

Unreasonable ~~Complainant~~ Conduct Policy

~~2021~~2024



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Related Documents	<u>Unreasonable Conduct Procedures</u> Managing Unreasonable Conduct by a Complainant Manual (NSW Ombudsman, March 2021) Unreasonable Complainant Conduct Model Policy (NSW Ombudsman, August 2021) Model Guidelines – Managing and Responding to Threats, Aggressive Behaviour and Violence from Members of the Public (NSW Ombudsman, June 2014)

*Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.

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~~PART A~~—Introduction

1 Purpose

This Unreasonable ~~Complainant~~ Conduct Policy (“this Policy”) has been developed to assist all Liverpool Plains Shire Council (“Council”) staff members to better manage unreasonable conduct by ~~complainants~~ members of the public (“~~UCC~~”). It aims to help staff:

- Feel confident and supported in taking action to manage ~~UCC~~ unreasonable conduct;
- Act fairly, consistently, honestly, and appropriately when responding to unreasonable conduct ~~UCC~~;
- Understand their roles and responsibilities in relation to the management of unreasonable conduct ~~UCC~~, and how this Policy will be used;
- Understand the types of circumstances when it may be appropriate to manage unreasonable conduct ~~UCC~~ using one or more of the following mechanisms:
 - the strategies provided in the NSW Ombudsman’s Managing Unreasonable Conduct by a Complainant Manual (3rd edition) including the strategies to change or restrict a complainant’s access to our services;
 - alternative dispute resolution strategies to deal with conflicts involving ~~complainants~~ the public and members of our organisation;
 - legal instruments such as trespass laws or other legislation to prevent a complainant from coming onto our premises, and orders to protect specific staff members from any actual or apprehended personal violence, intimidation, or stalking.
- Understand the criteria we will consider before we decide to change or restrict a complainant’s access to our services;
- Be aware of the processes that will be followed to record and report unreasonable conduct ~~UCC~~ incidents, and the procedures for consulting and notifying complainants about any proposed action or decision to change or restrict their access to our services; and
- Understand the procedures for reviewing decisions made under this Policy, including specific timeframes for review.

2 ~~2~~—Commencement

This Policy is effective from date of resolution by Council and shall remain in force until repealed by resolution of Council.

3 ~~3~~—Scope and Application

This Policy applies to all staff receiving or managing complaints from the public made to or about us, regarding our services, staff and complaint handling.

Staff grievances, Code of Conduct complaints and public interest disclosures are dealt with through separate mechanisms.

4 ~~4~~—Organisational Commitment

Council is committed to being accessible and responsive to all complainants-members of the public who approach our organisation regardless of ethnic identity, national origin, religion, linguistic background, sex, gender expression, sexual orientation, physical ability or other cultural or personal factors. At the same time, the success of our organisation depends on:

- Our ability to do our work 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-members of the public behave unreasonably, their conduct can significantly affect the successful conduct of our work. We will act proactively and decisively 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.

5 ~~5~~ — Terms and Interpretation

In this Policy, the following terms shall be interpreted to have the following meanings:

Term	Definition
Code of Conduct	means Liverpool Plains Shire Council’s Code of Conduct.
Complainant	a person or organisation who has submitted a complaint [see definition of “complaint” below].
Complaint	<p>expression of dissatisfaction made to or about Council, our services, staff or the handling of a complaint where a response or resolution is explicitly or implicitly expected or legally required.</p> <p>A complaint covered by this Policy can be distinguished from:</p> <ul style="list-style-type: none"> • Staff grievances [see Council’s Grievance Policy]; • Public interest disclosures made by our staff [see Council’s Internal Reporting (Public Interest Disclosures) Policy]; • Code of Conduct complaints [see Council’s Code of Conduct]; • Responses to requests for feedback about the standard of our service provision [see the definition of “feedback” below]; • Reports of problems or wrongdoing merely intended to bring a problem to our notice with no expectation of a response [see definition of “feedback”]; • Service requests [see definition of “service request” below]; and • Requests for information [see Council’s website for information on the <i>Government Information Public Access (GIPA) Act 2009</i>].
Council	means Liverpool Plains Shire Council.

EDRMS	means Liverpool Plains Shire Council's Electronic Document and Records Management System.
Feedback	opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly, to or about our services or complaint handling where a response is not explicitly or implicitly expected or legally required.
General Manager	means the General Manager of Liverpool Plains Shire Council appointed under section 334 of the <i>Local Government Act 1993</i> .
Public Officer	the staff member designated under section 342 of the <i>Local Government Act 1993</i> to exercise the functions of Public Officer detailed at section 343 of the <i>Local Government Act 1993</i> .
Service Request	<ul style="list-style-type: none"> • Requests for approval • Requests for action • Routine inquiries about Council's business • Requests for the provision of services and/or assistance • Reports of failure to comply with laws regulated by Council. • Requests for explanation of policies, procedures and decisions.

6 ~~PART B~~ — Defining Unreasonable Conduct by a Complainant

~~6~~ — Unreasonable conduct by a complainant

Most ~~complainants~~ members of the public 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, despite our best efforts to help them, in a very small number of cases, ~~complainants~~ members of the public display inappropriate and unacceptable behaviour. They can be aggressive and verbally abusive towards our staff, threaten harm and violence or bombard our organisation with unnecessary and excessive phone calls and emails. They may make inappropriate demands on our time and resources or refuse to accept our decisions and recommendations in relation to their complaints.

When members of the public ~~complainants~~ behave in these ways ~~(and where there are no cultural factors that could reasonably explain their behaviour)~~ we consider their conduct to be 'unreasonable'.

~~In short,~~ Unreasonable conduct by a member of the public complainant 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 organisation, our staff, other service users and complainants or the complainant themselves.

UCC-Unreasonable conduct can be divided into five categories of conduct:

- Unreasonable persistence;
- Unreasonable demands;
- Unreasonable lack of cooperation;
- Unreasonable arguments; and
- Unreasonable behaviours.

6.1 ~~6.1~~ — Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a member of the public ~~complainant~~ that has a disproportionate and unreasonable impact on our organisation, staff, services, time or resources. Some examples of unreasonably persistent behaviour include:

- An unwillingness or inability to accept reasonable and logical explanations, including final decisions that have been comprehensively considered and dealt with (even when it is evident the member of the public ~~complainant~~ does understand the information provided).
- 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, even after we have explained that a review is not warranted and refusing to accept that we cannot or will not take further action on their complaint.
- Reframing a complaint in an effort to get it taken up again.
- Multiple and repeated phone calls, visits, letters, emails (including cc'd correspondence) after repeatedly being asked not to.

- Contacting different people within or outside our organisation to get a different outcome or a more sympathetic response to their complaint – this is known as internal and external ‘forum shopping’.

6.2 Unreasonable demands

Unreasonable demands are any demands expressly made by a member of the public complainant—that have a disproportionate and unreasonable impact on our organisation, staff, services, time or resources. Some examples of unreasonable demands include:

- Issuing instructions and making demands about how to handle their complaint, the priority it should be given, or the outcome to be achieved.
- Insisting on talking to a senior manager or the General Manager personally when the reasons that this is not appropriate or warranted have been carefully explained to the m-complainant.
- Emotional blackmail and manipulation resulting in intimidation, harassment, shaming, seduction or portraying themselves as being victimised when this is not the case.
- Insisting on outcomes that are not possible or appropriate in the circumstances, for example asking for someone to be fired or prosecuted, or for an apology or compensation when there is no reasonable basis for this.
- Demanding services of a nature or scale that we cannot provide, even after we have explained this to them repeatedly.

6.3 Unreasonable lack of cooperation

Unreasonable lack of cooperation is when a member of the public complainant—is unwilling or unable to cooperate with us, our staff, or our complaints process – resulting in a disproportionate and unreasonable use of our services, time or resources. Some examples of unreasonable lack of cooperation include:

- Sending a constant stream of complex or disorganised information without clearly defining the issue at hand or explaining how the material provided relates to their complaint (where the member of the public complainant is clearly capable of doing this).
- Providing little or no detail around their complaint or providing 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 that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- Unhelpful behaviour such as withholding information, acting dishonestly and misquoting others.

6.4 Unreasonable arguments

Unreasonable arguments include any arguments that are not based on any reason or logic, that are incomprehensible, false, or inflammatory, trivial, or delirious, and that disproportionately and unreasonably impact upon our organisation, staff, services, time or resources. Arguments are unreasonable when they:

- Fail to follow a logical sequence that the complainant is able to explain to staff.
- Are not supported by any evidence or are based on conspiracy theories.
- Lead a member of the public 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.

6.5 Unreasonable behaviour

Unreasonable behaviour is conduct that is unreasonable in all circumstances (regardless of how stressed, angry or frustrated a complainant is) because it unreasonably compromises the health, safety and security of our staff, other service users or the member of the public complainant themselves. Some examples of unreasonable behaviour include:

- Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks.
- Harassment, intimidation, or physical violence.
- Rude, confronting or 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 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 our duty of care and Work Health and Safety (“WHS”) responsibilities.

7 All staff

All staff are responsible for familiarising themselves with this Policy and the associated Procedures. ~~as well as the Individual Rights and Mutual Responsibilities of the Parties to a Complaint document at Appendix A.~~ Staff are also encouraged to explain the contents of this document to all complainants, particularly those who engage in UGG unreasonable conduct or exhibit the early warning signs of unreasonable conduct. UGG. Staff must emphasise that an Unreasonable Conduct report will be submitted to the Public Officer if the conduct continues.

~~Staff are also encouraged and authorised to use the strategies and scripts provided at the NSW Ombudsman's website – see Part 2 of the Managing Unreasonable Conduct by a Complainant Manual (3rd edition):~~

- ~~• Strategies and scripts for managing unreasonable persistence.~~
- ~~• Strategies and scripts for managing unreasonable demands.~~
- ~~• Strategies and scripts for managing unreasonable lack of cooperation.~~
- ~~• Strategies and scripts for managing unreasonable arguments.~~
- ~~• Strategies and scripts for managing unreasonable behaviours.~~

~~Any strategies that change or restrict a complainant's access to our services must be considered at the Executive Management Team or higher as provided in this Policy.~~

Staff are also responsible for recording ~~documenting~~ and reporting all UGG unreasonable conduct incidents they experience or witness (as appropriate) to the Public Officer within 24 hours of the incident occurring, using the UGG Unreasonable Conduct incident form in Appendix B. A file note of the incident should also be recorded in Council's EDRMS:

– subject Unreasonable Complaints Register.

~~8~~

98 The Public Officer

The Public Officer, in consultation with relevant staff, has the responsibility and authority to change or restrict a member of the public ~~complainant's~~ access to our services in the circumstances identified in this Policy. When doing so they will consider the criteria in Section 17 below ~~(adapted into a checklist in Appendix C)~~ and will aim to impose any service changes or 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 member of the public ~~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, safety and security of our staff 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 manage and keep a file record of all cases where this Policy is applied.

~~10~~

419 Managers

All Managers are responsible for supporting staff to apply the strategies in this Policy, as well as those in the manual. Managers are also responsible for ensuring compliance with the procedures outlined in this Policy, and that all staff members are trained to deal with UCG-Unreasonable Conduct – including on induction.

After a stressful interaction with a member of the publiccomplainant, Managers should provide affected staff members with the opportunity to debrief their concerns either formally or informally. Managers will also ensure that staff are provided with proper support and assistance including medical or police assistance, and if necessary, support through programs like the Employee Assistance Program.

Managers may also be responsible for arranging other forms of support for staff, such as appropriate communication or intercultural training.

~~1210~~ **PART D – Responding to and managing Unreasonable Conduct**

~~10~~ **Changing or restricting a complainant's access to our services**

~~UCC~~ Unreasonable Conduct incidents will generally be managed by limiting or adapting the ways we interact with or deliver services to members of the public complainants by restricting:

- **Who they have contact with** – limiting a member of the public complainant to a sole contact person or staff member in our organisation.
- **What they can raise with us** – restricting the subject matter of communications that we will consider and respond to.
- **When they can have contact** – limiting a member of the public complainant's contact with our organisation to a particular time, day, or length of time, or curbing the frequency of their contact with us.
- **Where they can make contact** – limiting the locations where we will conduct face-to-face interviews to secured facilities or areas of the office.
- **How they can make contact** – limiting or modifying the forms of contact that the member of the public 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 provision of 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 member of the public complainant's personal circumstances such as level of competency, literacy skills, and cultural background. In this regard, we also recognise that more than one strategy may be needed in individual cases to ensure their appropriateness and efficacy.

~~13~~ —

~~14~~ ~~11~~ **Who: limiting the complainant to a sole contact point**

~~15~~ **Where a complainant tries to forum-shop within our organisation, changes their issues of complaint repeatedly, constantly 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 manage their complaint(s) and interaction with our office. This may help ensure they are dealt with consistently and may minimise the incidence of misunderstandings, contradictions and manipulation.**

~~16~~ **To avoid staff 'burnout', the sole contact officer's supervisor will provide them with regular support and guidance as needed. The Public Officer will also review the arrangement every six months to ensure that the officer is managing/coping with the arrangement.**

~~17~~ **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 – for example if they go on leave or are otherwise unavailable for an extended period of time.**

~~18~~ —

- ~~19 — 12 — What: restricting the subject matter of communications that we will consider~~
- ~~20 — Where complainants repeatedly send letters, emails or online forms that raise trivial or insignificant issues, contain inappropriate or abusive content, or relate to an issue that has already been comprehensively considered or reviewed (at least once) by our office, we may restrict the issues the complainant can raise with us. For example, we may:~~
- ~~21 — Refuse to respond to correspondence that raises an issue that has already been dealt with, that raises a trivial issue, or is not supported by evidence.~~
- ~~22 — 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’.~~
- ~~23 — Restrict the complainant to one complaint or issue per month. Any attempts to circumvent this restriction (for example by raising multiple complaints or issues in the one letter) may result in modifications or further restrictions being placed on their access.~~
- ~~24 — Return the correspondence to the complainant and require them to remove any inappropriate content before we agree to consider its contents. We will also keep a copy of the inappropriate correspondence for our records to help identify repeat UCC incidents.~~
- ~~25 —~~
- ~~26 — When and how: limiting when and how a complainant can contact us~~
- ~~27 — If a complainant’s contact with our organisation places an unreasonable demand on our time or resources, 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 or how the complainant can interact with us. This may include:~~
- ~~28 — Limiting their telephone calls or face-to-face interviews to a particular time of the day or days of the week.~~
- ~~29 — Limiting the length or duration of telephone calls, written correspondence or face-to-face interviews. For example:~~
- ~~30 — Telephone calls may be limited to 10 minutes at a time and will be politely terminated at the end of that time period.~~
- ~~31 — 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.~~
- ~~32 — Limiting face-to-face interviews to a maximum of 45 minutes.~~
- ~~33 — Limiting the frequency of their telephone calls, written correspondence or face-to-face interviews. Depending on the natures of the service(s) provided we may limit:~~
- ~~34 — Telephone calls to one every two weeks.~~

- ~~35 — Written communications to one every two weeks.~~
- ~~36 — Face-to-face interviews to one every two months.~~
- ~~37 — For irrelevant, overly lengthy, disorganised or very frequent written correspondence we may also:~~
- ~~38 — 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.~~
- ~~39 — Restrict the frequency with which complainants can send emails or other written communications to our office.~~
- ~~40 — Restrict a complainant to sending emails to a particular email account (e.g. the organisation's main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.~~
- ~~41 — 'Writing only' restrictions~~
- ~~42 — When a complainant is restricted to 'writing only' they may be restricted to written communications through:~~
- ~~43 — Australia Post only.~~
- ~~44 — Email only to a specific staff email or our general office email account.~~
- ~~45 — Fax only to a specific fax number.~~
- ~~46 — Some other relevant form of written contact, where applicable.~~
- ~~47 — 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 (e.g. Australia Post only). If it is not appropriate for a complainant to enter our premises to hand deliver their written communication this must be communicated to them as well.~~
- ~~48 — Any communications received by our office in a manner that contravenes a 'writing only' restriction will either be returned to the complainant or read and filed without acknowledgement.~~
- ~~49 —~~
- ~~50 — 14 — Where: limiting face-to-face interviews to secure areas~~
- ~~51 — 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.~~
- ~~52 — These restrictions can include:~~
- ~~53 — Restricting access to particular secured premises or areas of the office such as the reception area or a secured room or facility.~~
- ~~54 — Restricting their ability to attend our premises to specified times of the day or days of the week only — for example, when additional security is available or to times or days that are less busy.~~
- ~~55 — Allowing them to attend our office on an 'appointment only' basis, and only with specified staff (for these meetings, staff should enlist the support and assistance of a colleague for added safety and security.)~~

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- ~~56 — Banning the complainant from attending our premises altogether and allowing some other form of contact, e.g. ‘writing only’ or ‘telephone only’ contact.~~
- ~~57 — Contact through a representative only~~
- ~~58 — In cases where we cannot completely restrict our contact with a complainant and their conduct is particularly difficult to manage, we may require them to contact us through a support person or representative only. The support person may be someone nominated by the complainant, but they must be approved by the Public Officer.~~
- ~~59 — When assessing a representative or support person’s suitability, the Public Officer should consider factors such as their level of competency and literacy skills, demeanour and behaviour, and relationship with the complainant. If the Public Officer determines that the representative or support person may exacerbate the situation with the complainant, the complainant will be asked to nominate another person and we may assist them in this regard.~~

- ~~60 — 15 — Completely terminating a complainant's access to our services~~
- ~~61 — In rare cases, and as a last resort when all other strategies have been considered, the General Manager may decide that it is necessary for our organisation to completely restrict a complainant's contact or access to our services.~~
- ~~62 — 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, or their conduct poses a significant risk for our staff or other parties because it involves one or more of the following:~~
- ~~63 — Acts of aggression, verbal or physical abuse, threats of harm, harassment, intimidation, stalking, assault.~~
- ~~64 — Damage to property while on our premises.~~
- ~~65 — Threats with a weapon or common office items that can be used to harm another person or themselves.~~
- ~~66 — 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.~~
- ~~67 — Conduct that is otherwise unlawful.~~
- ~~68 — In these cases, the complainant will be sent a letter notifying them that their access has been restricted as outlined in Section 19 below.~~
- ~~69 — A complainant's access to our services and our premises may also be restricted (directly or indirectly) using legal mechanisms like trespass laws and other legislation or legal orders to protect members of our staff from personal violence, intimidation or stalking by a complainant.~~

7011 ~~PART E~~ – Alternative dispute resolution

16 ~~Using alternative dispute resolution strategies to manage conflicts with complainants~~

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

However, we recognise that in ~~UGC-unreasonable conduct~~ situations an ADR may not be an appropriate or effective strategy, particularly if the ~~member of the public complainant~~ is uncooperative or resistant to compromise. Therefore, each case will be assessed on its own facts to determine the appropriateness of this approach.

~~12~~ **~~PART F – Procedure to be followed when~~ Changing or restricting a member of the public complainant's access to our Council services**

~~Unreasonable Conduct incidents may result in changing or restricting a member of the public's access to Council services.~~

~~In such circumstances, the Public Officer will:~~

- ~~• consult with relevant staff;~~
- ~~• consider criteria for changing or restricting a member of the public's access to Council services;~~
- ~~• provide a warning letter;~~
- ~~• in some cases, provide a notification letter;~~
- ~~• notify relevant staff about access changes / restrictions;~~
- ~~• monitor the member of the public's records / restrictions.~~

~~71~~ ~~17~~ **~~Consulting with relevant staff~~**

~~72~~ ~~When the Public Officer receives a UCC incident form from a staff member, they will contact the staff member to discuss the incident. They will discuss:~~

~~73~~ ~~The circumstances that gave rise to the UCC incident, including the complainant's situation, personal and cultural background, and perspective.~~

~~74~~ ~~The impact of the complainant's conduct on our organisation, relevant staff, our time, resources etc.~~

~~75~~ ~~The complainant's response to the staff member's warnings or requests to stop the unreasonable behaviour.~~

~~76~~ ~~What the staff member has done to manage the complainant's conduct (if applicable).~~

~~77~~ ~~Any suggestions made by relevant staff on ways that the situation could be managed.~~

~~78~~

~~79~~ ~~18~~ **~~Criteria to be considered~~**

~~80~~ ~~Following a consultation with relevant staff, the Public Officer will search the EDRMS for information about the complainant's prior conduct and history with our organisation. They will also consider the following criteria:~~

~~81~~ ~~Whether the conduct in question involved overt anger, aggression, violence, or assault (which is unacceptable in all circumstances).~~

~~82~~ ~~Whether the complainant's case has merit.~~

~~83~~ ~~The likelihood that the complainant will modify their unreasonable conduct if they are given a formal warning about their conduct.~~

~~84~~ ~~Whether changing or restricting access to our services will be effective in managing the complainant's behaviour.~~

- ~~85 — Whether changing or restricting access to our services will affect the complainant's ability to meet their obligations, such as reporting obligations.~~
- ~~86 — Whether changing or restricting access to our services will have an undue impact on the complainant's welfare, livelihood, or dependents etc.~~
- ~~87 — Whether the complainant's personal circumstances have contributed to the behaviour? For example, the complainant's cultural background may mean their communication patterns differ from those of our staff or our organisation's standards, or the complainant is a vulnerable person who is under significant stress as a result of one or more of the following:~~
- ~~88 — Homelessness~~
- ~~89 — physical disability~~
- ~~90 — illiteracy or other language or communication barrier~~
- ~~91 — mental or other illness~~
- ~~92 — personal crises~~
- ~~93 — substance or alcohol abuse.~~
- ~~94 — Whether the complainant's response or conduct was moderately disproportionate, grossly disproportionate, or not at all disproportionate in the circumstances.~~
- ~~95 — Whether there are any statutory provisions that would limit the types of limitations that can be applied to the complainant's contact with, or access to our services.~~
- ~~96 — Once the Public Officer has considered these criteria, 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 manual and this Policy.~~
- ~~97 —~~
- ~~98 — 19 — Providing a warning letter~~
- ~~99 — Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the Public Officer will provide them with a written warning about their conduct in the first instance. If the complainant is unable to read the letter, it will be followed/accompanied by a telephone call, using an interpreter if necessary.~~
- ~~100 — The warning letter will:~~
- ~~101 — Specify the date, time, and location of the UCC incident(s).~~
- ~~102 — Explain why the complainant's conduct/UCC incident is problematic.~~
- ~~103 — 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 but only those that are most relevant).~~
- ~~104 — Provide clear and full reasons for the warning being given.~~

- ~~105 — 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 – Individual rights and mutual responsibilities of parties to a complaint.~~
- ~~106 — Provide the name and contact details of the staff member who they can contact about the letter.~~
- ~~107 — Be signed by the Public Officer or General Manager.~~
- ~~108 — See Appendix D – Sample warning letter.~~
- ~~109 —~~
- ~~110 — 20 — Providing a notification letter~~
- ~~111 — 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 or unacceptable conduct, the Public Officer has the discretion to send a notification letter immediately restricting the complainant's access to our services (without prior or further written warning). If the complainant is unable to read the letter (due to literacy issues, non-English speaking, etc.) the letter will be followed or accompanied by a telephone call, using an interpreter if necessary.~~
- ~~112 —~~
- ~~113 — This notification letter will:~~
- ~~114 — Specify the date, time, and location of the UCC incident(s).~~
- ~~115 — Explain why the complainant's conduct is problematic.~~
- ~~116 — Identify the change and/or restriction that will be imposed and what it means for the complainant.~~
- ~~117 — Provide clear and full reasons for this restriction.~~
- ~~118 — Specify the duration of the change or restriction imposed, which will not exceed 12 months.~~
- ~~119 — Indicate a time period for review.~~
- ~~120 — 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.~~
- ~~121 — Be signed by the Public Officer or General Manager.~~
- ~~122 — See Appendix E – Sample letter notifying complainants of a decision to change or restrict their access to our services.~~
- ~~123 —~~
- ~~124 — 21 — Notifying relevant staff about access changes/restrictions —~~
- ~~125 — The Public Officer will notify relevant staff about any decisions to change or restrict a complainant's access to our services, in particular our Customer Service Centre staff in cases where a complainant is prohibited from entering our premises.~~
- ~~126 — The Public Officer will also update the EDRMS with a record outlining the nature of the restriction imposed and its duration.~~

12713~~22~~ — Continued monitoring/oversight responsibilities

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

If the Public Officer determines that the restrictions have been ineffective in managing the member of the public complainant's conduct or are otherwise inappropriate, they may decide to either modify the restrictions, impose further restrictions, or terminate the member of the public complainant's access to our services altogether.

~~128~~ ~~PART G~~ ~~—~~ ~~Appealing a decision to change or restrict access to our services~~

~~129~~ ~~23~~ ~~—~~ ~~Right of appeal~~

~~130~~ ~~—~~ ~~People who have their access changed or restricted are entitled to one appeal of a decision to change or 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 staff member will consider the complainant's arguments and personal circumstances, including cultural background, 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 staff member will then refer any materials or records relating to the appeal to the Public Officer to be kept in the appropriate file.~~

~~131~~ ~~—~~ ~~If a complainant is still dissatisfied after the appeal process, they may seek an external review from an oversight agency such as the NSW Ombudsman. The NSW 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.~~

~~13214~~ **PART H** Non-compliance with a change or restriction on access to our services

~~24~~ **Recording and reporting incidents of non-compliance**

All staff members are responsible for recording and reporting incidents of non-compliance by members of the public~~complainants~~. This should be recorded in a file note in Council's EDRMS and a copy forwarded to the Public Officer who will decide whether any action needs to be taken to modify or further restrict the member of the public~~complainant~~'s access to our services.

~~133~~ **15 PART I Periodic reviews of all cases where this Policy is applied**

~~25~~ **Period for review**

All ~~UCC-unreasonable conduct~~ 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 upheld.

~~134~~ ~~26~~ **Notifying the complainant of an upcoming review**

~~135~~ ~~The Public Officer will invite complainants if they would like 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.~~

~~136~~ ~~See Appendix F – Sample letter notifying a complainant of an upcoming review.~~

~~137~~

~~138~~ ~~27~~ **Criteria to be considered during a review**

~~139~~ ~~When conducting a review, the Public Officer will consider:~~

~~140~~ ~~Whether the complainant has had any contact with the organisation during the restriction period.~~

~~141~~ ~~The complainant's conduct during the restriction period.~~

~~142~~ ~~Any information or arguments put forward by the complainant for review.~~

~~143~~ ~~Any other information that may be relevant in the circumstances.~~

~~144~~ ~~The Public Officer may also consult any staff members who have had contact with the complainant during the restriction period.~~

~~145~~ ~~Sometimes a complainant may not have a reason to contact our office during their restriction period. As a result, a review decision that is based primarily on the fact that the complainant has not contacted our organisation during their restriction period may not be an accurate representation of their level of compliance/reformed behaviour. This should be taken into consideration, in relevant situations.~~

~~146~~ ~~See Appendix G – Sample checklist for reviewing an access change or restriction.~~

~~147~~

~~148~~ ~~28~~ **Notifying a complainant of the outcome of a review**

~~149~~ ~~The Public Officer will tell the complainant the outcome of their review using an appropriate method of communication, as well as a written letter explaining the outcome.~~

~~150~~ ~~The review letter will:~~

~~151~~ ~~Briefly explain the review process.~~

~~152~~ ~~Identify the factors that have been considered during the review.~~

~~153~~ ~~Explain the decision or outcome of the review and the reasons for it.~~

-
- ~~154 — If the outcome of the review is to maintain or modify the restriction, the review letter will also:~~
- ~~155 — Indicate the nature of the new or continued restriction.~~
- ~~156 — State the duration of the new restriction period.~~
- ~~157 — Provide the name and contact details of the Public Officer or relevant officer who the complainant can contact to discuss the letter.~~
- ~~158 — Be signed by the Public Officer or General Manager.~~
- ~~159 — See Appendix H — Sample letter advising the complainant of the outcome of a review.~~
- ~~160 —~~
- ~~161 — 29 — Recording the outcome of a review and notifying relevant staff~~
- ~~162 — The Public Officer is responsible for keeping a record of the outcome of the review, updating Electronic Document Records Management System and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.~~
- ~~163 — See Sections 7 and 20 above.~~

~~16416~~ PART J – Managing Staff Stress

~~30~~ Staff reactions to stressful situations

Dealing with demanding, abusive, aggressive or violent members of the public complainants can be extremely stressful, distressing and even frightening for our staff. It is perfectly normal to get upset or stressed 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, t~~To do this we also need the help of all Liverpool Plains Shire Council staff to identify stressful incidents and situations. All staff have a responsibility to tell relevant supervisors and senior managers about UCC-unreasonable conduct incidents and any other stressful incidents that they believe require management to be involved.

~~165~~

~~166~~ ~~31~~ Debriefing

~~167~~ Debriefing means talking things through following a difficult or stressful incident. It is an important way of dealing with stress. Many staff do this naturally with colleagues after a difficult telephone call, but staff can also debrief 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.

~~168~~ Staff may also access an external professional service if required. All staff can access the Employee Assistance Program – a free, confidential counselling service. To make an appointment call: 1800 372 826. Information about this service is available on the Intranet or from Council's Human Resources team.

~~16917~~ **PART K – Training and Awareness**

~~32~~ **Training and Awareness**

We are committed to ensuring that all staff are aware of and know how to use this Policy. 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~~ unreasonable conduct on a regular basis and on induction. This should include training to support culturally appropriate communication.

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

In order for Liverpool Plains Shire 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 appropriate, regardless of cultural background, national origin, sex, sexual orientation, gender expression, disability or other cultural or personal characteristics²~~
- ~~A reasonable explanation in a wide range of languages of the organisation's complaints procedure, including details of the confidentiality, secrecy or privacy rights or obligations that may apply~~
- ~~A fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case³~~
- ~~A fair hearing⁴~~
- ~~A timely response~~
- ~~Be informed in at least general terms about the actions taken and outcome of their complaint⁵~~
- ~~Have decisions that affect them explained to them~~
- ~~At least one review of the decision on the complaint⁶~~
- ~~Be treated with courtesy and respect~~
- ~~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~~
- ~~Finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances⁸~~
- ~~Expect honesty, cooperation, and reasonable assistance from complainants~~

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 footnote 25].

- ~~Expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint~~
- ~~Be treated with courtesy and respect~~
- ~~A safe and healthy working environment⁹~~
- ~~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~~
- ~~Be treated with courtesy and respect by staff of Liverpool Plains Shire Council~~
- ~~Be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated¹¹~~
- ~~Be informed about the substance of any proposed adverse comment or decision~~
- ~~Be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made¹²~~
- ~~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~~
- ~~Be protected from harassment by disgruntled complainants acting unreasonably.~~

Mutual Responsibilities

Complainants are responsible for:-

- ~~Treating staff of Liverpool Plains Shire Council with dignity and respect~~
- ~~Clearly identifying to the best of their ability the issues of complaint, or asking for help from the staff of Liverpool Plains Shire Council to assist them in doing so~~
- ~~Providing Liverpool Plains Shire Council, to the best of their ability, with all the relevant information available to them at the time of making the complaint~~
- ~~Being honest in all communications with Liverpool Plains Shire Council informing Liverpool Plains Shire Council of any other action they have taken in relation to their complaint¹³~~
- ~~Co-operating to the best of their ability with the staff who are assigned to assess/investigate/resolve/determine or otherwise deal with their complaint.~~

~~If complainants do not meet their responsibilities, Liverpool Plains Shire Council may consider placing limitations or conditions on their ability to communicate with staff or access certain services.~~

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 reasonable 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 on foot.

~~Liverpool Plains Shire 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 complainant.¹⁴~~

~~Any 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, including cultural and linguistic 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~~
- ~~● 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 explanations that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them~~
- ~~● Treating complainants and any people who are the subject of complaints 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 Liverpool Plains Shire Council or its staff fail to comply with these responsibilities, complainants may complain to NSW Ombudsman.~~

~~Subjects of a complaint are responsible for:~~

- ~~● Cooperating with the staff of Liverpool Plains Shire 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~~

¹⁴ Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.

¹⁵ See footnote 11.

¹⁶ Other than where an allegation is so lacking in merit that it can be dismissed at the outset.

¹⁷ See footnote 11.

¹⁸ See footnote 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.

- ~~Providing all relevant information in their possession to Liverpool Plains Shire Council or its authorised staff when required to do so by a properly authorised direction or notice~~
- ~~Being honest in all communications with Liverpool Plains Shire Council and its staff~~
- ~~Treating the staff of Liverpool Plains Shire 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.~~

Liverpool Plains Shire Council is responsible for:

- ~~Maintaining an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints~~
- ~~Making 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 and 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~~
- ~~Adequately considering any confidentiality, secrecy or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.~~

~~If Liverpool Plains Shire Council fails to comply with these responsibilities, complainants may complain to the NSW Ombudsman.~~

²² See footnote 19.

²³ See footnote 20.

²⁴ See footnote 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 footnote 19.

²⁷ See footnote 20.

Appendix A – Sample ~~UGC~~ Unreasonable Conduct Incident Form

This form should only be filled out if you encounter unreasonable conduct by a member of the public ~~complainant~~ and consider that steps may need to be taken to change or restrict a member of the public's ~~complainant's~~ access to services.

Complete this form and send it electronically or by hand to the Public Officer within 24 hours of a ~~UGC~~ unreasonable conduct incident. They will decide on the necessary and appropriate course of action for responding to and managing the member of the public ~~complainant's~~ conduct.

Date: _____

Unreasonable Conduct Incident Form



Member of the Public Details			
Name of member of the public:			
Details of the member of the <u>public</u> conduct/incident including whether emergency services were contacted: _____			

Why do you consider this conduct to be unreasonable? <i>For example – has it occurred before/repeatedly, caused significant disruptions to our organisation, has or could it raise significant health and safety issues for our staff or other persons.</i>			

What action, if any, have you taken to manage the member of the public's conduct? <i>For example – warning the member of the public 'verbally' about their conduct, previous attempts to manage the behaviour etc</i>			

Is there any other information that might be relevant to this case? Please include information on any personal or cultural background issues that may have affected the member of the public's conduct. If necessary, attach any supporting documentation.			

Staff Details			
Name:		Position	
Date of Incident		Location	
Signature		Date	

This form is to be submitted to Council's Public Officer as soon as possible after the incident
Email: governanceandrisk@liverpoolplains.nsw.gov.au

_____ Case officer's name: _____

Name of complainant: _____ Complainant's case file number: _____

Details of the complainant's conduct/incident including whether emergency services were contacted:

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 it raise significant health and safety issues for our staff or other persons.

What action, if any, have you taken to manage the complainant's conduct?

For example — warning the complainant 'verbally' about their conduct, previous attempts to manage the behaviour etc

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 Public Officer.

Is there any other information that might be relevant to this case? Please include information on any personal or cultural background issues that may have affected the complainant's conduct. If necessary, attach any supporting documentation.
