

# Unreasonable Complainant

## Conduct POLICY

### 1. Introduction

Gisborne District Council (GDC) is committed to being accessible and responsive to all complainants who approach our office for assistance and/or with a complaint. At the same time the success of our office 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 complaints we receive.

When complainants behave unreasonably in their dealings with the Council, their conduct can significantly affect our success. As a result GDC 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.

In order to take an approach that is consistent with government agencies best practice and New Zealand law, GDC has adopted the practice manual for Managing Unreasonable Complainant Conduct prepared by the New Zealand Office of the Ombudsman in October 2012.<sup>1</sup>

#### 1.1 Aim of Policy and Practice

The Council's policy and the adoption of the Ombudsman's practice manual is intended to assist all staff members to better manage unreasonable complainant conduct (UCC). The aim is to ensure that all staff:

- Feel confident and supported in taking action to manage UCC
- Act fairly, consistently, honestly and appropriately when responding to UCC
- Are aware of their roles and responsibilities in relation to the management of UCC and how this policy will be used
- Understand the types of circumstances when it may be appropriate to manage UCC using one or more of the following mechanisms:
  - The strategies provided in this policy – including the strategies to change or restrict a complainant's access to our services
  - Alternative dispute resolution strategies to deal with conflict involving complainants and members of our organisation

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<sup>1</sup> [http://www.ombudsman.parliament.nz/system/paperclip/document\\_files/document\\_files/463/original/managing\\_unreasonable\\_complainant\\_conduct\\_manual\\_october\\_2012.pdf?1351456121](http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/463/original/managing_unreasonable_complainant_conduct_manual_october_2012.pdf?1351456121)

- Legal instruments such as trespass laws/legislation to prevent a complainant from coming onto our premises and orders to protect specific staff members from any actual or anticipated personal violence, intimidation or stalking.
- Have a clear understanding of the criteria that will be considered before we decide to change or restrict a complainant's access to 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.

## 2. Defining Unreasonable Complainant Conduct

### 2.1 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 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 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 GDC 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 occupational health and safety requirements.

### 2.2 Unreasonable Complainant Conduct

Most complainants who come to the Council's office 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 best efforts to help them. They are aggressive and verbally abusive towards our staff. They threaten harm and violence, bombard our offices with unnecessary and excessive phone calls and emails, make inaccurate or abusive posts on the Council's social media sites, 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".

UCC is any behaviour by a current or former complainant which – because of its nature or frequency – raises substantial health, safety, resource or equity issues for our organisation, our staff, other service users and complainants or the complainant themselves.

UCC can be divided into five categories of conduct:

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

### 2.3 Unreasonable Persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant 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/organisation with phone calls, visits, letters, emails (including cc'd correspondence) after repeatedly being asked not to do so
- Bombarding the Council's social media sites with inaccurate, unnecessarily repetitive or abusive posts
- Contacting different people within our organisation and/or externally to get a different outcome or more sympathetic response to their complaint – internal and external forum shopping.

### 2.4 Unreasonable Demands

Unreasonable demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on our organisation, 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 Chief Executive or Mayor 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 there is 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.

## 2.5 Unreasonable Lack of Cooperation

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with our organisation, staff, or complaints system and processes that result 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 – where only 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.

## 2.6 Unreasonable Arguments

Unreasonable arguments include any arguments that are not based on reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon our organisation, 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 based on conspiracy theories
- Lead a complainant to reject all other valid and contrary arguments
- Are trivial when compared with the amount of time, resources and attention that the complainant demands
- Are false, inflammatory or defamatory.

## 3. Practice Manual

For further information on definitions, policies and practice, reference should be made to:

*Managing unreasonable complainant conduct practice manual – October 2012*, prepared by the Office of the Ombudsman.

The approach and the strategies suggested in this practice manual are based on the clear understanding that:

- They are equally relevant and applicable to all staff within an organisation – including frontline staff, supervisors and senior managers
- All complainants are treated with fairness and respect
- In the absence of very good reasons to the contrary, all complainants have a right to access public services
- All complaints are considered on their merits
- Unreasonable complainant conduct does not preclude there being a valid issue

- The substance of a complaint dictates the level of resources dedicated to it, not a complainant's demands or behaviour
- Anger is an understandable and, to some degree, an acceptable emotion among frustrated complainants as long as it is not expressed through aggression or violence
- Staff safety and well-being are paramount when dealing with unreasonable complainant conduct
- The decision to change or restrict a complainant's access to services – as a result of their behaviour – will only be made at a senior management level and in accordance with clearly defined policies and procedures
- Senior managers will ensure relevant systems, policies and procedures are in place to manage complaints and UCC and that all staff who interact with complainants will receive training, guidance and direction about using the strategies suggested in the manual.

## 4. Appeals

Should a decision be made to change or restrict a complainant's access to services as a result of their behaviour, the complainant should be made aware – in writing – of:

- The restrictions that have been put in place
- The reasons for these restrictions
- The range of actions that the complainant may take to resolve the situation.

If the complainant is not satisfied with the action that has been taken and the explanation, they may request – in writing – a review that will be undertaken by a senior manager unrelated to the original complaint. The outcome of the review will be promptly communicated to the complainant in writing.

Such review letters should be signed by a senior manager – preferably the Chief Executive – to make it clear to the complainant that the matter has been escalated and considered at the highest level and there is nowhere else to go within the organisation. The letter can also include a statement and explanation about how further communications relating to their complaint will be dealt with – ie. *"further correspondence on this issue will be read and filed without acknowledgement, unless the organisation decides it requires further action."*

The review letter to the complainant should also contain advice on their rights of legal redress and their ability to elevate the complaint to the Office of the Ombudsman or to a Court.

For more information on alternative dispute resolution see:

<http://www.fairwayresolution.com/our-services/services-for-local-government>

For complaints to the Office of the Ombudsman, the complainant needs to set out the action, decision or conduct that they want to complain about, provide relevant background details and the steps they have taken to try to resolve the matter. They will need to include copies of any correspondence with the Council. If they need advice on how to make a complaint to the Ombudsman, they can phone them on 0800 802 602.