



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

Date approved/adopted	11 February 2020
Resolution No	20/018OC
Date effective	4 March 2020
Date last reviewed	N/A – New Policy
Next review date	1 February 2022
Department	Office of the General Manager
Author	Public Officer
TRIM reference	20/7212
Supporting documents	<ul style="list-style-type: none"> • Procedure - Restricting a Complainants Access to our Services • Template - Warning Letter – Inappropriate Behaviour • Template - Decision to Restrict Contact Letter • Staff Incident/Injury Report form • Council's Work Health and Safety Management Policy • Council's Complaints Management Policy & Procedure • Council's Grievance Handling Policy & Procedure • 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)

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Unreasonable Complainant Conduct Policy

1.0 Purpose

Kiama Municipal Council (KMC) is committed to being accessible and responsive to all customers and those who approach us with a complaint. At the same time the success of our 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 customer enquiries we receive.

When complainants behave unreasonably in their dealings with us, their conduct can significantly affect our success. As a result, KMC 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. This policy is based on the NSW Ombudsman's Unreasonable Complainant Conduct Model Policy.

2.0 Objectives

The objectives of this policy are 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
- have a clear understanding of the criteria that will be considered before we decide to change or restrict a complainant's access to our 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 our services
- are familiar with the procedures for reviewing decisions made under this policy, including specific timeframes for review.

KMC 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.

3.0 Scope

This policy applies to all staff of KMC, including Councillors, Contractors, Volunteers, Delegates, Committee Members, and in particular frontline staff and those that have a role in complaint handling. It distinguishes between the strategies that frontline staff are authorised to use and those that must be considered and acted on at a senior management level eg those that seek to change or restrict a complainant's ability to access our services.

When referring to 'staff' in this policy it is taken to include all Council Officials, such as Councillors, Contractors, Volunteers, Delegates, Committee Members. This policy authorises staff to manage their interactions with complainants whose conduct is identified as unreasonable.

This policy should not be seen as a quick solution for dealing with complainants who are angry or frustrated or who are viewed as being annoying or a nuisance. It is intended to be applied in cases where UCC is in fact an issue – that is in cases where a complainant’s conduct raises the types of safety, resource and equity issues identified in this policy.

4.0 Defining unreasonable complainant conduct

4.1 Unreasonable complainant conduct

Most complainants who come to KMC act reasonably and responsibly in their interactions with us, 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 our best efforts to help them. They may be aggressive or verbally abusive towards our staff. They may threaten harm and violence, bombard our Council with unnecessary and excessive phone calls and emails, make inappropriate demands on our time and our resources and refuse to accept our decisions and recommendations in relation to their complaints. When complainants behave in these ways we consider their conduct to be ‘unreasonable’.

Unreasonable complainant conduct 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 our council, our staff, other service users and complainants or the complainant himself/herself.

UCC can be divided into five categories of conduct¹:

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

4.2 Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a person that has a disproportionate and unreasonable impact on our organisation, 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 our staff/Council with phone calls, visits, letters, emails (including cc’d correspondence) after repeatedly being asked not to do so
- contacting different people within KMC and/or externally to get a different outcome or more sympathetic response to their complaint – internal and external forum shopping.

¹ Section 3 of the Model Unreasonable Complainant Conduct policy by the NSW Ombudsman’s office

4.3 Unreasonable demands

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

- issuing instructions and making demands about how we have/should handle their complaint, the priority it was/should be given, or the outcome that was/should be achieved
- insisting on talking to 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 – eg for someone to be sacked or prosecuted, an apology and/or compensation when no reasonable basis for expecting this
- demanding services that are of a nature or scale that we cannot provide when this has been explained to them repeatedly.

4.4 Unreasonable lack of cooperation

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with our Council, staff, or complaints system and processes that results in a disproportionate and unreasonable use of our 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 our instructions, suggestions, or advice without a clear or justifiable reason for doing so
- arguing frequently and/or with extreme intensity that a particular solution is the correct one in the face of valid contrary arguments and explanations
- displaying unhelpful behaviour – such as withholding information, acting dishonestly, misquoting others, and so forth.

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

4.6 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 our 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.

All staff should note that KMC 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 our duty of care and work health and safety responsibilities, which may include escalation to NSW Police.

5.0 Roles and responsibilities

5.1 All staff

All staff are responsible for familiarising themselves with this policy as well as the *Individual Rights and Responsibilities of the Parties to a Complaint* in Appendix A. Staff are also encouraged to explain the contents of this policy to all complainants particularly those who engage in UCC or exhibit the early warning signs for UCC.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness to the Risk Management Coordinator or Public Officer within 24 hours of the incident occurring, using the Staff Incident/Injury Report available on the Intranet. A file note of the incident should also be registered in Trim.

5.2 The Public Officer

The Public Officer, in consultation with the General Manager, has the responsibility and authority to change or restrict a complainant's access to our services in the circumstances identified in this policy. When doing so they will take into account the criteria in the associated Procedure for **Changing or Restricting a Complainant's Access to Our Services** 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 Public Officer will also aim to keep at least one open line of communication with a complainant. However, we do 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 Public Officer 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.

5.3 Senior managers

All senior managers are responsible for supporting staff to apply the strategies in this policy and ensuring that all staff members are trained to deal with UCC.

Following a UCC and/or stressful interaction with a complainant senior managers are responsible for providing affected staff members with the opportunity to debrief and vent their concerns either formally or informally. Senior managers 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 (EAPS), if necessary.

6.0 Responding to and managing UCC

6.1 Changing or restricting a complainant's access to our services (see associated procedure)

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

- **Who they have contact with** – eg limiting a complainant to a sole contact person/staff member in Council
- **What they can raise with us** – eg restricting the subject matter of communications that we will consider and respond to
- **When they can have contact** – eg limiting a complainant's contact with Council to a particular time, day, or length of time, or curbing the frequency of their contact with us.
- **Where they can make contact** – eg limiting the locations where we will conduct face-to-face interviews to secured facilities or areas
- **How they can make contact** – eg limiting or modifying the forms of contact that the complainant can have with us. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to our premises, contact through a representative only, taking no further action or terminating our services altogether.

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

6.2 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 (preferably at supervisor or above level) as a sole contact point who will exclusively manage their complaint(s) and interactions with Council. This will 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 or manager will provide them with regular support and guidance – as needed. Also, the Public Officer 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.

6.3 What – restricting the subject matter of communications that we 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) by KMC, we may restrict the issues/subject matter the complainant can raise with us/we will respond to. For example, we 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 we decide that we need to pursue it further in which case, we may do so on our '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 we will agree to consider its contents. A copy of the inappropriate correspondence will also be made and kept for our records to identify repeat/further UCC incidents.

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

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

- limiting 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 5 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 30 minutes
- limiting the frequency of their telephone calls, written correspondence or face-to-face interviews. Depending on the nature of the service(s) provided we may limit:
 - telephone calls to 1 every week
 - written communications to 1 every week
 - face-to-face interviews to 1 every week.

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

- require the complainant to clearly identify how the information or supporting materials they have sent to us relate to the central issues that we have identified in their complaint
- restrict the frequency with which complainants can send emails or other written communications to our office
- restrict a complainant to sending emails to a particular email account 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 our general Council 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 Public Officer will clearly identify the specific means that the complainant can use to contact our office (eg Australia Post only). Also if it is not suitable for a complainant to enter our premises to hand deliver their written communication, this must be communicated to them as well.

Any communications that are received by our office in a manner that contravenes a 'write only' restriction will either be returned to the complainant or read and filed without acknowledgement.

6.5 Where – limiting face-to-face interviews to secure areas

If a complainant is violent or overtly aggressive, unreasonably disruptive, threatening or demanding or makes frequent unannounced visits to our premises, we may consider restricting our face-to-face contact with them.

These restrictions may include:

- restricting access to particular secured premises or areas of Council – such as the reception area or secured room/facility
- restricting their ability to attend our 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 KMC 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 our premises altogether and allowing some other form of contact – eg 'writing only' or 'telephone only' contact

6.6 Contact through a representative only

In cases where we cannot completely restrict our contact with a complainant and their conduct is particularly difficult to manage, we may also restrict 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 or Public Officer.

When assessing a representative/support person's suitability, the General Manager or Public Officer 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 or Public Officer determines that the representative/support person may exacerbate the situation with the complainant, the complainant will be asked to nominate another person or we may assist them in this regard.

6.7 Completely terminating a complainant's access to our services

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

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

- acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking, assault

- damage to property while on our 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 offsite visit
- conduct that is otherwise unlawful.

In these cases, the complainant will be sent a letter notifying them that their access has been restricted.

A complainant's access to our services and our premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws/legislation or legal orders to protect members of our 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.

6.8 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 Risk Management Coordinator and Public Officer who will decide whether any action needs to be taken to modify or further restrict the complainant's access to our services.

7.0 Alternative dispute resolution

7.1 Using alternative dispute resolution strategies to manage conflicts with complainants

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

However, we recognise that in UCC situations, alternative dispute resolution may not be an appropriate or effective strategy particularly if the complainant is uncooperative or resistant to compromise. Therefore, each case will be assessed on its own facts to determine the appropriateness of this approach.

8.0 Appealing a decision to change or restrict access to our services

8.1 Right of appeal

Complainants are entitled to one appeal of a decision to change/restrict their access to our services. This review will be undertaken by a senior staff member who was not involved in the original decision to change or restrict the complainant's access. This senior staff member 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 which must be signed off by the General Manager. The senior staff member will then refer any materials/records relating to the appeal to the Public Officer 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 NSW Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that we have acted fairly, reasonably and consistently and have observed the principles of good administrative practice including, procedural fairness.

9.0 Managing staff stress

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

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

9.2 Debriefing

Debriefing means talking things through following a difficult or stressful incident. It is an important way of ‘offloading’ 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. We encourage all staff to engage in an appropriate level of debriefing, when necessary.

All staff can access the Employee Assistance Program – a free, confidential counselling service. For further information and contact details see Council’s Intranet.


10.0 Attachments

Appendix A - Individual Rights and Responsibilities of the Parties to a Complaint

11.0 Document control

Date reviewed	Date adopted	Amendment
October 2019	11 February 2020	New Policy

12.0 Signature

Name: Kerry McMurray General Manager	Date: 4 March 2020
Signature: 	

Appendix A - Individual Rights and Responsibilities of the Parties to a Complaint

In order for Kiama Municipal Council (KMC) 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.

Complainants have the right:

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

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

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 Council staff
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated
- 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 made
- 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.

How to contact Council

Post

General Manager
Kiama Municipal Council
PO Box 75
Kiama NSW 2533

Telephone

+61 (02) 4232 0444

Facsimile

+61 (02) 4232 0555

Online

Email: council@kiama.nsw.gov.au
Website: www.kiama.nsw.gov.au

Office hours

Our Administration Building located at
11 Manning Street Kiama is open 8.45 am to 4.15 pm
Monday to Friday (excluding public holidays)



KIAMA MUNICIPAL COUNCIL
your council, your community