

Unreasonable Complainant Conduct Policy

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1 Introduction

Auckland Council is committed to being accessible and responsive to all customers seeking assistance, lodging a complaint, or requesting information or a service. 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, wellbeing, and security of our staff
- our ability to allocate our resources fairly across all customers we serve.

In a very small number of cases, the behaviour of customers can become unreasonable, vexatious, or abusive and can have a disproportionate and unreasonable impact on our staff, services, time or resources. When this happens, Auckland Council will take action to manage any conduct that negatively and unreasonably impacts on the organisation, its staff or ability to allocate resources fairly across all the complaints we receive.

In some cases, the customer is not making a complaint, but seeking information, action, cessation of action, or redress. In these cases, the customer behaviour should also be considered using this policy to assess whether the conduct breaches the threshold of reasonable behaviour. This policy will refer to both unreasonable customer behaviour, and unreasonable complainant conduct interchangeably.

This policy does not apply to elected representatives' management of unreasonable customer behaviour – this is covered by the Auckland Council Code of Conduct: Elected Members.

Whether this policy or the outcomes of this policy apply to contractors undertaking work on behalf of Auckland Council will be case specific for each contractor and their contract with council.

2 Purpose

The purpose of this policy is to:

- assist all staff members to better manage unreasonable customer behaviour
- define unreasonable customer behaviour
- explain the types of behaviour we might consider unreasonable customer behaviour
- outline other resolution strategies to be used in conjunction with this policy
- provide an overview of the procedural fairness components required in order to provide a robust and just process
- ensure Auckland Council supports and protects staff dealing with unreasonable behaviour
- outline other resources relevant to this policy.

The process we will follow to make decisions about unreasonable customer behaviour is covered in the Process Document for Unreasonable Complainant Conduct (the “Process Document”).

3 What is unreasonable customer behaviour?

3.1 Unreasonable customer behaviour

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 continuously contact us with unnecessary or excessive phone calls and emails, make inappropriate demands about our time and resources, or refuse to accept our decisions and recommendations in relation to their complaints or concerns. When customers behave in these ways, we consider their conduct to be 'unreasonable'.

On some occasions, customers can be aggressive and verbally abusive towards our staff or threaten harm or violence. For the purpose of this policy, such conduct is referred to as 'unreasonable', however Auckland Council has a zero-tolerance approach towards any violence, harm or threat, and this kind of behaviour is considered unacceptable.

Unreasonable complainant conduct is:

Behaviour that, because of its nature or frequency, impacts health, safety, wellbeing, resource or equity for our organisation, staff, service users or customers (including the complainant).

Unreasonable conduct can be divided into five categories:

- 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 customer that impacts health, safety, wellbeing, resource or equity for our organisation, staff, service users or customers (including the complainant).

Some examples of unreasonably persistent behaviour include:

- contacting staff with unreasonably high levels of phone calls, visits, letters, emails (including being copied on correspondence)
- persistently requesting a review without presenting any new and compelling reasons for review
- refusing to accept further action cannot or will not be taken on their complaint or concern, after a final decision has been made
- reframing a complaint in an effort to get it taken up again
- persistently sending copies of information that has been sent already or that is irrelevant to the complaint or concern
- contacting different people within our organisation or externally in an attempt to get a different outcome or more sympathetic response to their complaint or concern
- an unwillingness or inability to accept reasonable explanations, including final decisions that have been comprehensively considered and communicated
- using the complaints process to raise new trivial complaints in an effort to reopen the original issue or prevent the work needed to implement a decision
- repeatedly changing the substance of a complaint or raising unrelated concerns
- logging repeated requests for action which require council investigation, in an effort to provide evidence to warrant council to reconsider an original decision
- high frequency of communication which impedes council from pursuing a legitimate aim or implementing a legitimate decision.

We consider access to council services and processes to be important but sometimes such repeated use may be considered unreasonable and result in an abuse of council services and processes. In such cases consideration will be given to restricting access on a case-by-case basis. For example, council will not continue to respond to complaints that have proven over time to be unsubstantiated, such as repeated noise complaints relating to the same or similar noise where previous investigations have demonstrated it does not breach permissible noise levels.

3.3 Unreasonable demands

Unreasonable demands are any demands (express or implied), made by a customer, that impacts health, safety, wellbeing, resource or equity for our organisation, staff, service users or customers (including the complainant).

Some examples of unreasonable demands include:

- repeatedly demanding responses within an unreasonable timeframe
- insisting on seeing or speaking to a particular member of staff or elected representative when that is not possible, appropriate, or warranted
- insisting on the issue being progressed or determined outside of the normal framework for progressing such requests
- repeatedly changing the substance of a complaint or raising unrelated concerns and demanding that these are considered and investigated through the original process
- 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
- demanding services that are of a nature or scale that we cannot provide.

Unreasonable demands consume an excessive amount of staff time which can disadvantage other customers and can prevent the complaint or concern from being dealt with in a reasonable timeframe.

3.4 Unreasonable lack of cooperation

Unreasonable lack of cooperation is the lack of willingness or ability of a customer to cooperate with our organisation, staff and processes which impacts on health, safety, wellbeing, resource or equity for our organisation, staff, service users or customers (including the complainant).

Some examples of unreasonable lack of cooperation include:

- providing little or no detail with a complaint or presenting information in a sporadic, nonsensical, or disorganised manner

- providing us with no further information, evidence or comments where it is requested to progress the issue
- refusing to help us by summarising their concerns or completing necessary documentation for us
- sending incomprehensible or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues being complained about
- refusing to follow or accept our instructions, requirements, processes, or advice, without a clear and justifiable reason for doing so
- withholding information, only providing partial information, acting dishonestly, misrepresenting facts or misquoting others.

We will always seek to assist someone if they have a specific, genuine difficulty complying with a request in line with council's obligations to provide reasonable accommodation for people with disabilities. However, we consider it to be unreasonable to bring a complaint or issue to us and then not respond or cooperate with our reasonable requests to progress the complaint or issue.

3.5 Unreasonable arguments

Unreasonable arguments include any arguments that are incomprehensible, false or inflammatory, that impacts on health, safety, wellbeing, resource or equity for our organisation, staff, service users or customers (including the complainant).

Some examples of unreasonable arguments are when they:

- insist on the importance of an issue which is not supported by evidence
- make allegations using unsupported or irrelevant information
- refuse to accept other valid contrary arguments
- make allegations of bullying or victimisation which are not substantiated by evidence
- attempt to undermine staff, for example by challenging professionalism or making unnecessary personal comments or demanding personal details about staff carrying out their roles, such as qualifications, work experience, authority to act, in an attempt to alter a decision or outcome
- are false, irrational, inflammatory, defamatory, or nonsensical.

3.6 Unreasonable behaviour

Unreasonable behaviour is conduct that is unacceptable in all circumstances – regardless of how stressed, angry or frustrated a customer is – because it compromises the health, safety, wellbeing and/or security of our staff, other service users or customers (including the complainant).

Examples of behaviour which is unacceptable include:

- physical violence
- threats, whether:
 - direct or indirect threats of harm to others, including staff or other customers (such as a direct threat of violence)
 - direct or indirect threats of harm to self
 - threats with a weapon or threats to damage property, including bomb threats
 - threatening or intimidating posture or body language.
- stalking (in person or online)
- harassment or intimidation
- abusive, degrading, and insulting language (including any derogatory, discriminatory, or defamatory remarks)
- repeated use of inappropriate tone, volume, and language
- rude, confronting, or aggressive communication.

Auckland Council has a zero-tolerance approach towards any violence, harm or threats. Any conduct of this kind will be dealt with in accordance with our duty of care and occupational health and safety responsibilities, and where appropriate, may result in the involvement of the police and courts, or other agencies. In addition, the unreasonable behaviour may be considered under this policy.

4 Managing unreasonable customer behaviour under this Policy

4.1 Informal behaviour management strategies

Where a customer's conduct exhibits any of the unreasonable behaviours outlined in this policy, or there are wellbeing concerns arising from having to deal with the conduct, council may try to minimise the impact of the conduct by first applying some informal behaviour management strategies. This type of informal behaviour management is not a restriction under this policy, as the purpose is to enable council to work with the customer to achieve a timely and effective resolution of their issue. Such informal behaviour management strategies are intended to intervene to better manage and prevent potential cases of unreasonable conduct and reduce the impact of potentially unreasonable behaviour on staff.

Informal behaviour management strategies include:

- customers may be asked to moderate their language, tone, or frequency of their interactions with council
- customers may be asked to engage only with a nominated single point of contact who will work with the customer until a solution can be reached. The purpose of this strategy is to assist a customer and staff by providing a nominated person within council to help both parties work towards a resolution.

Examples of behaviours which may lead to the use of these strategies include:

- a high volume, or inappropriate tone of communications in relation to a particular issue
- repeated unsubstantiated complaints
- breakdown of relationship(s) with operational staff
- escalation of a complaint to senior managers due to lack of resolution through standard operational procedures.

Informal behaviour management strategies may also be a precursor to a decision being made to apply formal restrictions under this policy. Informal behaviour management is not mandatory and requires the collaboration of both customer and council staff. Should the informal management break down, not be accepted by the customer, fail to achieve a resolution due to the customer's behaviour, or if the unreasonable behaviour continues, assessment of whether to apply formal restrictions under the policy will be initiated in accordance with the Process Document.

In some cases, a customer's behaviour will cross a threshold requiring immediate assessment for whether restrictions should be applied under this policy

4.2 Other strategies

A variety of other strategies can also be used to minimise the impact of the behaviour, or to encourage the customer to behave in a reasonable way. This will depend on the individual customer, context of their issue and behaviour encountered, and will be at the discretion of council.

Other strategies could include:

- using alternative legal mechanisms where appropriate to restrict a customer's access to our services and/or our premises, such as trespass
- advising the customer to contact an appropriate external agency
- reporting the behaviour to an appropriate external agency, such as the Police or health services
- referring the customer to an external review agency, such as the Environment Court or the [New Zealand Ombudsman](#).

4.3 Application of restrictions

If the steps taken to work with a customer do not achieve a resolution, and the customer behaviour continues to have unreasonable impacts, or if the behaviour is sufficiently serious, measures may be introduced to manage or minimise the impact of the behaviour in accordance with the Process Document.

These management measures are called “**restrictions**” for the purposes of this Policy and may include imposing restrictions or modifications on a customer's access to our services or taking a coordinated or managed approach to an individual.

The following considerations apply in deciding how or what restrictions to apply:

- the restrictions will be tailored to deal with individual circumstances (that is, be proportionate to the complainant's personal circumstances, level of competency or literacy skills)
- the restrictions will not be applied in ways that go beyond what is appropriate and necessary to manage a customer's conduct (that is, the least restrictive and proportionate for the context)
- the focus will be on managing the impact of the behaviour rather than punishing the complainant. The protection of the health and safety of our staff and service users or customers (including the complainant), as well as ensuring equity and fairness in the distribution of our resources are key considerations for proposed modifications or restrictions

- recognition that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

4.4 Types of restrictions

Unreasonable behaviour will generally be managed by modifying the ways that we interact with or deliver services to customers to minimise the impacts and risks posed by their conduct.

Examples of types of restrictions which may be imposed are outlined below. The list is not exhaustive, and a combination of several restrictions may be appropriate to manage the impact of the behaviour most effectively.

- a. **Who** a complainant can make contact with within council.
Including limiting contact to a single appointed contact person in our organisation.
- b. **What / the subject matter** we will respond to.
Including restricting the subject matter that we will consider and respond to.
- c. **When** a customer can make contact with us.
Including placing limits on the number of times a customer can contact us or limiting the customer's contact with us to a particular time, day, or length of time.
- d. **Where** a customer can interact with us.
Including limiting the locations where contact occurs, whether we will interact face-to-face, on Council premises or in a neutral location.
- e. **How** a customer can contact us.
Including limiting or modifying the channels of contact that the complainant can have with us. This can include requiring 'writing only' contact; or restricting access to direct staff emails and only allowing access through one of council's general email accounts; prohibiting access to our premises; or contact through a representative only.

4.5 Council's relationship with the customer while the restrictions are in place

Council acknowledges that our relationship to the customer will continue for the provision of infrastructure and services as provided to all ratepayers.

4.5.1 New interactions while restrictions are in place

While restrictions are in place for a customer, council will not ignore new interactions, service requests or complaints; however, how or if council responds to the customer will differ.

For example, a customer currently has restrictions in place specifying how often they can contact council and the subject matter they can raise in their contact. If they contact council with a new interaction, council may respond in a number of ways:

- Council will adopt standard business rules for the interaction if the customer demonstrates reasonable behaviour; the contact is within the parameters of the restrictions (i.e. frequency); and the issue raised in the new contact is outside of the scope of the specific restrictions (i.e. they are not re-raising restricted subjects).
- Council reserves the discretion not to respond if the customer continues to demonstrate unreasonable behaviour (for example: continuing abusive behaviour or continuing to send incomprehensible information).
- Council reserves the discretion not to respond if the customer contravenes the restrictions (i.e. contacts council too frequently or re-raises restricted subjects).
- Any new interaction which exhibits zero-tolerance behaviour, namely violence, harm or threats, will be dealt with in accordance with our duty of care and occupational health and safety responsibilities, and where appropriate, by involving the police and/or courts.

5 Procedural fairness

5.1 Before restrictions can be put in place

In most circumstances, before restrictions can be put in place council must ensure that:

- any underlying complaint or issue giving rise to the unreasonable behaviour has been dealt with properly and fairly and in line with the relevant procedures and/or statutory guidelines
- to the extent possible, a final summary response has been provided
- council has given the customer an opportunity to engage with council in a reasonable manner by clearly communicating to the customer:
 - the specific behaviour that is of concern;
 - what changes to behaviour are expected; and
 - an indication of the consequences should the ongoing behaviour continue
- council affords the customer with an appropriate length of time to demonstrate a behaviour change before council considers whether to apply this policy. We note that what constitutes an appropriate length of time will depend on the circumstances and the seriousness of the unreasonable behaviour at issue.

The exception to the above is in circumstances where the behaviour and the impact on the council is sufficiently serious to warrant the immediate application of restrictions. For example, where a customer has behaved violently or engaged in threats of violence towards council staff or in council facilities, restrictions may be put in place immediately to ensure that council staff and other council customers are kept safe. In circumstances where the restrictions are put in place immediately, the customer will be notified of the restrictions, provided with the opportunity to comment and a review of the restrictions will take place once the customer's comments are received to ensure the reasonableness of the original restriction decision.

5.2 Fairness to customer

At all times council must treat the customer fairly and should demonstrate the following at all stages of applying this policy:

- impartiality and open-mindedness
- transparency
- evidence based decision making.

5.3 Notifying the customer of the decision to impose restrictions

The customer must be formally notified of the decision to impose restrictions indicating:

- what restrictions have been put in place
- why the restrictions have been put in place (what the behaviour was and why it was considered unreasonable). This may include, where appropriate, a summary or copies of the evidence of unreasonable behaviour
- how the restrictions will impact them and their future interactions with council while the restrictions are in place
- how long the restrictions will be in place
- what will happen if they contravene the restrictions
- what right of appeal is available
- details of the review process.

Relevant staff throughout council should be notified about the restrictions to enable a coordinated approach.

5.4 Right of appeal

The decision to implement formal restrictions under this policy is final and there is no internal right of appeal available. The process for implementing formal restrictions is rigorous and contains a review which is then signed off with a decision by the Chief Executive or their delegate. We will advise the customer that if they are dissatisfied with the process or decision, they may seek an external review from the New Zealand Ombudsman. The Ombudsman may investigate the decision to ensure that we have acted reasonably and observed the principles of good administrative practice, including procedural fairness.

The restrictions are not permanent and will be periodically reviewed. The details of this review are set out below.

5.5 Periodic Reviews

When any restrictions are put in place, a review date will be set. A review should be completed no later than 12 months from the date the restrictions are put in place. This will be based on the circumstances of the case and the severity of the situation.

The status of a customer's restrictions will be reviewed by a senior manager on or before the review date.

If the customer is invited to participate in the review process, this will be in writing only. The customer will not be invited to participate in the review process if it is likely that the invitation will provoke further unreasonable behaviour.

If the outcome of the review is that the restrictions will continue, council will write to the customer to inform them of the details of the restrictions. Where the senior manager decides the restrictions should continue due to the continuance of unreasonable behaviour consistent with this policy, the customer will be provided with the reasons for the decision and the length of restrictions.

5.6 When restrictions end

Once restrictions have ended, council expects customers to behave reasonably.

Council will exercise its discretion in how to support or manage customers whose restrictions have ended. We recognise the need to balance fairness to the customer with protecting council staff and minimising exposure to ongoing unreasonable customer behaviour and we will endeavour to act in a manner proportionate to the unreasonable behaviour and degree of risk to the organisation.

If we encounter new instances of unreasonable behaviour in the six months following the ending of restrictions, council must advise the customer of the expected behaviour change required. If there is no change, council can act at their discretion by either renewing the original restrictions or by commencing a fresh decision process. How council will act will be considered on a case-by-case basis depending on the number of factors including:

- the amount of time passed since restrictions have ended (the longer the period of time which has passed since the restrictions ended, the stronger the case for a fresh process)

- whether the behaviour is the same or similar to the unreasonable behaviour identified in the original restrictions (the more dissimilar the new unreasonable behaviour is compared to the original behaviour, the stronger the case for a fresh process)
- the number, volume and frequency of the new unreasonable interactions from the customer since the restrictions have ended
- the amount and quality of communication with the customer about their behaviour – before, during or after restrictions were put in place or removed
- what the least restrictive and most proportionate response might be to manage the impact of the unreasonable behaviour in the context
- the degree of risk to the organisation or staff
- the availability of relevant, reliable and contemporaneous evidence to support action
- authorisation by the relevant divisional Director, or the Chief Executive.

In all cases, an effort must be made to communicate with the customer and give them the opportunity to engage with us in a reasonable manner. Any decision to renew the restrictions will be explained, along with the reasons for the decision and another date for review set (no longer than twelve months after the date the renewed restrictions are imposed).

If unreasonable behaviour is encountered after more than six months has passed since the original restrictions were removed, a new assessment for whether restrictions should be imposed under this policy will take place. The assessment will consider the current behaviour and may consider the previous behaviour which led to the original restrictions being imposed.

5.7 Ombudsman may request copies of our records

Auckland Council will keep records of all cases where restrictions are applied under this Policy. This data will be made available as required pursuant to the Local Government Official Information and Meetings Act 1987 and the Ombudsmen Act 1975.

6 Record Keeping

It is vital that any decisions made in respect of managing unreasonable behaviour are based on accurate, reliable, and appropriate information. Maintaining good quality records is essential, and a clear audit trail will prove vital in the event that any decisions are challenged, or further information is requested. It is the responsibility of all staff to maintain good customer interaction records in a centralised and accessible location.

A record of any decisions to apply restrictions will be administered by the Complaints and Issues Resolution Team, overseen by the Customer Resolutions Manager. The record will contain:

- the name and address of each customer who is classified as unreasonable and has active restrictions in place
- what restrictions have been put in place
- when any restrictions were put in place, and the date for review of restrictions.

7 Relation to other council policies

This policy is part of council's approach to addressing customer issues and formal complaints.

Before this policy is applied, all standard policies and procedures should have been followed, with the intention to achieve a satisfactory resolution for the customer where possible.



8 Policy review

All staff are responsible for forwarding any suggestions they have in relation to this policy to the Customer Resolutions Manager, who, along with relevant staff, will review the policy periodically.

9 Supporting documents and policies

9.1 Statement of compliance

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

- Auckland Council Process Document for Unreasonable Complainant Conduct
- Auckland Council Formal Complaint Policy
- Auckland Council Formal Complaint Framework
- Auckland Council's safety and wellbeing approach

