaints)
 - Are false, inflammatory or defamatory.
- 5.4.3 The terms frivolous and vexatious are often used to describe unreasonable arguments and/or behaviour respectively, by complainants and although different by definition, they relate to the same basic concept of a claim or complaint (or a series of many) not being brought in good faith.

5.5 Unreasonable behaviour

- 5.5.1 Unreasonable behaviour refers to actions and conduct that are deemed unreasonable in any situation, irrespective of the complainant's level of stress, anger, or frustration. This is because such conduct unreasonably compromises the well-being, safety, and security of staff, Council Members, other service users, or the complainant themselves.
- 5.5.2 Instances of unreasonable behaviour encompass:
- Acts of aggression, verbal abuse, 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).
 - Emotional manipulation
- 5.5.2 Unreasonable behaviour is often described as vexatious, whereby a complaint is made specifically to cause harassment, annoyance, frustration, worry, or even bring financial cost to the other party.

6 AVOIDING MISUSE OR OVERUSE OF THE UCC POLICY AND PROCEDURE

- 6.1 This Policy and the accompanying Procedure should be applied cautiously and sparingly and should never be seen as a quick solution for dealing with complainants who are angry or frustrated or who are regarded as being annoying or a nuisance. People who are making a complaint should always be treated with respect, regardless of their behaviour.
- 6.2 Cultural factors should also be considered to rule out any miscommunication or misinterpretation around the behaviour being shown.
- 6.3 The Policy should only be applied when a complainant's conduct raises the types of safety, resource and equity issues outlined in this Policy and the Procedure.
- 6.4 More comprehensive explanation of the UCC that this Policy and the Procedure may apply to is available in the 'Managing unreasonable conduct by a complainant manual'

(3rd edition), which can be accessed via the NSW Ombudsman website.

7 SUPPORTING DOCUMENTS AND POLICIES

This Policy is to be read in conjunction with the Managing Unreasonable Complainant Conduct Procedure.

The Policy and Procedure have been developed in accordance with the NSW Ombudsman resources, considered to be the industry best practice guide across Australia for managing UCC, for local government and other public authorities:

- Managing Unreasonable Complainant Conduct, NSW Ombudsman Model Policy
- Manual for managing unreasonable conduct by complainants, NSW Ombudsman (3rd edition)

8 REVIEW AND EVALUATION

All staff are responsible for forwarding any suggestions they have in relation to this Policy and the accompanying Procedure to Governance, who along with the Executive Management Team will review it biennially (every 2 years).

The Policy will not be altered or substituted so as to affect a process already commenced.

9 FURTHER INFORMATION

Further information about this Policy can be obtained by:

Telephone: 8522 9211

Email: council@gawler.sa.gov.au

Appointment: Town of Gawler Administration Centre, 43 High Street, Gawler East.

Letter: PO Box 130, Gawler SA 5118

10 AVAILABILITY OF POLICY

This Policy is available to be downloaded, free of charge, from Council's website at www.gawler.sa.gov.au

A printed copy may be purchased on request from the Council's Administration Centre.