

Unreasonable Complainant Conduct Policy

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1 Introduction

1.1 Statement of intent

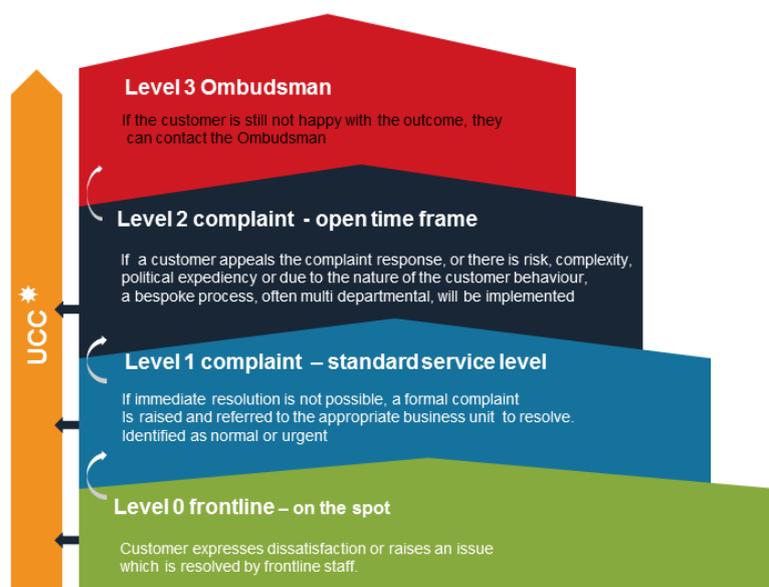
Auckland Council is committed to being accessible and responsive to all customers who approach the council for assistance or with a complaint or request for information. At the same time the success of our operation depends on:

- 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 our resources fairly across all the complaints we receive.

In a very small number of cases, the behaviour of customers with complaints can become unreasonable, vexatious or abusive. When this happens, Auckland Council will take proactive and decisive action to manage any customer conduct that negatively and unreasonably impacts on the organisation and its staff.

This policy does not apply to elected representatives' management of unreasonable complainant conduct covered by the Auckland Council Code of Conduct: Elected Members.

1.2 Complaints management model



*Covered in this document

2 Objectives

2.1 Policy aims

This policy has been developed to assist all staff members to better manage unreasonable complainant conduct (UCC). Its aim is to set out:

- what might be considered unreasonable complainant conduct
- the roles and responsibilities of the different staff involved in identifying, responding to, and managing UCC
- alternatives to applying the UCC Policy
- procedural fairness components to provide a robust and just process
- how Auckland Council will prepare and protect staff dealing with unreasonable complainants
- how Auckland Council will ensure that this policy remains relevant
- other resources relevant to this policy.

3 Defining unreasonable complainant conduct

3.1 Unreasonable complainant conduct

Most customers who contact us act reasonably and responsibly, even if they are experiencing distress, frustration or anger about their complaint or concern. However, in a very small number of cases some customers behave in ways that are inappropriate and unacceptable. They can bombard us with unnecessary and excessive phone calls and emails, make inappropriate demands on our time and resources or refuse to accept our decisions and recommendations in relation to their complaints. On some occasions, they can be aggressive and verbally abusive towards our staff, or threaten harm or violence. When customers behave in these ways, we consider their conduct to be 'unreasonable'.

Unreasonable complainant conduct is any behaviour by a customer which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for our organisation, our staff, other service users and customers, or for the complainant himself or herself.

UCC can be divided into five categories of conduct:

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

3.2 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 or resources. Some examples of unreasonably persistent behaviour include:

- an unwillingness or inability to accept reasonable explanations, including final decisions that have been comprehensively considered and communicated
- persistently demanding a review simply because it is available and without presenting the reasons for review
- pursuing and exhausting all available review options and refusing to accept further action cannot or will not be taken on their complaints

- reframing a complaint in an effort to get it taken up again
- bombarding staff with phone calls, visits, letters, emails (including being copied in on correspondence) after repeatedly being asked not to do so
- contacting different people within our organisation or externally in an attempt to get a different outcome or more sympathetic response to their complaint.

3.3 Unreasonable demands

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

- issuing instructions and making demands about how we have handled or should handle their complaint, the priority it was given or should be given, or the outcome that was or should be achieved
- insisting on outcomes that are not possible or appropriate in the circumstances, such as calling for someone to be sacked or prosecuted, an apology or compensation when there is no reasonable basis for expecting this
- insisting on talking to a senior manager or the chief executive, mayor or elected members personally when it is neither appropriate nor warranted
- emotional blackmail and manipulation with the intent to intimidate, harass or shame staff, or to portray themselves as being victimised, when this is not the case
- demanding services that are of a nature or scale that we cannot provide when this has been explained to them repeatedly.

3.4 Unreasonable lack of cooperation

Unreasonable lack of cooperation is the lack of willingness or ability of a complainant to cooperate with our organisation, staff or complaints system and processes that results in a disproportionate and unreasonable use of our services, time or resources. Some examples of unreasonable lack of cooperation include:

- sending a constant stream of incomprehensible or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues being complained about, when the complainant is clearly capable of doing this
- providing little or no detail with a complaint or presenting information in a sporadic or disorganised manner

- refusing to follow or accept our suggestions or advice without a clear or justifiable reason for doing so
- arguing frequently 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 or misquoting others.

3.5 Unreasonable arguments

Unreasonable arguments include any arguments that are incomprehensible, false or inflammatory, or that disproportionately and unreasonably impact upon our organisation, staff, services, time or resources. Arguments are unreasonable when they:

- are not supported by sufficient evidence or are based on conspiracy theories
- lead a complainant to reject all other valid contrary arguments
- have an impact that is disproportionate to the amount of time, resources and attention that the complainant demands
- are false, inflammatory or defamatory.

3.6 Unreasonable behaviour

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

- 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.

Auckland Council has a zero-tolerance policy towards any harm, abuse or threats directed at staff. Any conduct of this kind will be dealt with under this policy, and in accordance with our duty of care and occupational health and safety responsibilities, and where appropriate with the Police and courts.

4 Roles and responsibilities

4.1 All staff

Everyone in the council is responsible for listening and responding to what customers say. In every customer interaction, we expect staff to act fairly, consistently, honestly, and appropriately.

In a very small number of cases, the complainant chooses to interact with the council in a manner that is inappropriate.

This behaviour may impact on:

- the health, safety and security of our staff,
- our ability to do our work and perform our functions in the most effective and efficient ways possible, or
- our ability to allocate our resources fairly across all the complaints we receive.

Key to enabling management of these cases, all staff are responsible for familiarising themselves with the complaints related documents comprising of the council's Complaints Policy, and this, the Unreasonable Complainant Conduct Policy.

These policies are supported by procedure documents and guidelines as listed on page 23, and including the UCC Procedure Guidelines.

To ensure transparency and accountability in applying this policy, all staff must keep full and accurate records of interactions with complainants, as per the Public Records Act 2005.

Once the UCC policy has been applied, all staff members are responsible for recording and reporting incidents of non-compliance by complainants. This should be recorded in a file note in SAP CRM and a copy forwarded to the nominated senior manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to our services.

All staff must take responsibility for protecting fellow staff, both in terms of health and safety considerations and ensuring that any private and confidential personal or staff information of the people involved in the application of the UCC policy will be protected, as much as possible, and subject to any legal requirements.

It must be emphasised that in the exceptional circumstances that this policy is applied, approval must be obtained up to the chief executive level, and supported by legal advice.

4.2 The chief executive

The chief executive, in consultation with relevant staff, has the responsibility and authority to:

1. decide whether a complainant's conduct warrants application of the policy and
2. how the policy will be applied to the complainant.

These decisions will be made using the criteria set out in the UCC Procedure Guidelines. The aim when taking such decisions will not be to punish the complainant, but rather to manage the impact of their conduct.

4.3 Senior managers

All senior managers are responsible for:

1. supporting staff to apply this policy, in line with the UCC Procedure Guidelines
2. ensuring that there are systems in place for identifying, assessing and managing UCC-related risks, or seek guidance
3. taking steps to ensure that staff have a safe and supportive workplace, environment and culture, such as:
 - a. following a stressful interaction with a complainant, providing affected staff members with the opportunity to debrief and express their concerns either formally or informally
 - b. providing staff with proper support and assistance, including medical or police assistance and support through programmes such as Employee Assistance Programme (EAP) if necessary
 - c. taking steps to minimise any repeat effect on the relevant staff member
4. assessing and recommending whether the behaviour should be considered under the policy, and making recommendations for managing the complainant
5. participating in the periodic reviews required to ensure that the policy and procedures remain relevant and responsive.

4.4 Impartial reviewer

The impartial reviewer is responsible for ensuring that:

1. the policy is initiated only in situations where it is warranted
2. the customer has been given opportunity to engage with the council in a reasonable manner before decision to apply the UCC policy is made

3. where we have made mistakes or exacerbated the situation, we identify and recommend actions to be undertaken to mitigate the impact and reduce the likelihood of the UCC policy being applied.

4.5 Case manager

When a decision has been made to change or restrict access, a case manager will be appointed to execute and manage these changes. They will be responsible for providing the material to be used in the periodic review of the restrictions applied and their continued applicability.

5 Responding to and managing unreasonable complainant conduct

5.1 Changing or restricting a complainant's access to our services

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

- **who they have contact with** – including limiting a complainant to a single contact person in our organisation
- **what they can raise with us** – including restricting the subject matter that we will consider and respond to
- **when they can have contact with us** – including 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 with us** – including limiting the locations where we will conduct face-to-face interviews to secured facilities or areas of the office
- **how they can make contact with us** – including 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.

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

5.2 Who – limiting the complainant to a sole contact point

Where a complainant repeatedly approaches multiple people within our organisation about the same issue, changes their issues of complaint repeatedly, reframes their complaint, or raises an excessive number of complaints it may be appropriate to restrict their point of contact to a single staff member (a case manager) who will exclusively manage their complaint(s) and interactions with the council.

This may ensure that they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

Where a complainant submits a request or complaint on a different or new issue, the case manager must assess whether the request needs to be directed to the normal processes, such as LGOIMA.

To avoid staff burnout, the case manager's supervisor will provide them with regular support and guidance as needed. The department manager will also review the arrangement every six to twelve months to ensure that the arrangement continues to be effective.

If the case manager is unavailable for an extended period or is no longer suitable, a new case manager will be appointed.

5.3 What – restricting the subject matter of communications we will consider

Sometimes a complainant will:

- repeatedly communicate with us about trivial or insignificant issues
- repeatedly communicate about an issue that has already been comprehensively considered or reviewed by us
- communicate using inappropriate or abusive content or language.

In these cases we may restrict the issues or subject matter the complainant can raise with us or that we will respond to.

For example, we may:

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

5.4 When – limiting when and how a complainant can contact us

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

- limiting 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. For example:
 - telephone calls may be limited to 10 minutes at a time and will be politely terminated at the end of that time period
 - written communication may be restricted to a maximum of 15 typed or written pages, single sided, font size 12, or it will be sent back to the complainant to be organised and summarised. This option is only appropriate in cases where the complainant is capable of summarising the information and refuses to do so
 - limiting face-to-face interviews to a maximum of 45 minutes.
- limiting the frequency of telephone calls, written correspondence or face-to-face interviews. Depending on the nature of the service(s) provided we may limit:
 - telephone calls to one every two weeks
 - written communications to one every two weeks
 - face-to-face interviews to one every six months.

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

- require the complainant to clearly identify how the information or supporting materials they have sent to us relate to the central issues that we have identified in their complaint
- restrict the frequency with which complainants can send emails or other written communications to our office
- restrict a complainant to sending emails to a particular email account (such as the organisation's main account or a nominated account) or block their email access altogether and require that any further correspondence be sent by mail only.

5.4.1 Writing only restrictions

When a complainant is restricted to 'writing only' they may be restricted to written communications through:

- mail only
- email only to a specific staff email or our general office email account
- fax only to a specific fax number
- another relevant form of written contact where applicable.

If a complainant's contact is restricted to 'writing only', the chief executive will clearly identify the specific means that the complainant can use to contact our office (such as mail only). If it is not suitable for a complainant to enter our premises to hand deliver their written communication, 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 either be returned to the complainant or read and filed without acknowledgement.

5.5 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 our premises, we may consider restricting our face-to-face contact with them. These restrictions may include:

- restricting access to particular secured premises or areas of the office, such as a reception area, or secured room or facility
- restricting their ability to attend our premises to specified times of the day or days of the week only – for example, when additional security is available, or times or days that are less busy
- allowing them to attend our office on an appointment-only basis and only with specified staff. During these meetings staff should always seek the support and assistance of a colleague for added safety and security
- banning the complainant from attending our premises altogether and allowing some other form of contact such as 'writing only' or 'telephone only' contact.

5.5.1 Contact through a representative only

In cases where we cannot completely restrict our contact with a complainant and their conduct is particularly difficult to manage, we may also restrict them to contact through an external representative or support person only. The representative may be nominated by the complainant but must be approved as part of the application of the UCC policy.

When assessing a representative's suitability, the senior manager should consider factors such as the nominated representative's competency and literacy skills, demeanour and behaviour, and relationship with the complainant. If the senior manager determines that the representative may exacerbate the situation with the complainant, the complainant will be asked to nominate another person or we may assist them in this regard.

5.6 Completely terminating a complainant's access to our services

In exceptionally rare cases, and as a last resort when all other strategies have been considered or attempted, the chief executive may decide that it is necessary for our organisation to completely restrict (that is, terminate) a complainant's contact or access to our services.

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

- acts of aggression, verbal or physical abuse, threats of harm, harassment, intimidation, stalking, assault
- damage to property while on our premises
- threats with a weapon or other items that could 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 (for example trapping the staff member in the complainant's home)
- conduct that is otherwise unlawful.

We acknowledge that if the complainant is a ratepayer, our relationship with them will continue for the provision of infrastructure and services as provided to all ratepayers.

6 Other resolution strategies

6.1 Using alternative dispute-resolution (ADR) strategies to manage conflicts with complainants

If at any stage of the investigation or application of the UCC policy it becomes apparent that we cannot terminate our services to a complainant in a particular case or that we bear some responsibility for causing or exacerbating their conduct, the council may consider using alternative dispute-resolution strategies such as mediation and conciliation to resolve the conflict with the complainant and attempt to rebuild our relationship with them. If alternative dispute resolution is considered an appropriate option in a particular case, the mediation will be conducted by an independent third party to ensure transparency and impartiality.

However, we recognise 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, each case will be assessed on its own facts to determine the appropriateness of this approach.

6.2 Other strategies

Guidance for customer strategies are provided in [*the Managing Unreasonable Complainant Conduct Practice Manual \(New Zealand Ombudsman October 2012\)*](#).

6.3 Other legal instruments

A complainant's access to our services and our premises may also be restricted (directly or indirectly) using legal mechanisms such as trespass laws and legislation or legal orders, to protect staff members from personal violence, intimidation or stalking by the complainant.

7 Procedural fairness

7.1 Pre-UCC policy caution and monitoring

Before application of the UCC policy is considered, we must thoroughly review, by consulting with relevant staff and considering the complainant's prior conduct and history. Refer to the UCC Procedure Guidelines for criteria and details.

We must also give the complainant the opportunity to change their behaviour when dealing with Auckland Council by clearly communicating the specific behaviour that is of concern, and what we consider acceptable behaviour.

We must then give the complainant time to demonstrate a behaviour change before considering whether to apply the UCC policy.

A warning letter will include: incident details, reason for concern, impact of behaviour on council staff and resources, example of reasonable behaviour, and potential consequences for continuing the behaviour.

Detailed guidance for this letter is available in the UCC Procedure Guidelines.

7.2 Application of the UCC policy

We must ensure that at all times during the process to apply the UCC policy we are mindful of our duty to treat the complainant fairly.

This will include:

- impartiality and open-mindedness
- transparency
- the complainant's involvement in the UCC process
- evidence considered is relevant and timely
- restrictions considered are proportionate to the unreasonable behaviour
- sensitivity of the UCC policy application and outcome
- and demonstrated through the consistency and fairness of the procedure as set out in the UCC Procedure Guidelines.

7.3 Notification of UCC decision to the complainant and staff

The complainant must be formally notified of the UCC decision indicating what restrictions have been put in place, why, and how this will impact on them.

Relevant staff should also be notified about changes to access.

Details are provided in the UCC Procedure Guidelines.

7.4 Right of appeal

If a complainant is dissatisfied with the UCC process, they may seek an external review from an oversight agency such as the Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that we have acted fairly, reasonably and consistently and have observed the principles of good administrative practice, including procedural fairness.

7.5 Periodic reviews

All UCC cases where this policy is applied will be reviewed every six months (depending on the nature of the service provided) and not more than 12 months after the service change or restriction was initially imposed, or continued.

The case manager will invite the complainant to participate in the review process in writing only, unless they determine that this invitation will provoke further UCC.

The nominated senior manager is responsible for conducting the periodic reviews.

Factors relevant to the periodic review such as the criteria to be considered, notifying the complainant of the upcoming review and outcome, recording the result, and notifying relevant staff of the result of the review are detailed in the UCC Procedure Guidelines.

7.6 Ombudsman may request copies of our records

Auckland 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 will be made available as required pursuant to the Local Government Official Information and Meetings Act 1987 and the Ombudsmen Act 1975.

8 Building internal resilience and capacity

8.1 Identifying, assessing and managing UCC-related risks

As an organisation, we expect that our staff can work in a safe environment. As a result, all staff are responsible to notify relevant supervisors or senior managers of UCC incidents.

Where potential, actual or perceived hazards or risks are identified, the senior manager has an obligation to review and consequently mitigate or remove them from our staffs' environment.

On an ongoing basis, we need to identify, assess, review and control potential or actual UCC-related hazards or risks. This dovetails in with the Auckland Council Health and Safety Policy and procedures to provide a robust risk management approach.

8.2 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 staff. It is normal to get upset or experience stress when dealing with difficult situations.

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

8.2.1 Debriefing

Debriefing means talking things through following a difficult or stressful incident. It is an important way of dealing with stress. Many staff members naturally do this with colleagues after a difficult interaction, but debriefing can also be done with a supervisor or senior manager, or as a team following a significant incident. We encourage 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 (EAP) – a free, confidential counselling service. Details are available on the council intranet, from People and Capability or from your manager.

If staff feel there is a threat to their personal safety, or that there may be a risk to them in their home or outside of the workplace, this should be discussed immediately with their manager, to take appropriate security measures.

8.2.2 Training and awareness

Auckland 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, on induction and on a regular basis.

8.3 Record keeping

Managing UCC will only be effective if we keep accurate and up-to-date records of our interactions with complainants. Good record keeping, as per the UCC and Complaints Procedure Guidelines, will ensure that all incidents of UCC (and UCC trends) are promptly identified and dealt with.

9 Policy review

All staff are responsible for forwarding any suggestions they have in relation to this policy to the Customer Services Manager, who, along with relevant senior managers, will review it at least every two years.

10 Supporting documents and policies

10.1 Statement of compliance

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

- Auckland Council Unreasonable Complainant Conduct Procedure Guidelines
- Auckland Council Occupational Health and Safety Policy (and associated legislation)
- Auckland Council Complaint Policy
- Auckland Council Complaints Procedure Guidelines
- The Practice Manual – the Managing Unreasonable Complainant Conduct Practice Manual (New Zealand Ombudsman October 2012)
- Public Records Act 2005
- Local Government Official Information and Meetings Act 1987
- Ombudsmen Act 1975.

**Auckland
Council**

Tā Kōwhiri o Tāmaki Makaurau

