

## Unreasonable Complainant Conduct Policy 2019

<b>Department/Unit:</b> <i>Governance Unit</i>	<b>First Implemented:</b> <i>New Policy</i> <b>Effective From:</b> <i>21 May 2019</i> <b>Review Date:</b> <i>31 May 2023</i> <b>Version:</b> <i>1</i> <b>Trim Reference:</b> <i>E513/2</i>	<b>Origin:</b> Responsible Officer <i>Governance and Risk Co-ordinator</i> Authorising Officer: <i>Endorsed by Council – 21 May 2019</i>
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### PURPOSE/OBJECTIVE

To assist Mansfield Shire Council staff handling complaints to:

- recognise and manage unreasonable complainant conduct;
- act fairly, consistently and appropriately when responding to unreasonable complainant conduct;
- clarify roles and responsibilities in managing unreasonable complainant conduct.

### POLICY STATEMENT

The procedures set out in this policy should be applied in rare instances where a complainant's conduct exceeds what most people would consider reasonable in the circumstances.

All staff should note that Mansfield Shire 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 occupational health and safety responsibilities.

### DEFINITIONS

**Complainant** A person or organisation that makes a complaint

**Unreasonable complainant conduct (UCC)** Any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for the council and its staff, or the complainants themselves.

Unreasonable complainant conduct can be in the form of any of the following:

- Unreasonable persistence;
- Unreasonable demands;
- Unreasonable lack of co-operation;



- Unreasonable arguments; and
- Unreasonable behaviours.

**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, without presenting a case for one
- Pursuing and exhausting all available review options when it is not warranted and refusing to accept that further action cannot or will not be taken on a complaint.
- Reframing a complaint in an effort to get it taken up again.
- Bombarding our staff/organisation with phone calls, visits, letters and emails (including cc'd correspondence) after repeatedly being asked not to do so.
- Contacting different people within our organisation and/or externally to get a different outcome or more sympathetic response to their complaint – internal or external forum shopping.

**Unreasonable demands** Unreasonable demands are any demands (expressed or implied) that are made by a complainant that have a disproportionate and unreasonable impact upon 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 or should be achieved.
- Continually insisting on talking to a senior manager or the CEO personally when it is not appropriate or warranted.
- Emotional blackmail and manipulation with intention to guilt trip, intimidate, harass, shame, seduce or portray themselves as victims – 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, demanding 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.

**Unreasonable lack of co-operation** Unreasonable lack of co-operation is an unwillingness and/or inability by a complainant to co-operate with our organisation, staff or complaints system that results in a disproportionate and unreasonable use of our services, time and/or resources. Some examples of unreasonable lack of co-operation 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.
- Providing little or no detail when lodging a complaint and/or presenting information sporadically.
- 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 reasonable explanations.
- Displaying unhelpful behaviour, such as withholding information, acting dishonestly and misquoting others.

**Unreasonable arguments** Unreasonable arguments include any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or vexatious and that disproportionately and unreasonably impact upon the organisation, staff, services, time and/or resources.

Arguments are considered unreasonable when they:

- Fail to follow a logical sequence
- Are not supported by any evidence and/or are based on conspiracy theories
- Lead a complainant to reject all other valid and contrary arguments
- Are trivial when compared to the amount of time, resources and attention that the complainant demands
- Are false, inflammatory or defamatory.

**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. Some examples of unreasonable behaviours include:

- Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks
- Harassment, intimidation or physical violence
- Rude, confronting and threatening communications, including 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.

## SCOPE

This policy applies to all Council employees, Councillors, contractors, consultants, volunteers and other authorised personnel of Mansfield Shire Council.



## RESPONSIBILITIES

*All staff, volunteers, contractors and Councillors that are direct recipients of a complaint*

- Immediately forward the complaint (or details thereof) to Records and Customer Service staff to be captured and commence the formal process

*Records and Customer Service staff*

- Receive and record complaints
- Respond or pass on complaint for action to appropriate Council Officer

*Council Officers*

- Receive and respond to complaints
- If unable to respond, refer to Manager

*Managers and Executive Officers*

- Receive and respond to complaints
- Perform internal review of complaints

*Chief Executive Officer (CEO)*

- Receive and respond to complaints
- Perform internal review of complaints

Adherence to this Policy will be overseen by the Governance team, as the owner of this policy. Any reviews of this Policy must be made in consultation with the Governance & Risk Co-ordinator.

## REFERENCES / RELATED POLICIES

- *Local Government Act 1989*
- *Freedom of Information Act 1982*
- *Human Rights and Responsibilities Act 2006* (Victorian Charter)
- *Privacy and Data Protection Act 2014*
- *Protected Disclosure Act 2012*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Health Records Act 2001*
- Mansfield Shire Council Complaint Resolution Policy 2019
- Mansfield Shire Council Customer Service Policy and Charter 2018
- Mansfield Shire Councillors' Code of Conduct and Councillor Charter 2017
- Mansfield Shire Council Disciplinary Policy 2016
- Mansfield Shire Council Equal Opportunity and Human Rights Policy 2017
- Mansfield Shire Council Bullying and Harassment Policy 2017
- Mansfield Shire Council Child Safety Policy and Child Safe Code of Conduct 2018
- Mansfield Shire Council Reportable Conduct Scheme Policy 2018
- Mansfield Shire Council Infringement Notice Review Procedure
- Mansfield Shire Council Aged and Disability Review Procedure
- Unreasonable Complainant Conduct Model Policy – Ombudsman NSW
- Complaints: Good Practice Guide for Public Sector Agencies (Victorian Ombudsman September 2016)




## IMPLEMENTATION


This Policy is effective from 21 May 2019.

## REVIEW DATE

This Policy is to be reviewed by 31 May 2023.

## AUTHORISATION TO IMPLEMENT POLICY

Signed:   
Councillor

Witnessed:   
Chief Executive Officer

Approval dated: 21 May 2019

**Mansfield Shire Council reserves the right to review, vary or revoke this Policy at any time.**



## UNREASONABLE COMPLAINANT CONDUCT POLICY 2019 PROCEDURES

Most complainants who come to our 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 our best efforts to help them.

### 1. ACTION TO TAKE WHEN UCC OCCURS

Any member of Council staff may encounter unreasonable complainant conduct. The incident should be reported to the appropriate senior manager by completing a notification form [see **Appendix A** for sample form].

On receiving the notification form, the senior manager will make contact with the staff member to discuss the incident, including:

- The circumstances that gave rise to the UCC incident.
- The impact of the complainant's conduct on our organisation, relevant staff, our time, resources, etc.
- The complainant's responsiveness to the staff member's warnings/requests to stop the behaviour.
- The actions the staff member has taken to manage the complainant's conduct, if any.
- The suggestions made by relevant staff on ways that the situation could be managed.

Following a consultation with relevant staff the senior manager will search CRMS for information about the complainant's prior conduct and history with our organisation. They will also will consider the following criteria:

- Whether the conduct in question involved overt anger, aggression, violence or assault (which is unacceptable in all circumstances).
- Whether the complainant's case has merit.
- The likelihood that the complainant will modify their unreasonable conduct if they are given a formal warning about their conduct.
- Whether changing or restricting access to our services will be effective in managing the complainant's behaviour.
- Whether changing or restricting access to our services will affect the complainant's ability to meet their obligations, such as reporting obligations.
- Whether changing or restricting access to our services will have an undue impact on the complainant's welfare, livelihood or dependents etc.
- Whether the complainant's personal circumstances have contributed to the behaviour. For example, the complainant is a vulnerable person who is under significant stress as a result of homelessness; physical disability; illiteracy or other language or communication barrier; mental or other illness; personal crises and/or substance or alcohol abuse.



- Whether the complainant's response/conduct in the circumstances was moderately disproportionate, grossly disproportionate or not at all disproportionate.
- Whether there any statutory provisions that would limit the types of limitations that can be put on the complainant's contact/access to our services.

Once the senior manager has considered these factors they will decide on the appropriate course of action. [See **Appendix B** – Sample checklist for deciding to modify or restrict a complainant's access]

## 2. CHANGING OR RESTRICTING ACCESS TO COUNCIL

Mansfield Shire Council will manage unreasonable or offensive complainant conduct by changing or restricting the way our organisation interacts with the complainant, in the following ways:

- **Restricting who they have contact with**

Where a complainant tries to forum shop internally within our organisation, changes their issues of complaint repeatedly, reframes their complaint, or raises an excessive number of complaints it may be appropriate to restrict their access to a single staff member (a sole contact point) who will exclusively manage their complaint(s) and interactions with our office. This may ensure they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

To avoid staff 'burn out' the sole contact officer's supervisor will provide them with regular support and guidance – as needed. Also, the senior manager will review the arrangement every six months to ensure that the officer is managing/coping with the arrangement.

Complainants who are restricted to a sole contact person will however be given the contact details of one additional staff member who they can contact if their primary contact is unavailable – eg they go on leave or are otherwise unavailable for an extended period of time.

- **Restricting the subject matter of communications that we will consider**

Where complainants repeatedly send written communications, letters, emails, or online forms that raise trivial or insignificant issues, contain inappropriate or abusive content or relate to a complaint/issue that has already been comprehensively considered and/or reviewed (at least once) by our office, we may restrict the issues/subject matter the complainant can raise with us/we will respond to. For example, we may:

- Refuse to respond to correspondence that raises an issue that has already been dealt with comprehensively, that raises a trivial issue, or is not supported by clear/any evidence. The complainant will be advised that future correspondence of this kind will be read and filed without acknowledgement unless we decide that we need to pursue it further in which case, we may do so on our 'own motion'.
- Restrict the complainant to one complaint/issue per month. Any attempts to circumvent this restriction, for example by raising multiple complaints/issues in the





one complaint letter may result in modifications or further restrictions being placed on their access.

- Return correspondence to the complainant and require them to remove any inappropriate content before we will agree to consider its contents. A copy of the inappropriate correspondence will also be made and kept for our records to identify repeat/further UCC incidents

- **Limiting when and how a complainant can contact us**

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

- Limiting their telephone calls or face-to-face interviews to a particular time of the day or days of the week.
- Limiting the length or duration of telephone calls, written correspondence or face-to-face interviews. For example:
  - Telephone calls may be limited to 10 minutes at a time and will be politely terminated at the end of that time period.
  - Lengthy written communications may be restricted to a maximum of 15 typed or written pages, single sided, font size 12 or it will be sent back to the complainant to be organised and summarised – This option is only appropriate in cases where the complainant is capable of summarising the information and refuses to do so.
  - Limiting face-to-face interviews to a maximum of 45 minutes.
- Limiting the frequency of their telephone calls, written correspondence or face-to-face interviews. Depending on the natures of the service(s) provided we may limit:
  - Telephone calls to 1 every two weeks.
  - Written communications to 1 every month.
  - Face-to-face interviews to 1 every month.

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

- Require the complainant to clearly identify how the information or supporting materials they have sent to us relate to the central issues that we have identified in their complaint.
- Restrict the frequency with which complainants can send emails or other written communications to our office.
- Restrict a complainant to sending emails to a particular email account (eg the organisation's main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.





- **Writing only restrictions**

When a complainant is restricted to 'writing only' they may be restricted to written communications through Australia Post only or email only to a specific staff email or our general office email account.

If a complainant's contact is restricted to 'writing only', the senior manager will clearly identify the specific means that the complainant can use to contact our office (eg Australia Post only). Also if it is not suitable for a complainant to enter our premises to hand deliver their written communication, this must be communicated to them as well.

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

- **Limiting face-to-face interviews to secure areas**

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

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

- **Contact through a representative only**

In cases where we cannot completely restrict our contact with a complainant and their conduct is particularly difficult to manage, we may also restrict their contact to being through a support person or representative only. The support person may be nominated by the complainant but must be approved by the appropriate senior manager.

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



- **Completely terminating a complainant's access to our services**

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

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

- Acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking, assault.
- Damage to property while on our premises.
- Threats with a weapon or common office items that can be used to harm another person or themselves.
- Physically preventing a staff member from moving around freely either within their office or during an off-site visit – eg entrapping them in their home.
- Conduct that is otherwise unlawful.

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

A complainant's access to Council services and Council premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws/legislation or legal orders to protect members of our staff from personal violence, intimidation or stalking by a complainant.

### **3. ADVISING COMPLAINANT OF ACTION TAKEN**

The senior manager will decide on the most appropriate action to take and advise the complainant in writing.

**Warning letter** - Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the senior manager will provide them with a written warning about their conduct in the first instance.

[See **Appendix C** – Sample warning letter]

**Notification letter** - If a complainant's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault or other unlawful/unacceptable conduct the senior manager has the discretion to send a notification letter immediately restricting the complainant's access to our services (without prior written warning). [See **Appendix D** – Sample letter notifying complainant of a decision to change or restrict their access to services.]



**Continued monitoring/oversight responsibilities** - Once a complainant has been issued with a warning letter or notification letter the senior manager will review the complainant's record/restriction every 3 months, on request by a staff member, or following any further incidents of UCC that involve the particular complainant to ensure that they are complying with the restrictions/the arrangement is working.

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

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

The senior manager will also update CRMS with a record outlining the nature of the restrictions imposed and their duration.

#### **4. APPEALING A DECISION TO CHANGE/ RESTRICT ACCESS TO OUR SERVICES**

Complainants are entitled to one appeal of a decision to change/restrict their access to our services. This review will be undertaken by a senior staff member who was not involved in the original decision to change or restrict the complainant's access. This staff member will consider the complainant's arguments along with all relevant records regarding the complainant's past conduct. They will advise the complainant of the outcome of their appeal by letter which must be signed off by the CEO.

If a complainant continues to be dissatisfied after the appeal process, they may seek an external review from an oversight agency such as the Ombudsman.

#### **5. ALTERNATIVE DISPUTE RESOLUTION**

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

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



## 6. 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 complainants. This should be recorded in a file note in CRMS and a copy forwarded to the senior manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to our services.

## 7. PERIODIC REVIEWS

All UCC cases will be reviewed every 3 months or 6 months (depending on the nature of the service provided) and not more than 12 months after the service change or restriction was initially imposed or continued/upheld.

- The senior manager will invite all complainants to participate in the review process unless they determine that this invitation will provoke a negative response from the complainant (ie further UCC). The invitation will be given and the review will be conducted in accordance with the complainant's access restrictions (eg if contact has been restricted to writing only then the invitation to participate will be done in writing). [See **Appendix E** – Sample letter notifying a complainant of an upcoming review]
- When conducting a review the senior manager will consider:
  - Whether the complainant has had any contact with the organisation during the restriction period.
  - The complainant's conduct during the restriction period.
  - Any information/arguments put forward by the complainant for review.
  - Any other information that may be relevant in the circumstances.
- The senior manager may also consult any staff members who have had contact with the complainant during the restriction period. [See **Appendix F** – Sample checklist for reviewing an access change/restriction]
- The senior manager will notify the complainant of the outcome of their review using the appropriate/relevant method of communication as well as a written letter explaining the outcome, as applicable. [See **Appendix G** – Sample letter advising the complainant of the outcome of a review]
- Like all other decisions made under this policy, the senior manager is responsible for keeping a record of the outcome of the review, updating CRMS and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.



## 8. MANAGING STAFF STRESS

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

- **Debriefing**

Council encourages all staff to engage in an appropriate level of debriefing, when necessary. Many staff members naturally do this with colleagues after a difficult telephone call, but debriefing can also be done with a supervisor or senior manager or as a team following a significant incident.

Staff may also access an external professional service on a needs basis. All staff can access the Employee Assistance Program – a free, confidential counselling service on 1300 366 789. For traumatic incident or crisis counselling, call 1800 451 138.

- **Compensation for injury**

Any staff member who suffers injury as a result of aggressive behaviour from complainants is entitled to make a workers' compensation claim. *[Personnel]* will assist wherever possible in processing claims. If you are the victim of an assault, they may also be able to apply to the Victim's Compensation Tribunal for compensation.

- **Compensation for damage to clothing or personal affects**

Where damage is suffered to clothing or personal effects as a result of aggression by a complainant, compensation may be sought.

- **Legal assistance**

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

- **Threats outside the office or outside working hours**

Where threats are directed at a particular staff member and it appears those threats may be carried out outside normal working hours or outside the office, the staff member will receive the support of the office. Requests for such assistance should be made to the senior manager.

- **Escorts home**

When a staff member fears for their safety following a threat from a complainant, another staff member may accompany them home or the office can meet the cost of the staff member going home in a taxi. Ask the senior manager for more information.

- **Telephone threats on home numbers**

If a staff member or their family have been harassed by telephone at their home and they believe it is connected with their employment they may apply to have the office meet the cost of having their telephone number changed and/or made silent. The staff member should also contact their telephone carrier, as they may provide an interception/monitoring service.



If assistance is approved, the office will meet the cost incurred for a period up to 12 months. Once approval is given, the staff member is responsible for making the necessary arrangements and will be reimbursed after producing a paid account.

Applications for reimbursement must be approved by the senior manager.

- **Other security measures**

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

Nothing in this Policy prevents Council taking appropriate alternative action to that set out in this Policy following receipt of advice from Victorian Police, lawyers or third party agencies.

## **9. TRAINING AND AWARENESS**

Mansfield Shire Council is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with complainants in the course of their work will also receive appropriate training and information on using this policy and on managing UCC on a regular basis in particular, on induction.

## **10. OMBUDSMAN MAY REQUEST COPIES OF OUR RECORDS**

Mansfield Shire Council will keep records of all cases where this policy is applied, including a record of the total number of cases where it is used every year. This data may be requested by the Ombudsman to conduct an overall audit and review in accordance with its administrative functions and/or to inform its work on UCC.



## Appendix A – Unreasonable Complainant Conduct Notification Form

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

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

Date: \_\_\_\_\_

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:

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

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What action, if any, have you taken to deal with/manage the complainant's conduct?  
For example – warning the complainant 'verbally' about their conduct, other/previous attempts to manage the behaviour etc.

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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 *[nominated senior manager]*.

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Is there any other information that might be relevant to this case? If necessary, attach any supporting documentation.

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**Appendix B - Checklist for the senior manager to consider when deciding to modify or restrict a complainant's access**

- I have received a signed and completed incident form from the case officer(s) involved (attach copy).
- I have spoken with relevant case officer(s) to obtain further information, as needed.
- I have reviewed the complainant's record and all the relevant information in it.
- I have referred to and considered Part 7.2 Criteria to be considered which includes an assessment of the following:

- The merits of the complainants case

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- The complainant's circumstances

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- Jurisdictional issues

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Proportionality

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Organisational or case officer responsibility

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Responsiveness, including previous conduct

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Case officer's personal boundaries

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- Conduct that is unreasonable in all circumstances (assault, threats of harm etc.)

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- Along with the case officer concerned and nominated senior manager, I have considered all reasonable options for managing the complainant's conduct, including those that do not involve restricting their access to our services.

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- The complainant has been warned about their conduct in writing, and the letter has been signed by the CEO if applicable.
- The complainant has been advised in writing of our decision to restrict their access to our organisation, and the letter has been signed by the CEO if applicable.
- I have made a record of my assessment and decision about the complainant's conduct and all relevant staff members have been notified of my decision.
- An electronic alert has been created in CRMS that notifies any staff dealing with this complainant of the nature of the conduct that caused us to be concerned, the nature of the restriction that has been placed on their access, its duration, how they are to deal with the complainant (including who they should direct any communications from the complainant to).

Date: \_\_\_\_\_

Signature: \_\_\_\_\_



## Appendix C - Warning Letter

*[To be signed by the CEO]*

Our reference: *[reference]*  
Contact: *[case officer]*  
Telephone: *[number]*

*[Date]*

*[Name of complainant]*

*[Address of complainant]*

Dear *[name of complainant]*

### Your contact with Mansfield Shire Council

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

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

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

Or any other restriction that we consider to be appropriate in the circumstances. I have attached a copy of a document called *[Individual rights and mutual responsibilities of the parties to a complaint]* for your reference. We expect everyone who complains to this office to act in the ways described in this document.

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

Yours sincerely,

[CEO]

Encl. *[Individual rights and mutual responsibilities of the parties to a complaint]*



## Individual Rights and Mutual Responsibilities of the Parties to a Complaint

In order for Mansfield Shire Council to ensure that all complaints are dealt with fairly, efficiently and effectively and that occupational 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 rights

#### *Complainants have the right:*

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

#### *Staff have the right:*

- to determine whether, and if so how, a complaint will be dealt with
- to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances
- to expect honesty, co-operation and reasonable assistance from complainants
- to expect honesty, co-operation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint
- to be treated with courtesy and respect
- to a safe and healthy working environment
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.

#### *Subjects of a complaint have the right:*

- to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them
- to be treated with courtesy and respect by staff of the Mansfield Shire Council
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated
- to be informed about the substance of any proposed adverse comment or decision
- to be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made
- to be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them
- to be protected from harassment by disgruntled complainants acting unreasonably.



## Mutual responsibilities

### *Complainants are responsible for:*

- treating staff of the Mansfield Shire Council with courtesy and respect
- clearly identifying to the best of their ability the issues of complaint, or asking for help from the staff of the Mansfield Shire Council to assist them in doing so
- providing to the best of their ability the Mansfield Shire Council with all the relevant information available to them at the time of making the complaint
- being honest in all communications with the Mansfield Shire Council
- informing the Mansfield Shire Council of any other action they have taken in relation to their complaint
- co-operating with the staff who are assigned to assess/ investigate/resolve/determine or otherwise deal with their complaint.

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

Mansfield 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. Any such conduct of a criminal nature will be reported to police and in certain cases legal action may also be considered.

### *Staff are responsible for:*

- providing reasonable assistance to complainants who need help to make a complaint and, where appropriate, during the complaint process
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly and impartially
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them and the substance of any proposed adverse comment or decision that they may need to answer or address
- keeping complainants informed of the actions taken and the outcome of their complaints
- giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances
- taking all reasonable and practical steps to ensure that complainants are not subjected to any detrimental action in reprisal for making their complaint
- giving adequate warning of the consequences of unacceptable behaviour.





If the Mansfield Shire Council or its staff fail to comply with these responsibilities, complainants may complain to the Victorian Ombudsman.

*Subjects of a complaint are responsible for:*

- co-operating with the staff of the Mansfield 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 jurisdiction
- providing all relevant information in their possession to the Mansfield Shire Council or its authorised staff when required to do so by a properly authorised direction or notice
- being honest in all communications with Mansfield Shire Council and its staff
- treating the staff of the Mansfield Shire Council with courtesy and respect at all times and in all circumstances
- refraining from taking any detrimental action against the complainant in reprisal for them making the complaint.

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

*Mansfield Shire Council is responsible for:*

- having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints
- decisions about how all complaints will be dealt with
- ensuring that all complaints are dealt with professionally, fairly and impartially
- 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 circumstances
- implementing reasonable and appropriate policies/procedures/practices to ensure that complainants are not subjected to any detrimental action in reprisal for making a complaint, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If the Mansfield Shire Council fails to comply with these responsibilities, complainants may complain to the Victorian Ombudsman.



## Appendix D - Notifying a complainant of a decision to change or restrict their access to our services

*[To be signed by the CEO]*

Our reference: *[reference]*  
Contact: *[case officer]*  
Telephone: *[number]*

*[Date]*

*[Name of complainant]*

*[Address of complainant]*

Dear *[name of complainant]*

### Decision to restrict your contact with Mansfield Shire Council

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

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

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

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

### What this means

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

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

### Your existing complaint (if applicable)

This organisation currently has one file open in your name. This relates to *[state the subject of complaint and describe complaint]*. This file is being handled by *[name of officer and position title]*. While you are able to contact *[name of officer]* *[state nature of contact – e.g. by email]* about this specific matter, all other contact with my organisation, including



any future complaints, must be *[state restriction – e.g. in writing through Australia Post]*  
*[provide contact details – e.g. address of organisation where post can be sent].*

### **Review of this decision**

My decision to restrict your contact with this organisation is effective immediately and will last for *[3 months/6 months/12 months]*. At that time we will review your restriction and decide if it should be maintained, amended or withdrawn.

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

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

Yours sincerely

[CEO]



## Appendix E - Notifying a complainant of an upcoming review

*[To be signed by the CEO]*

Our reference: *[reference]*  
Contact: *[case officer]*  
Telephone: *[number]*

*[Date]*  
*[Name of complainant]*  
*[Address of complainant]*

Dear *[name of complainant]*

### **Upcoming review of the decision to restrict your contact with *[name of organisation]***

It has now been *[3 months/6 months/12 months]* since restrictions were *[imposed/upheld]* on your contact with our office. As advised in our letter dated *[date]*, we are now reviewing our decision to ascertain whether the restrictions should be maintained, amended or withdrawn.

We consider it important to give you an opportunity to participate in the review process, so we are therefore inviting you to *[apply the relevant option(s)]*:

- make submissions in writing through Australia Post *[include contact person's name and address]*
- schedule a face-to-face interview with *[include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]*
- schedule a telephone interview with *[include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]*

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

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

We must receive your letter by *[time and date]*/you should confirm your interview with *[name of case officer]* by *[time and date]*. If we do not receive it/hear from you by this date, we will assume that you do not wish to participate in this review and will undertake the review based on the information that we have available to us.

Once the review is completed, we will contact you again by letter notifying you of our decision.



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

Yours sincerely

*[CEO]*



**Appendix F - Checklist for reviewing a decision regarding an access change/restriction**

- The complainant has been sent a letter notifying them of the review.
  
- The complainant will/will not participate in the review.
  - the complainant has/has not scheduled a face-to-face interview
  - the complainant has/has not made written submissions
  - the complainant has/has not scheduled a telephone interview
  
- I have reviewed all the information in the *[case management system]* from the last 12 months *[or relevant period of the restriction]* about the complainant's:
  - contact with the office (explain form of contact)  

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  - conduct during that contact (explain if conduct reasonable or unreasonable)  

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- I have spoken with the case officers who have had contact with the complainant during the last 12 months about the complainant's conduct during that period.
  
- I have considered the arguments/statements made by the complainant, including the impact of the restrictions on them (explain complainant's position, including if their circumstances have changed etc.) *Note: if the complainant is arguing that their circumstances have changed, they should be required to submit evidence to support this claim.*  

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- I have considered whether there are other more reasonable/suitable options for managing the complainant's conduct, including those that do not involve restricting their access to our services (list all that apply).  

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- I consider that the restriction should be (explain):
  - maintained –*e.g. because the conduct has continued or is likely to continue, is disproportionate etc.*
  - removed – *e.g. because the complainant has complied with the restrictions etc.*
  - amended – *e.g. because the complainant’s circumstances have changed and the current restriction is no longer appropriate.*

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- I have discussed my decision with [*other nominated senior officers*]
- The complainant has been advised in writing of my decision to maintain/remove/amend the restriction and this letter has been signed by the *CEO*.
- CRMS has been updated to reflect my decision.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_





## Appendix G - Advising the complainant of the outcome of a review

*[To be signed by the CEO]*

Our reference: *[reference]*  
Contact: *[case officer]*  
Telephone: *[number]*

*[Date]*

*[Name of complainant]*

*[Address of complainant]*

Dear *[name of complainant]*

### Review of your contact with *[name of organisation]*

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

### Process of review

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

### Considerations

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

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

*[apply if relevant]*: Our records show that you have complied with the restrictions that were imposed on your contact with our organisation.

### Decision

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

*[apply if relevant]*: Due to *[explain reasoning for the decision]* I consider it necessary to amend the restrictions on your access to better suit your personal circumstances *[explain, including providing clear instructions on how the complainant is to contact us and how we will contact them]*. The new restrictions will be effective immediately and will last for 12



months. If your circumstances change again during this period, you may *[explain how the complainant can notify of the change]*.

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

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

Yours sincerely

*[CEO]*