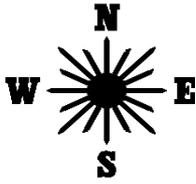


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Managing unreasonable complainant conduct



Central Darling Shire Council

Title of Policy	Managing Unreasonable Complainant Conduct		
This applies to	All staff		
Author	Michael Boyd	Date approved:	
Position of Author	General Manager	Authorised by:	
Legislation, Australian Standards, Code of Practice	Local Government Act 1993 Government Information (Public Access) Act 2009 Privacy and Personal Information Protection Act 1998 Public Interest Disclosures Act 1994 Inclosed Lands Protection Act 1901 NSW Ombudsman's Managing Unreasonable Complainant Conduct Practice Manual, 2 nd Edition		
Related Policies/Procedures	Complainant Management Policy		

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1 Introduction

1.1 Statement of support

Central Darling Shire Council is committed to being accessible and responsive to all complainants who approach Council for assistance and/or with a complaint. At the same time the success of Council 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, and
- our ability to allocate our resources fairly across all the complaints we receive.

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

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 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* (2nd edition) (Practice Manual) including the strategies to change or restrict a complainant's access to Council services
 - alternative dispute resolution strategies to deal with conflicts involving complainants and members of Council
 - 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 we decide to change or restrict a complainant's access to Council services
- 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 services
- are familiar with the procedures for reviewing decisions made under this Policy, including specific timeframes for review.

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3 Defining unreasonable complainant conduct

3.1 Unreasonable complainant conduct

Most complainants who come to Council act reasonably and responsibly in their interactions, 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 offices with unnecessary and excessive phone calls and emails, make inappropriate demands on Council time and Council resources and refuse to accept Council decisions and recommendations in relation to their complaints. When complainants behave in these ways Council considers their conduct to be "unreasonable".

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

For more examples of unreasonable persistence see pages 39 to 43 of the Practice Manual.

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3.3 Unreasonable demands

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

- issuing instructions and making demands about how Council have/should handle their 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 General Manager 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 Council cannot provide when this has been explained to them repeatedly.

For more examples of unreasonable demands see pages 50 to 54 of the Practice Manual.

3.4 Unreasonable lack of cooperation

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with Council, staff, or complaints system and processes that result in a disproportionate and unreasonable use of Council services, time and/or resources. 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"
- 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.

For more examples of unreasonable lack of cooperation see pages 64 to 65 of the Practice Manual.

3.5 Unreasonable arguments

Unreasonable arguments include 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, staff, services, time, and/or resources. 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

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- are trivial when compared to the amount of time, resources and attention that the complainant demands
- are false, inflammatory or defamatory.

For more examples of unreasonable arguments see pages 69 to 71 of the Practice Manual.

3.6 Unreasonable behaviour

Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated that 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, 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.

For more examples of unreasonable persistence, see pages 77 to 85 of the Practice Manual.

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 work health and safety responsibilities.

4 Roles and responsibilities

4.1 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 the contents of this document to all complainants particularly those who engage in UCC or exhibit the early warning signs for UCC. See pages 16 to 18 of the Practice Manual.

Staff are also encouraged and authorised to use the strategies and scripts provided in Part 5 of the practice manual to manage UCC, in particular:

- strategies and script ideas for managing unreasonable persistence: pages 39 to 48
- strategies and script ideas for managing unreasonable demands: pages 50 to 63
- strategies and script ideas for managing unreasonable lack of cooperation: pages 64 to 68
- strategies and script ideas for managing unreasonable arguments: 69 to 76
- strategies and script ideas for managing unreasonable behaviours: pages 77 to 88.

However, it must be emphasised that any strategies that effectively change or restrict a complainant's access to Council services must be considered by the General Manager as provided in this Policy.

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Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to their Director within 24 hours of the incident occurring, using the Sample UCC incident form in Appendix B. A file note of the incident should also be copied into Council's records management system (with the appropriate security level).

4.2 General Manager

The General Manager, in consultation with relevant staff, has the responsibility and authority to change or restrict a complainant's access to Council services in the circumstances identified in this Policy. When doing so they will take into account the criteria in Part 7.2 below (adapted into a checklist in Appendix C) 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 General Manager will also aim to keep at least one open line of communication with a complainant. However, Council does recognise that in extreme situations all forms of contact may need to be restricted for some time to ensure the health and safety and security of our staff and/or third parties.

The General Manager 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 a file record of all cases where this Policy is applied.

4.3 Directors

All Directors are responsible for supporting staff to apply the strategies in this Policy, as well as those in the practice manual. Directors 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 on induction.

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

Depending on the circumstances Directors may also be responsible for arranging other forms of support for staff which are detailed in Part 12 of this OMS.

5 Responding to and managing UCC

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

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

- **who they have contact with** – e.g. limiting a complainant to a sole contact person/staff member in Council
- **what they can raise with Council** – e.g. restricting the subject matter of communications that Council will consider and respond to

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- **when they can have contact** – e.g. limiting a complainant's contact with Council to a particular time, day, or length of time, or curbing the frequency of their contact with Council
- **where they can make contact** – e.g. limiting the locations where Council will conduct face-to-face interviews to secured facilities or areas of the Council office
- **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, contact through a 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.

5.2 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 complaint(s) and 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 General Manager 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 who they can contact if their primary contact is unavailable – eg they go on leave or are otherwise unavailable for an extended period of time.

5.3 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), Council may restrict the issues/subject matter the complainant can raise. 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 that it needs to pursue it further in which case, Council may do so on its "own motion".
- 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.
- return correspondence to the complainant and require them to remove any inappropriate content before Council will agree to consider its contents. A copy of

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the inappropriate correspondence will also be made and kept for our records to identify repeat/further UCC incidents.

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

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 Council 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 Council. This may include:

- limiting their 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
 - lengthy written communications 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 their telephone calls, written correspondence or face-to-face interviews. Depending on the nature(s) of the service(s) provided Council may limit:
 - telephone calls to 1 every two weeks/ month.
 - written communications to 1 every two weeks/month
 - face-to-face interviews to 1 every two weeks/month.

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

- Require the complainant to clearly identify how the information or supporting materials they have sent to Council 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.
- Restrict a complainant to sending emails to a particular email account (eg the Council's main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.

Writing only restrictions

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

- Australia Post only
- email only to a specific staff email or Council's general office email account
- fax only to a specific fax number
- some other relevant form of written contact, where applicable.

If a complainant's contact is restricted to "writing only", the General Manager will clearly identify the specific means that the complainant can use to contact Council (e.g. Australia Post

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only). Also if it is not suitable for a complainant to enter Council 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 "write 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 Council's premises, Council may consider restricting face-to-face contact with them.

These restrictions may include:

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

Contact through a representative only

In cases where Council cannot completely restrict its contact with a complainant and their conduct is particularly difficult to manage, Council may also restrict their contact to contact through a support person or representative only. The support person may be nominated by the complainant but must be approved by the General Manager.

When assessing a representative/support person's suitability, the General Manager should consider factors like: the nominated representative/support person's competency and literacy skills, demeanour/behaviour and relationship with the complainant. If the General Manager determines that the representative/support person may exacerbate the situation with the complainant the complainant will be asked to nominate another person or Council may assist them in this regard.

5.6 Completely terminating a complainant's access to Council's services

In rare cases, and as a last resort when all other strategies have been considered and/or attempted, the General Manager may decide that it is necessary for Council to completely restrict a complainant's contact/access to Council 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 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, assault

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- damage to property while on Council premises
- threats with a weapon or common office 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 their home
- conduct that is otherwise unlawful.

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

A complainant's access to Council services and premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws/legislation or legal orders to protect members of Council staff from personal violence, intimidation or stalking by a complainant. For more information, about the types of circumstances where legal mechanisms may be used to deal with UCC, please see:

- *Unauthorised entry onto agency premises – applying the provisions of the Inclosed Lands Protection Act 1901 (NSW)*
- *Orders to address violence, threats, intimidation and / or stalking by complainants.*

6 Alternative dispute resolution

6.1 Using alternative dispute resolution strategies to manage conflicts with complainants

If the General Manager determines that Council cannot terminate services to a complainant in a particular case or that Council or Council staff bear some responsibility for causing or exacerbating their conduct, they may consider using alternative dispute resolution strategies (ADR) such as mediation and conciliation to resolve the conflict with the complainant and attempt to rebuild Council's relationship with them. If ADR is considered to be an appropriate option in a particular case, the ADR will be conducted by an independent third party to ensure transparency and impartiality.

However, Council recognises that in UCC situations, ADR 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.

7 Procedure to be followed when changing or restricting a complainant's access to Council's services

7.1 Consulting with relevant staff

When the General Manager receives a UCC incident form from a staff member they will contact the staff member to discuss the incident. They will discuss:

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

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- the suggestions made by relevant staff on ways that the situation could be managed.

7.2 Criteria to be considered

Following a consultation with relevant staff the General Manager will search the Council's records management system 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 services will be effective in managing the complainant's behaviour
- whether changing or restricting access to Council services will affect the complainant's ability to meet their obligations, such as reporting obligations
- whether changing or restricting access to Council services will have an undue impact on the complainant's welfare, livelihood or dependents etc
- Whether the complainant's personal circumstances have contributed to the behaviour? For example, the complainant is a vulnerable person who is under significant stress as a result of one or more of the following:
 - homelessness
 - physical disability
 - illiteracy or other language or communication barrier
 - mental or other illness
 - personal crises
 - substance or alcohol abuse.
- whether the complainant's response/ conduct in the circumstances was moderately disproportionate, grossly disproportionate or not at all disproportionate
- whether there any statutory provisions that would limit the types of limitations that can be put on the complainant's contact/access to Council services
- once the General Manager 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 which may include one or more of the strategies provided in the practice manual and this Policy.

See Appendix C – Sample checklist for the General Manager to consider when deciding to modify or restrict a complainant's access.

7.3 Providing a warning letter

Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the General Manager 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
- 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)
- provide clear and full reasons for the warning being given

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- include an attachment of the organisation's ground rules and / or briefly state the standard of behaviour that is expected of the complainant, see Appendix A
- provide the name and contact details of the staff member who they can contact about the letter
- be signed by the General Manager.

See Appendix D – Sample warning letter.

7.4 Providing a notification letter

If a complainant's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault or other unlawful/unacceptable conduct the General Manager has the discretion to send a notification letter immediately restricting the complainant's access to Council services (without prior written warning).

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 problematic
- identify the change and/or restriction that will be imposed and what it means for the complainant
- provide clear and full reasons for this restriction
- specify the duration of the change or restriction imposed, which will not exceed 12 months
- indicate a time period for review
- provide the name and contact details of the senior officer who they can contact about the letter and/or request a review of the decision
- be signed by the General Manager.

See Appendix E – Sample letter notifying complainants of a decision to change or restrict their access to Council services.

7.5 Notifying relevant staff about access changes/restrictions

The General Manager will notify relevant staff about any decisions to change or restrict a complainant's access to Council services, in particular reception and security staff in cases where a complainant is prohibited from entering Council premises.

The General Manager will also update the Council's records management system with a record outlining the nature of the restrictions imposed and their duration.

7.6 Continued monitoring/oversight responsibilities

Once a complainant has been issued with a warning letter or notification letter the General Manager will review the complainant's record/restriction every three months, on request by a staff member, or following any further incidents of UCC that involve the particular complainant to ensure that they are complying with the restrictions/the arrangement is working.

If the General Manager determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise inappropriate they may decide to either, modify the restrictions, impose further restrictions or terminate the complainant's access to Council's services altogether.

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

8.1 Right of appeal

Complainants are entitled to one appeal of a decision to change/restrict their access to Council's services. This review will be undertaken by a Director who was not involved in the original decision to change or restrict the complainant's access. This Director 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 Director will then refer any materials/records relating to the appeal to the General Manager to be kept in the appropriate file.

If a complainant continues to be dissatisfied after the appeal 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 Council has acted fairly, reasonably and consistently and have observed the principles of good administrative practice, including procedural fairness.

9 Non-compliance with a change or restriction on access to Council's services

9.1 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 Council's records management system and a copy forwarded to the General Manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to Council's services.

10 Periodic reviews of all cases where this Policy is applied

10.1 Period for review

All UCC cases where this policy is applied will be reviewed every three months or 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/upheld.

10.2 Notifying the complainant of an upcoming review

The General Manager will invite the 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 will be done in writing).

See Appendix F – Sample letter notifying a complainant of an upcoming review.

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10.3 Criteria to be considered during a review

When conducting a review the General Manager will consider:

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

The General Manager 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 made contact during their restriction period (apparent compliance with Council's restriction) may not be an accurate representation of their level of compliance/reformed behaviour. This should be taken into consideration, in relevant situations.

See Appendix G – Sample checklist for reviewing an access change/restriction.

10.4 Notifying a complainant of the outcome of a review

The General Manager 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
- 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
- provide the name and contact details of the General Manager or nominated staff member who the complainant can contact to discuss the letter
- be signed by the General Manager.

See Appendix H – Sample letter advising the complainant of the outcome of a review.

10.5 Recording the outcome of a review and notifying relevant staff

Like all other decisions made under this Policy, the General Manager is responsible for keeping a record of the outcome of the review, updating Council's records management system and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.

See Parts 4.2 and 7.5 above.

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11 Managing staff stress

11.1 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 Council staff – both experienced and inexperienced. It is perfectly normal to get upset or experience stress when dealing with difficult situations.

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

11.2 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 senior 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 on a needs basis. All staff can access the Employee Assistance Program – a free, confidential counselling service. To arrange an appointment please contact Council's Human Resources Manager.

12 Other remedies

12.1 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. Council's Return to Work (RTW) Co-ordinators will assist wherever possible in processing claims. If you are the victim of an assault, they may also be able to apply to the Victim's Compensation Tribunal for compensation.

12.2 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.

12.3 Legal assistance

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

12.4 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 or outside the office, the staff member will receive

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the support of the Council. Requests for such assistance should be made to the General Manager.

12.5 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. Ask the General Manager for more information.

12.6 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 the Council meet the cost of having their telephone number changed and/or made silent. The staff member should also contact their telephone carrier, as they may provide an interception/monitoring service.

If assistance is approved, the 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 the General Manager.

12.7 Other security measures

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

13 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 on a regular basis in particular, on induction.

14 Ombudsman may request copies of Council records

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 may be requested by the Ombudsman to conduct an overall audit and review in accordance with its administrative functions and/or to inform its work on UCC.

15 Policy Review

All staff are responsible for forwarding any suggestions they have in relation to this Policy to the General Manager who along with relevant senior managers will review it every four years.

16 Supporting documents and policies

16.1 Statement of compliance

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

- Council's Work Health and Safety Policy
- Council's Complaint Management Policy
- NSW Ombudsman's Managing unreasonable complainant conduct practice manual (2nd edition)
- unauthorised entry onto agency premises – applying the provisions of the *Inclosed Lands Protection Act 1901* (NSW)
- orders to address violence, threats, intimidation and / or stalking by complainants

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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 work 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 rights¹

Complainants have the right:

- to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate²
- to a reasonable explanation of the organisation'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 case³
- to a fair hearing⁴
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint⁵
- to be given reasons that explain decisions affecting them
- to at least one right of review of the decision on the complaint⁶
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.⁷

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 circumstances⁸
- 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 environment⁹
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.¹⁰

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 staff of the Council
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated¹¹
- 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 made¹²
- 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
- 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 for help from the staff of the Council to assist them in doing so
- providing to the best of their ability the Council with all the relevant information available to them at the time of making the complaint
- being honest in all communications with the Council
- informing the Council of any other action they have taken in relation to their complaint¹³
- co-operating 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 further dealings with the complainant¹⁴. 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 made¹⁵

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- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them¹⁶ and the substance of any proposed adverse comment or decision that they may need to answer or address¹⁷
- keeping complainants informed of the actions taken and the outcome of their complaints¹⁸
- 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 complainants¹⁹ are not subjected to any detrimental action in reprisal for making their complaint²⁰
- giving adequate warning of the consequences of unacceptable behaviour.

If the 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 the staff of the Council who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction²¹
- providing all relevant information in their possession to the 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 the staff of the Council with courtesy and respect at all times and in all circumstances
- refraining from taking any detrimental action against the complainant²² in reprisal for them making the complaint.²³

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

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 impartially²⁴
- ensuring that staff treat all parties to a complaint with courtesy and respect
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances²⁵
- implementing reasonable and appropriate policies/procedures/practices to ensure that complainants²⁶ are not subjected to any detrimental action in reprisal for making a complaint²⁷, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- 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 the Council fails to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

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Appendix B: Sample UCC incident form

This form should only be completed if you encounter unreasonable complainant conduct and consider that steps may need to be taken to change or restrict a complainant's access to services provided by Council.

You must complete this form and send it electronically or by hand to the General Manager within 24 hours of a UCC incident. They will decide on the necessary and appropriate course of action for responding to and managing the complainant's conduct.

Date	<input style="width: 90%;" type="text"/>	Responsible Officer's Name	<input style="width: 90%;" type="text"/>
Name of Complainant	<input style="width: 95%;" type="text"/>		
Complainant's customer number (ECM)	<input style="width: 90%;" type="text"/>		
Details of the complainant's conduct/incident including whether emergency services were contacted:			
<div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px;"></div>			
Why do you consider this conduct to be unreasonable?			
For example – has it occurred before/repeatedly, caused significant disruptions to our organisation, has or could raise significant health and safety issues for our staff or other persons.			
<div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px;"></div>			
What action, if any, have you taken to deal with/manage the complainant's conduct?			
For example – warning the complainant 'verbally' about their conduct, other/previous attempts to manage the behaviour etc.			
<div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px;"></div>			
What do you think should be done to effectively manage the complainant's conduct?			
Note – the final decision on the appropriate course of action will be made by the General Manager.			
<div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px;"></div>			
Is there any other information that might be relevant to this case? If necessary, attach any supporting documentation.			
<div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px;"></div>			

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Appendix C: Sample checklist for the General Manager to consider when deciding to modify or restrict a complainant's access

- I have received a signed and completed incident form from the case officer(s) involved (attach copy).
- I have spoken with relevant case officer(s) to obtain further information, as needed.
- I have reviewed the complainant's record and all the relevant information in it.
- I have referred to and considered Part 7.2 Criteria to be considered which includes an assessment of the following:
 - the merits of the complainant's case
 - the complainant's circumstances
 - jurisdictional Issues
 - proportionality
 - organisational or case officer responsibility
 - responsiveness, including previous conduct
 - Responsible Officer's personal boundaries
 - conduct that is unreasonable in all circumstances (assault, threats of harm, etc.)
- Along with the case officer concerned and the Directors, I have considered all reasonable options for managing the complainant's conduct, including those that do not involve restricting their access to our services.
- The complainant has been warned about their conduct in writing.
- The complainant has been advised in writing of our decision to restrict their access to Council.
- I have made a record of my assessment and decision about the complainant's conduct and all relevant staff members have been notified of my decision.
- An electronic alert has been created in Council's records management system that notifies any staff dealing with this complainant of the nature of the conduct that caused us to be concerned, the nature of the restriction that has been placed on their access, its duration, how they are to deal with the complainant (including who they should direct any communications from the complainant to).

Date Signature

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Appendix D Sample warning letter

Your Ref:
Our Ref: <Customer Number>

<Date>

<Name of Complainant>
<Address of Complainant>

Dear <Name of Complainant>

Your contact with Central Darling Shire Council

You recently had [*state the form of contact – e.g. telephone, written or face-to-face*] with Council staff on <date>. <During/In that telephone call/appointment/letter>, I understand that you [*explain the nature of the conduct that has caused the organisation to be concerned*].

Council considers this type of behaviour to be inappropriate and it must stop. If you continue to behave in this way, or in any other way that my staff consider to be unreasonable, Council will impose restrictions on your contact with Council. This may involve restricting your contact to [*apply the relevant option(s)*]:

- 'Writing only' – this means that Council will only accept communications from you in writing, delivered by Australia Post [if online or other written communications are preferred then explain].
- 'Telephone contact only' – this means that you will only be able to contact Council by telephone on a specified time and day of the week.
- 'Face-to-face contact only' – this means that your contact will be limited to scheduled face-to-face meetings with a specified member of Council's staff.

Or any other restriction that Council considers to be appropriate in the circumstances.

I have attached a copy of a document called *Individual rights and mutual responsibilities of the parties to a complaint* for your reference. Council expects everyone who complains to act in the ways described in this document.

If you have any questions about this letter, please contact me on ().

Yours faithfully

<Name>
General Manager

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Appendix E: Sample letter notifying a complainant of a decision to change or restrict their access to Council's services

Your Ref:
Our Ref: <Customer Number>

<Date>

<Name of Complainant>
<Address of Complainant>

Dear <Name of Complainant>

Decision to restrict your contact with Central Darling Shire Council

It has come to my attention that you *[describe the nature of the unreasonable conduct and its impact – e.g. if the complainant has been sending emails to several members of my staff on a daily basis]*.

I understand that my staff have previously told you that Council considers this conduct to be unreasonable and unwarranted.

I also wrote to you on *[date]* and asked you to stop this behaviour. In that letter, I advised you that if your behaviour continued, I would restrict your contact with Council. At the time, I also attached a copy of Council's [Individual rights and mutual responsibilities of the parties to a complaint] which outlines your responsibilities as a complainant.

Because your behaviour has continued, I now consider it necessary to impose certain restrictions on your future contact with Council. I therefore give you notice that from *[date]*, and with the exception(s) detailed below, Council will only accept communication from you *[identify permissible form of contact, if any]*.

What this means

This means that you are only to contact Council using *[describe the restriction in further details]*. Any communications that do not comply with this restriction will be *[describe what will happen – e.g. phone calls will be terminated immediately or emails/written communications will be read and filed without acknowledgment, emails will be blocked or deleted, no interviews will be granted, etc]*.

[Note: the complainant should be clearly informed how they can contact the Council and how the Council will contact them].

Your existing complaint [if applicable]

Council currently has one file open in your name. This relates to *[state the subject of complaint and describe complaint]*. This file is being handled by *[name of officer and position title]*. While you are able to contact *[name of officer]* *[state nature of contact – e.g. by email]* about this specific matter, all other contact with Council, including any future complaints, must be *[state restriction – e.g. in writing through Australia Post]* *[provide contact details – e.g. address of organisation where post can be sent]*.

Review of this decision

My decision to restrict your contact with Council is effective immediately and will last for *[three months/six months/12 months]*. At that time Council, will review your restriction and decide if it should be maintained, amended or withdrawn.

I take these steps with the greatest reluctance, but *[state reason for restriction – e.g. the equity and safety of other complainants and my staff]*, leaves me no alternative.

If you have any questions about this letter, you can contact *[provide name and phone number of the nominated senior manager]*.

If you have any questions about this letter, please contact <Responsible Officer>, <Title> on <phone>.

Yours faithfully

<Name>
General Manager

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Appendix F: Sample letter notifying a complainant of an upcoming review

Your Ref:
Our Ref: <Customer Number>

<Date>

<Name of Complainant>
<Address of Complainant>

Dear <Name of Complainant>

Upcoming review of the decision to restrict your contact with Central Darling Shire Council

It has now been [*three months/six months/12 months*] since restrictions were [*imposed/upheld*] on your contact with Council. As advised in Council's letter dated [*date*], Council is now reviewing its decision to ascertain whether the restrictions should be maintained, amended or withdrawn.

Council considers it important to give you an opportunity to participate in the review process, so is therefore inviting you to [*apply the relevant option(s)*]:

- make submissions in writing through Australia Post [*include contact person's name and address*]
- schedule a face-to-face interview with [*include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling Customer Service on (08) 8083 8900.*]
- schedule a telephone interview with [*include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling Customer Service on (08) 8083 8900.*]

In your letter, you should include information that would be relevant to Council's review. This includes information about [*.....*]/*During the interview which will not last more than 30 minutes, we will discuss whether:*

- you have complied with the current contact restrictions
- the current contact restrictions should be removed
- the current contact restrictions should be amended to better suit your personal circumstances
- the current contact restrictions should be maintained
- any other information that is relevant to our decision.

Council must receive your letter by [*time and date*]. You should confirm your interview with [*Responsible Officer*] by [*time and date*]. If Council does not receive it/hear from you by this date, Council will assume that you do not wish to participate in this review and will undertake the review based on the information that is available to it. Once the review is completed, Council will contact you again by letter notifying you of its decision.

If you have any questions about this letter, please contact <Responsible Officer>, <Title> on <phone>.

Yours faithfully

<Name>
General Manager

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Appendix G: Sample checklist for reviewing a decision regarding an access change/restriction

- The complainant has been sent a letter notifying them of the review.
- The complainant will/will not participate in the review.
 - the complainant has/has not scheduled a face-to-face interview
 - the complainant has/has not made written submissions
 - the complainant has/has not scheduled a telephone interview
- I have reviewed all the information in the Council's records management system from the last 12 months [or relevant period of the restriction] about the complainant's:
 - contact with the office (explain form of contact)
 - conduct during that contact (explain if conduct reasonable or unreasonable)
- I have spoken with the case officers who have had contact with the complainant during the last 12 months about the complainant's conduct during that period.
- I have considered the arguments/statements made by the complainant, including the impact of the restrictions on them (explain complainant's position, including if their circumstances have changed etc.) *Note: if the complainant is arguing that their circumstances have changed, they should be required to submit evidence to support this claim.*
- I have considered whether there are other more reasonable/suitable options for managing the complainant's conduct, including those that do not involve restricting their access to our services (list all that apply).
- I consider that the restriction should be (explain):
 - maintained –e.g. because the conduct has continued or is likely to continue, is disproportionate etc.
 - removed – e.g. because the complainant has complied with the restrictions etc.
 - amended – e.g. because the complainant's circumstances have changed and the current restriction is no longer appropriate.
- I have discussed my decision with [other nominated senior officers].
- The complainant has been advised in writing of my decision to maintain/remove/ amend the restriction and this letter has been signed by the General Manager.
- Council's records management system has been updated to reflect my decision.

Date

Signature

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Appendix H: Sample letter advising the complainant of the outcome of a review

Your Ref:
Our Ref: <Customer Number>

<Date>

<Name of Complainant>
<Address of Complainant>

Dear <Name of Complainant>

Review of your contact with Central Darling Shire Council

I am writing about a review that was undertaken by Council on [date] concerning your contact with this office. I understand that you [participated/did not participate] in that review.

Process of review

During the review you were given an opportunity to *[explain in general terms how the review what undertaken]*.

Considerations

After your *[interview/reading your submissions]*, Council considered the concerns and suggestions raised in your *[interview/letter, etc.]*, particularly your concerns about *[include information that would be relevant – e.g. the complainant said there circumstances had changed]*. Council also reviewed its records of your conduct and contact with Council over the last 12 months. These records showed that *[provide summary of relevant information – e.g. Our records show that you have continued to send emails to our office, sometimes up to four times a day, throughout the period of your restriction]*.

[apply if relevant] These communications were in direct violation of your restriction which limited your contact with Council to *[state nature restriction]* *[explain what the purpose of the restriction was, if appropriate, and the impact of their conduct]*.

[apply if relevant] Council's records show that you have complied with the restrictions that were imposed on your contact with our organisation.

Decision

[apply if relevant] Due to *[explain reasoning for the decision – e.g. the number of emails that you have sent to our organisation in the last 12 months and]* I consider it necessary to maintain the restrictions on your contact with Council for a further 12 months, effective immediately.

[apply if relevant] Due to *[explain reasoning for the decision]*, I consider it necessary to amend the restrictions on your access to better suit your personal circumstances *[explain, including providing clear instructions on how the complainant is to contact us and how we will contact them]*. The new restrictions will be effective immediately and will last for 12 months. If your circumstances change again during this period, you may *[explain how the complainant can notify of the change]*.

[apply if relevant] Due to *[explain reasoning for the decision]* I consider it appropriate to remove the restrictions that have been placed on your access with Council, effective immediately. You may contact Council using any of our normal servicing options.

If you have any questions about this letter, please contact <Responsible Officer>, <Title> on <phone>.

Yours faithfully

<Name>
General Manager

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End Notes

- ¹ The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint.
- ² Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums.
- ³ While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.
- ⁴ The 'right to be heard' refers to the 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.
- ⁵ Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.
- ⁶ Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.
- ⁷ 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.
- ⁸ Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint [see also Endnote 25].
- ⁹ See for example WH&S laws and the common law duty of care on employers.
- ¹⁰ Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.
- ¹¹ 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.
- ¹² 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.
- ¹³ For example whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings at foot.
- ¹⁴ Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.
- ¹⁵ See Endnote 11.
- ¹⁶ Other than where an allegation is so lacking in merit that it can be dismissed at the outset.
- ¹⁷ See Endnote 11.
- ¹⁸ See Endnote 5.
- ¹⁹ 'Complainants' include whistleblowers/people who make internal disclosures.
- ²⁰ 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.
- ²¹ This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.
- ²² See Endnote 19.
- ²³ See Endnote 20.
- ²⁴ See Endnote 3.
- ²⁵ Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.
- ²⁶ See Endnote 19.
- ²⁷ See Endnote 20.