

Unreasonable Conduct Policy

2024



INFORMATION ABOUT THIS DOCUMENT

Document Record Number	D21/22207
Document Owner	Director Corporate and Community Services
Document Development Officer	Coordinator Governance, Risk and Corporate Records
Review Timeframe	Every two years
Last Review Date	22 May 2024
Next Review Date	22 May 2026

Document History		
Doc No.	Date Amended	Details/Comments
1	17 October 2021	New policy adopted by Council [res. TBA]
2	May 2024	Review, make original Policy into a Policy and Procedure, remove reference to Complainant.

Further Document Information and Relationships	
Related Legislation*	<i>Local Government Act 1993</i> <i>Ombudsman Act 1974</i>
Related Policies	Code of Conduct Complaint Management Policy Work Health and Safety Policy
Related Documents	Unreasonable Conduct Procedures 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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Introduction

1 Purpose

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

- Feel confident and supported in taking action to manage unreasonable conduct;
- Act fairly, consistently, honestly, and appropriately when responding to unreasonable conduct;
- Understand their roles and responsibilities in relation to the management of unreasonable conduct, and how this Policy will be used;
- Understand the types of circumstances when it may be appropriate to manage unreasonable conduct 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 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 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 Commencement

This Policy is effective from date of resolution by Council and shall remain in force until repealed by resolution of Council.

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 Organisational Commitment

Council is committed to being accessible and responsive to all 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 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 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.
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 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 Defining Unreasonable Conduct

Most 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, 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 behave in these ways we consider their conduct to be 'unreasonable'. Unreasonable conduct by a member of the public is any behaviour 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.

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 Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a member of the public 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 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 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 them.
- 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 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 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 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 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. Staff are also encouraged to explain the contents of this document to all complainants, particularly those who engage in unreasonable conduct or exhibit the early warning signs of unreasonable conduct. Staff must emphasise that an Unreasonable Conduct report will be submitted to the Public Officer if the conduct continues.

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

8 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's access to our services in the circumstances identified in this Policy. When doing so they will consider the criteria 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. 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.

9 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 Unreasonable Conduct – including on induction.

After a stressful interaction with a member of the public, 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.

10 Responding to and managing Unreasonable Conduct

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

- **Who they have contact with** – limiting a member of the public 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'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 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'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.

11 Alternative dispute resolution

If the Public Officer and the General Manager determine that we cannot terminate our services to a member of the public 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 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 unreasonable conduct situations an ADR may not be an appropriate or effective strategy, particularly if the member of the public is uncooperative or resistant to compromise. Therefore, each case will be assessed on its own facts to determine the appropriateness of this approach.

12 Changing or restricting a member of the public's access to 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.

13 Continued monitoring/oversight responsibilities

Once a member of the public has been issued with a warning letter or notification letter, the Public Officer will review the member of the public's record/restriction every three months, on request by a staff member, or following any further incidents of unreasonable conduct that involve the particular member of the public 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's conduct or are otherwise inappropriate, they may decide to either modify the restrictions, impose further restrictions, or terminate the member of the public's access to our services altogether.

14 Non-compliance with a change or restriction on access to our services

All staff members are responsible for recording and reporting incidents of non-compliance by members of the public. 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's access to our services.

15 Periodic reviews of all cases where this Policy is applied

All 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.

16 Managing Staff Stress

Dealing with demanding, abusive, aggressive or violent members of the public 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.

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 unreasonable conduct incidents and any other stressful incidents that they believe require management to be involved.

17 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 unreasonable conduct on a regular basis and on induction. This should include training to support culturally appropriate communication.

Appendix A – Sample Unreasonable Conduct Incident Form

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

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

Unreasonable Conduct Incident Form



Member of the Public Details			
Name of member of the public:			
Details of the member of the <u>public's</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