



ADMINISTRATIVE PROCEDURE

Procedure Name	Unreasonable Complainant Conduct Management Procedure
Department / Officer	Office of Chief Executive officer/Group Manager Governance and Finance
Date Adopted	20 July 2020 (SMT), 27 July 2020
Date/s Reviewed	
Next Preview	Every Three Years
Attachments	Attachment A – Strategies for Unreasonable Complainant Conduct

1. Purpose

The purpose of this procedure is to assist the Council, the Chief Executive Officer and Council employees to better manage unreasonable complainant conduct and aims to ensure that all employees:

- feel confident and supported in taking action to manage unreasonable complainant conduct
- act fairly, consistently, honestly and appropriately when responding to unreasonable complainant conduct
- are aware of their roles and responsibilities in relation to the management of unreasonable complainant conduct;
- understand the types of circumstances when it may be appropriate to manage unreasonable complainant conduct using strategies and processes in this procedure.

2. Scope

This procedure applies to all complainants whose conduct is determined as unreasonable and shall be read in conjunction with Council's Complaint Handling Policy.

3. Definitions

Unreasonable Complainant Conduct means 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 employees or other service users and complainants or the complainant himself/herself. Unreasonable Complainant Conduct can be divided into five categories of conduct, persistence, demands, and lack of cooperation, arguments and behaviours.

Unreasonable persistence means a continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on Council, its employees, services, time and/or resources.

Unreasonable demands means any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on Council, Council employees, services, time and/or resources.

Unreasonable lack of cooperation means an unwillingness and/or inability by a complainant to cooperate with Council, Council employee, or complaints system and processes that results in a disproportionate and unreasonable use of Council services, time and/or resources.

Unreasonable arguments means any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon Council, Council employees, services, time and/or resources.

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

All employees should note that the City of Victor Harbor 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 procedure and in accordance with our duty of care and Work Health and Safety responsibilities.

Examples (but not limited to) of the five unreasonable complainant conduct are provided at Attachment A.

4. Operating Procedure

Council is entitled to expect members of the public who have a complaint will behave in an acceptable manner that demonstrates respect towards Council employees.

Attachment A sets out the strategies in which Council employees may handle an unreasonable complainant conduct.

In certain circumstances the Council or Chief Executive Officer may limit communication between the Council and a complainant in relation to complaints. Such limitations may be imposed on a complainant whose behaviour:

- Constitutes unreasonable complainant conduct; and/or
- Gives risk to a risk to the safety and/or welfare of Council employees and/or other persons and/or may reasonably be considered to be an excessive drain on Council resources.

Where the Council imposes limitations on a complainant, notification will be made to the complainant in writing, specifying the limits and the reasons for their imposition.

The options available in imposing limitations upon communication for the purpose of managing unreasonable complainant conduct are set out in clauses 4.2 – 4.4 inclusive.

In making a decision to pursue one or more of these options in respect of a complainant, the Council will have regard to the following:

- The number of complaints made to Council by the complainant and the period within which they have been made;
- The nature of and outcome of any previous complaints made by the complainant to Council.
- The costs incurred by Council (if any) in having addressed the complainants previously made by the complainant;
- The principles of equity and procedural fairness; and
- Any other matters that Council or the Chief Executive Officer deems fit.

Council is aware of the legitimate right of members of the public to access Council information under the *Freedom of Information Act 1991*. Any limitations imposed on a complainant under this procedure will not impede these statutory rights, however unreasonable customer conduct may contribute to a request being denied under Section 18(2a) of the *Freedom of Information Act 1991*.

4.1 Require communication in writing

The Council and/or the Chief Executive Officer may:

- request that a complainant provide all complaints in writing; and/or
- decline to respond to any further communication from the complainant unless it is in writing

4.2 Not replying to correspondence

Where, following a written response to a complaint, the Council or Chief Executive Officer or delegate receives further complaints from the same complainant that detail the same or substantially similar matters, the Chief Executive Officer or Council nominated person may inform the complainant that it will not provide a substantive response to any similar complaints.

In these instances, the complainant will be notified of any alternative recourse that may be available to him/her such as making a complaint to the Ombudsman.

4.3 Unreasonable telephone communication

In some circumstances it may be appropriate for a Council employee to inform a complainant that they will no longer deal with his/her complaints over the telephone, and to terminate the call. This will only be done in exceptional circumstances where the complainant is using unreasonable behaviour as described above.

4.4 Limiting all contact to a nominated person

Where a complainant is making the same or substantially similar complaint or multiple complaints to numerous Council employees, the Council or Chief Executive Officer may nominate a particular Council employee to deal with the complainant.

Notification will be made in writing to the complainant of the name and contact details of the Council employee who will respond to his or her complaints and specify that no other will respond to complaints made by the complainant.

4.5 Restrictions following repeat unreasonable complainant conduct

Where a complainant repeatedly engages in unreasonable complainant conduct the Council or Chief Executive Officer may:

- inform the complainant that any further complainants will not be acknowledged unless they detail significant new information or new issues which in the opinion of the Chief Executive Officer or delegate warrants action; and/or
- restrict the times and days that a complaint may be accepted from a complainant by refusing to respond to any complaint from him or her that is received outside the times and other than in the manner notified to the complainant.

This action will only be taken as a last resort, with this decision to be made by the Chief Executive Officer after all other avenues have been exhausted, and where the complainant is making unacceptable demands on Council's complaint handling resources.

In some instances, it may be appropriate for Council management to seek legal advice with respect to the implications of a suspected frivolous and/or vexatious complaint and/or regarding unreasonable complainant conduct. A decision to seek legal advice will be made by the Chief Executive Officer.

4.5.1 Notice before action

Before pursuing action, the Chief Executive Officer or delegate will write to the complainant to notify him or her of the action that the Council proposes to take and the reasons why and, will invite comments from the complainant within a specified period (that is not less than 21 days) as to why such action should not be taken. Submissions by the complainant will be taken into account before determining whether to proceed with the proposed action.

4.5.2 Review of action

Where a decision is made under Clause 4.6, the Council or Chief Executive Officer will review the appropriateness of any restrictions imposed on the complainant every 12 months. If following a review the Council or Chief Executive Officer considers that the restrictions imposed on the complainant are no longer necessary taking into account the complainant's conduct in the 12 months prior, the Council or Chief Executive Officer will:

- Revoke the restrictions; and
- Notify the complainant of its decision in writing accordingly.

5. Related Documents and References

Complaint Handling Policy
Complaint Handling Procedure
Request for Service Policy
Internal Review of a Council Decision Procedure

Types of Unreasonable Conduct	Examples of complainant Conduct	Strategies for dealing with conduct
Unreasonable Persistence	<ul style="list-style-type: none"> • 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 in an effort to get it taken up again. • Bombarding Council employees or the Elected Council with phone calls, visits, letters, and emails (including cc'd correspondence) after 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 – internal and external forum shopping. 	<ul style="list-style-type: none"> • be prepared to say 'no' • it may be appropriate to advise the complainant that the issue will not be investigated further • communicate clearly if an unproductive telephone call is to be ended • provide one internal review only • adopt, when appropriate, a firm position of no further contact or correspondence • do not allow the complainant to re-frame the complaint to keep the matter alive unless there are significant new issues • make it clear that the decision of <i>Ombudsman SA</i> is final or in the case of external reviews under the <i>Freedom Of Information Act 1991</i> advise the complainant of their appeal rights
Unreasonable Demands	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • set limits on what will be done i.e. what issues will be investigated, by whom, how communication will happen etc. • be clear with the complainant in advance as to what the Council will do, and the limits

	<ul style="list-style-type: none"> • Insisting on talking to a senior manager or the CEO/Director 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. 	<ul style="list-style-type: none"> • end telephone calls that are unproductive, with a warning • may need to limit contact to written communications only
Unreasonable Lack of cooperation	<ul style="list-style-type: none"> • 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 ‘dribs and drabs’. • Refusing to follow or accept Council 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, misquoting others, and so forth. 	<ul style="list-style-type: none"> • Council employees need to set limits before proceeding with the matter • require complainants to clarify and summarise information they have provided before proceeding with the matter • require complainants to clearly define what their issues are before the complaint will be looked at • refuse to deal with the matter if it is found that the complainant has been wilfully misleading or untruthful in a significant way
Unreasonable Arguments	<p>Arguments are unreasonable when they:</p> <ul style="list-style-type: none"> • Fail to follow a logical sequence. • Are not supported by any evidence and/or are based on conspiracy theories. 	<ul style="list-style-type: none"> • decline or discontinue the matter • if unreasonable issues are mixed with reasonable issues, ensure that they are clearly identified and separated and only deal with the reasonable ones

	<ul style="list-style-type: none"> • 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. • Are false, inflammatory or defamatory. 	
<p>Unreasonable Behaviour</p>	<ul style="list-style-type: none"> • Acts of aggression, verbal abuse, and 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. 	<ul style="list-style-type: none"> • Council Employees will not tolerate unreasonable behaviour • complainant is to be told that threats are unacceptable and may be reported to police • rude correspondence will not be responded to, complainant is asked to reframe their complaint in more moderate terms • if a complainant is behaving unreasonably in a telephone conversation he or she should be warned that their conduct is unacceptable and that if the behaviour persists the call will be terminated • telephone calls are to be ended if the complainant continues to behave unreasonably after being warned, the Chief Executive or Mayor is to be advised of this action • meetings are to be ended if the complainant continues to behave unreasonably after being warned. The Chief Executive or Mayor is to be advised of this action.