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# Unreasonable Conduct by Customers Policy

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## Purpose

The objective of this policy is to provide Customers and City Staff the framework within which the City will manage unreasonable conduct by customers.

The City is committed to being accessible and responsive to all customers who approach the City for assistance with a request for service, request for information or with a complaint.

At the same time the success of our organisation depends on:

- Our ability to do our work and perform our functions in the most effective and efficient ways possible;
- The health, safety and security of our staff, and
- Our ability to allocate our resources fairly across all the complaints we receive.

When customers behave unreasonably in their dealings with us, their conduct can significantly affect our success. As a result, the City will take proactive and decisive action to manage any customer conduct that negatively and unreasonably affects us and will support our staff to do the same in accordance with this policy.

## Scope

This policy applies to the management of unreasonable conduct by customers, as defined in this policy.

## 1. Defining Unreasonable Conduct by Customers

### 1.1. Unreasonable conduct by customers

Most of our customers 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 customers behave in ways that are inappropriate and unacceptable – despite our best efforts to help them. They are aggressive and/or verbally abusive towards our staff. They threaten harm and violence, bombard our offices with unnecessary and excessive phone calls and emails, make inappropriate demands on our time and our resources and refuse to accept our decisions and recommendations in relation to their complaints. When customers behave in these ways we consider their conduct to be ‘unreasonable’.

Unreasonable conduct by customers (‘UCC’) 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 customers or the customer himself/herself.

UCC can be divided into five categories of conduct:

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

### **1.2. Unreasonable persistence**

Unreasonable persistence is continued, incessant and unrelenting conduct by a customer that has a disproportionate and unreasonable impact on the City, 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 contacting the City about the same matter when it has been comprehensively considered and dealt with.
- Targeting the City with multiple requests about a range of issues, whether related or not, which separately or together require an unreasonable or unfair allocation of City resources.
- Pursuing and exhausting all available review options when it is not warranted and refusing to accept the City's position when told that 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, 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 and external forum shopping.

### **1.3. Unreasonable demands**

Unreasonable demands are demands (express or implied) that are made by a customer that have a disproportionate and unreasonable impact on the City, 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, Director or the CEO 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 – e.g. 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.
- Expecting responses to requests which separately or together require an unreasonable or unfair allocation of City resources.

#### **1.4. Unreasonable lack of cooperation**

Unreasonable lack of cooperation is an unwillingness and/or inability by a customer to cooperate with our organisation, staff, or complaints system and processes that results in a disproportionate and unreasonable use of our services, time and/or resources.

Some examples of unreasonable lack of cooperation include:

- Sending a constant stream of comprehensive and/or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues being complained about – only where the customer 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.

#### **1.5. Unreasonable arguments**

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

#### **1.6. Unreasonable behaviour**

Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated that a customer is – because it unreasonably compromises the health, safety and security of our staff, other service users or the customer himself/herself.

Some examples of unreasonable behaviours include:

- Acts of aggression, verbal abuse and derogatory, racist, or grossly defamatory remarks.
- Harassment, intimidation or physical violence.
- Rude, confronting and/or threatening face to face or phone contact or 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.

The City of Sydney has a zero tolerance policy towards any harm, abuse or threats directed towards staff. Any conduct of this kind will be dealt with under this policy, the Harassment & Bullying Policy, Security & Emergency Management Policy and the City's Work Health & Safety policy.

## 2. Responding To and Managing Unreasonable Conduct by a Customer

### 2.1. Changing or restricting a Customer's access to the City of Sydney

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

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

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

### 2.2. Who – limiting the customer to a sole contact point

Where a customer 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.

Customers who are restricted to a sole contact person will be given the contact details of one additional staff member who they can contact if their primary contact is unavailable due to taking leave or is otherwise unavailable for an extended period of time.

### 2.3. What – restricting the subject matter of communications that the City will consider

Where customers 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 customer can raise with us or that 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 evidence. (The customer 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 customer 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 customer 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).

### 2.4. When – limiting when and how a customer can contact the City

If a customer’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 (e.g. 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 customer 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.
- Limiting the frequency of their telephone calls, written correspondence or face-to-face interviews.

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

- Require the customer 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 customers can send emails or other written communications to our office.
- Restrict a customer to sending emails to a particular email account (e.g. the organisation’s main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.

#### Writing only restrictions

When a customer is restricted to ‘writing only’ they may be restricted to written communications through:

- Australia Post only

- Email only to a specific staff email or our general office email account
- Fax only to a specific fax number, or
- Some other relevant form of written contact, where applicable.

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

### **2.5. Where – limiting face to face interviews**

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

These restrictions may include:

- Restricting access to particular secured premises or areas of the office – such as the reception area or a 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 customer from attending our premises altogether and allowing some other form of contact – e.g. 'writing only' or 'telephone only' contact.

### **Contact through a representative only**

In cases where we cannot completely restrict our contact with a customer and their conduct is particularly difficult to manage, we may also restrict their contact to go through a support person or representative only. The support person may be nominated by the customer but must be agreed to by the City of Sydney.

### **2.6. Completely terminating a customer's access to the City**

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 customer's contact/access to our services.

A decision to have no further contact with a customer will only be made if it appears that the customer 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 – e.g. entrapping them in their home.
- Conduct that is otherwise unlawful.

In these cases the customer will be sent a letter notifying them that their access has been restricted. The Police may also be notified in these circumstances.

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

### 3. Managing Customers Seeking Access to Information

The Government Information (Public Access) Act 2009 (GIPA Act) provides our customers with a general right of access to information held by the City unless there is an overriding public interest consideration against disclosure of the information, and as long as releasing the information is consistent with privacy, copyright and other legislation. Information is provided proactively, and customers may make either an informal request or a formal access application under the Act.

Information is provided via the informal process either directly by staff as part of business operations, or by the Information Access team in Information Services. All requests for information are assessed and determined in accordance with the legislation.

There is also provision for a customer to make a formal information access application. Formal applications are processed by the Information Access team and final determinations regarding what information is released are made by the Governance team. Formal applications are managed in a structured way under the GIPA Act that includes application and processing fees, defined response times and appeal provisions.

For more information regarding City of Sydney's principles regarding public access to information and the process of managing requests for such access please refer to the City's Access to Information Policy.

Customers seeking access to information that the City holds who demonstrate unreasonable conduct can be managed using the following strategies:

#### 3.1. Who – limiting the customer to a sole contact officer

Where a customer requests the same information from different staff, it may be appropriate to restrict their access to a single staff member (a sole contact officer) who will exclusively manage their request(s) for information. This will ensure they are dealt with consistently and minimise the chances for misunderstandings.

#### 3.2. What – restricting the subject matter of communications that the City will consider

Where customers repeatedly request information that has already been provided, the City may refuse to respond to further requests. The customer will be advised that future correspondence requesting information that has already been provided will be read and filed without acknowledgement.

#### 3.3. How – applying the GIPA rules

Under the GIPA Act:

- A customer requesting information from the City cannot be prohibited from contacting the City.
- The City cannot be required to consider an informal request, or to provide information in response to such a request

- The City must consider all formal access applications it receives.

Where a request for information causes concern in a business unit because the customer demonstrates unreasonable conduct, the business unit may refer the request to the Information Access team within the Information Services Unit.

The Information Access team will assess the request and decide whether to deal with it as an informal request.

If the decision is not to deal with the informal request, the customer will be advised that they have the option of lodging a formal access application. Formal access applications are managed by the Information Access team in accordance with the GIPA Act.

The GIPA Act (s60) allows for refusal to deal with a formal access application only on the following grounds-

- Unreasonable and substantial diversion of resources.
- Applicant has previously been provided with the information.
- Applicant has previously applied for the same information, and the earlier application has been decided, and there are no reasonable grounds to believe revisiting the matter would result in a different decision.

## 4. Alternative Dispute Resolution

### 4.1. Using alternative dispute resolution strategies to manage conflicts with customers

If the City of Sydney determines that services to a customer cannot be terminated in a particular case or that we/our staff bear some responsibility for causing or exacerbating their conduct, the City may consider using alternative dispute resolution strategies ('ADR') such as mediation and conciliation to resolve the conflict with the customer and attempt to rebuild our relationship with them.

A decision as to whether or not to participate in ADR is entirely at the discretion of the City and on a case-by-case basis.

## 5. Procedure When Changing a Customer's Access to the City

### 5.1. Consulting with relevant staff

When determining if a customer's access should be changed we will consult with relevant staff on the following:

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



## 5.2. Criteria to be Considered

The following criteria will be considered;

- Whether the conduct in question involved overt anger, aggression, violence or assault (which is unacceptable in all circumstances).
- Whether the customer's case or complaint has merit.
- The likelihood that the customer 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 customer's behaviour.
- Whether changing or restricting access to our services will affect the customer'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 customer's welfare, livelihood or dependents etc.
- Whether the customer's personal circumstances have contributed to the behaviour? For example, the customer is a vulnerable person who is under significant stress as a result of one or more of the following:
  - Homelessness
  - Physical disability
  - Illiteracy or other language or communication barrier
  - Mental or other illness
  - Personal crises
  - Substance or alcohol abuse.
- Whether the customer'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 customer's contact/access to our services.

Once the City of Sydney has considered these factors a decision will be made on the appropriate course of action.

## 5.3. Providing a warning letter

Unless a customer's conduct poses a substantial risk to the health and safety of staff or other third parties, they will be provided with a written warning about their conduct in the first instance.

## 5.4. Providing a notification letter

If a customer'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 City of Sydney has the discretion to send a notification letter immediately restricting the customer's access to our services (without prior written warning). Where necessary, police will be notified.

## 5.5. Continued monitoring/oversight responsibilities

Once a customer has been issued with a warning letter or notification letter the City of Sydney will review the customer's record/restriction every 6 months, on request by a staff member, or following any further incidents of UCC that involve the particular customer to ensure that they are complying with the restrictions/the arrangement is working.

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

## **6. Reviewing a Decision To Change Or Restrict Access To The City**

### **6.1. Right of review**

Customers are entitled to one review 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 customer's access. This staff member will consider the customer's arguments along with all relevant records regarding the customer's past conduct. The customer will be advised of the outcome of their review by letter.

If a customer continues to be dissatisfied after the review process, they may seek an external review from an oversight agency such as the Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that we have acted fairly, reasonably and consistently and have observed the principles of good administrative practice including, procedural fairness.

Note: customers making formal application for information from the City have review rights under the GIPA Act. The rights of review described in section 8 do not apply to customers making formal GIPAA applications.

## **7. Periodic Reviews of All Cases Where a Change Or Restriction To Access Is Applied**

### **7.1. Period for review**

All UCC cases where this policy is applied will be reviewed every 6 months and not more than 12 months after the service change or restriction was initially imposed or continued/upheld.

### **7.2. Notifying the customer of an upcoming review**

The City of Sydney will invite all customers to participate in the review process unless they determine that this invitation is reasonably likely to provoke a negative response from the customer (i.e. further UCC). The invitation will be given and the review will be conducted in accordance with the customer's access restrictions (e.g. if contact has been restricted to writing only then the invitation to participate will be done in writing).

### **7.3. Criteria to be considered during a review**

When conducting a review the City of Sydney will consider:

- Whether the customer has had any contact with the organisation during the restriction period.
- The customer's conduct during the restriction period.
- Any information/arguments put forward by the customer.
- Any other information that may be relevant in the circumstances.

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

#### **7.4. Notifying a customer of the outcome of a review**

The City of Sydney will notify the customer of the outcome of their review using the appropriate/relevant method of communication as well as a written letter explaining the outcome, as applicable.

### **8. Roles and Responsibilities**

To effectively administer the UCC policy, there is a reliance on staff members within this process to review and analyse a customer's contact with the City. To enable this process staff are responsible for recording all contacts that they have with a customer; regardless of the customer being designated UCC.

To facilitate the recording of customer contacts, staff members are to use this City's enterprise systems i.e. Pathway and / or Trim.

#### **8.1. All Staff**

All staff are responsible for familiarising themselves with the policy and procedure as well as the Individual Rights and Mutual Responsibilities of the Parties to a Complaint in Appendix A.

All staff are responsible for speaking with their Managers about how this policy and associated procedure relates to any Business Unit specific procedures regarding managing customer behaviours.

Staff are encouraged to explain the contents of this document to all customers particularly those who engage in UCC or exhibit the early warning signs for UCC.

Where staff identify a customer as exhibiting UCC behaviours, they are to report the incident(s) to their Manager. Staff are responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to their Manager within 24 hours of the incident occurring and ensuring details of contacts are recorded.

All staff are responsible for familiarising themselves with Telephone and Face to Face Service Standards and understanding the immediate measures that can be taken when confronted by abusive, offensive or threatening behaviours.

All staff are responsible for maintaining accurate records of contacts with customers using the City's record keeping systems .e.g. Trim, Pathway & WHS Incident Management System.

While effective application of this policy relies on all staff identifying and reporting UCC incidents, it must be emphasised that any strategies that effectively change or restrict a customer's access to our services must be considered at the Senior Management (M3) level or higher as provided in this procedure.

## 8.2. The M3/M4 Manager

The M3 or M4 Manager, in consultation with relevant staff, has the responsibility and authority to provide advice to their Director and the Manager Customer Service, on changing or restricting a customer's access to the City in the circumstances identified in this procedure.

The M3 or M4 manager is also required to:

- Ensure that all relevant staff members are trained to deal with UCC – including on induction.
- Are responsible for supporting staff to apply the strategies in the policy and procedure and are responsible for ensuring compliance.
- Responsible for recording, monitoring and reviewing all cases where UCC is applied within their business area to ensure consistency, transparency and accountability for the application of these procedures.
- They will also manage and keep a record of all cases where these procedures are applied.

Depending on the circumstances, managers may also be responsible for arranging other forms of support for staff.

## 8.3. The Manager Customer Service

The Manager, Customer Service acts as a central point of escalation and will be notified by business unit managers of any proposed changes or restrictions to a customer's access.

The Manager, Customer Service is also responsible for maintaining currency and accuracy of information held centrally about UCC and changes to customer's access to our services.

## 8.4. UCC Review Panel

The Review Panel is made up of three (3) M3 Managers to monitor and review all cases where these procedures are applied across all business areas to ensure consistency, transparency and accountability.

The Review Panel, in consultation with relevant staff, has the responsibility and authority to change or restrict a customer's access to our services in the circumstances identified in the policy. When doing so they will consider the criteria in Appendix and will aim to impose any service changes/restrictions in the least restrictive ways possible. Their aim, when taking such actions will not be to punish the customer, but rather to manage the impacts of their conduct.

When applying the policy the Review Panel will also aim to keep at least one open line of communication with a customer. However, we do recognise that in extreme situations all forms of contact may need to be restricted for some time to ensure the health and safety and security of our staff and/or third parties.

The Review Panel is also responsible for recording, monitoring and reviewing all cases to ensure consistency, transparency and accountability for the application of the policy & this procedure. They will also manage and keep a file record of all cases where this policy & procedure is applied.

## 8.5. Manager Information Management

The Manager Information Management is responsible for ensuring that requests for information that are received by, or referred to, the Information Access team by business unit managers are dealt with according to City procedures and the *Government Information (Public Access) Act 2009*.

## 8.6. Directors

All Directors are responsible for supporting staff to apply the strategies in this procedure.

The Director of City Engagement and the Director Legal is responsible for approving any strategies that effectively change or restrict a customer's access to the City. These include notifying customers of any changes or restrictions to their access to the City, and any outcomes of a review of changes to access restrictions that have been applied.

## 8.7. Chief Executive Officer

The CEO will approve any decision to completely terminate a customer's contact / access to the City.

## 8.8. Correspondence and Briefings Unit

The Correspondence and Briefings Unit will be responsible for preparing any correspondence that effectively changes or restricts a customer's access to the City, on behalf of business unit Managers, Directors and the CEO.

They will manage all files in relation to UCC in TRIM to ensure consistency, transparency and accountability.

## 8.9. Community Facilities Managers

Community Facilities include Customer Service and Neighbourhood Centres, Libraries, Community Centres and Aquatic Centres. Community Facilities Managers can place general restrictions or bans on customers who demonstrated unreasonable behaviours contacting or accessing council services (refer section 1.6).

## 9. Training and Awareness

The City of Sydney is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with customers 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

The City of Sydney 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.

## Consultation

This policy was developed to align Ombudsman NSW Unreasonable Complaint Conduct Model Policy (2013).

## References

<b>Laws and standards</b>	<ul style="list-style-type: none"> <li>• Privacy and Personal Information Protection Act 1998</li> <li>• Health Records Information Privacy Act 2002</li> <li>• Independent Commission Against Corruption Act 1988</li> <li>• Government Information (Public Access) Act 2009</li> <li>• Local Government Act 1993</li> <li>• Library Act 1939</li> <li>• Library Regulation 2010</li> <li>• Protected Disclosures Act 1994</li> <li>• Ombudsman Act 1974</li> <li>• Inclosed Lands Protection Act 1901</li> </ul>
<b>Policies, procedures and guidelines</b>	<ul style="list-style-type: none"> <li>• Unreasonable Complainant Conduct Model Policy – NSW Ombudsman</li> <li>• Complaints and Feedback Guidelines</li> <li>• Telephone Service Standards</li> <li>• Face to Face Service Standards</li> <li>• Staff Complaints Policy</li> <li>• Work Health and Safety Policy</li> <li>• Code of Conduct</li> <li>• Equal Employment Opportunity (EEO) and Anti-Discrimination Policy</li> <li>• Unreasonable Conduct by Customer Procedure</li> <li>• Harassment &amp; Bullying Policy</li> <li>• Security &amp; Emergency Management Policy</li> <li>• Access to Information Policy</li> </ul>

## Approval status

The Chief Executive Officer approved this policy on 14.12.17



## Approval history

Stage	Date	Comment	TRIM Reference
Original	19 August 2014	Endorsed by the Executive	2014/139144

Review	December 2017	Full review. Policy modified to align Ombudsman NSW Unreasonable Complaint Conduct Model Policy (2013) Endorsed by the Executive	20XX/XXXXXX
Next review	December 2019		

### Ownership and approval

Responsibility	Role
Owner	Manager Customer Service
Endorser	City of Sydney Executive
Approver	City of Sydney Chief Executive Officer

## Appendix A

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

In order for the City of Sydney 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<sup>i1</sup>

*Customers have the right to:*

- Make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate<sup>2</sup>
- A reasonable explanation of the organisation's complaints procedure, including details of the confidentiality, secrecy and/or privacy rights or obligations that may apply
- A fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case<sup>3</sup>
- A fair hearing<sup>4</sup>
- A timely response
- Be informed in at least general terms about the actions taken and outcome of their complaint<sup>5</sup>
- Be given reasons that explain decisions affecting them
- At least one right of review of the decision on the complaint<sup>6</sup>
- Be treated with courtesy and respect
- Communicate valid concerns and views without fear of reprisal or other unreasonable response<sup>7</sup>.

*Staff have the right to:*

- Determine whether, and if so, how a complaint will be dealt with
- Finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances<sup>8</sup>
- Expect honesty, cooperation and reasonable assistance from customers

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<sup>1</sup> The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint

<sup>2</sup> Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums

<sup>3</sup> While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.

<sup>4</sup> The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.

<sup>5</sup> Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.

<sup>6</sup> Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.

<sup>7</sup> Provided the concerns are communicated in the ways set out in relevant legislation, policies and/or procedures established for the making of such complaints/allegations/disclosures/etc.

<sup>8</sup> Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint



- Expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint
- Be treated with courtesy and respect
- A safe and healthy working environment<sup>9</sup>
- Modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a customer.<sup>10</sup>

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

- A fair and impartial assessment and, where appropriate, investigation of the allegations made against them
- Be treated with courtesy and respect by staff of the City of Sydney
- Be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated<sup>11</sup>
- Be informed about the substance of any proposed adverse comment or decision
- Be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>12</sup>
- Be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them
- Be protected from harassment by disgruntled customers acting unreasonably.

### Mutual responsibilities

#### Customers are responsible for:

- Treating staff of the City of Sydney 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 City of Sydney to assist them in doing so
- Providing to the best of their ability the City of Sydney with all the relevant information available to them at the time of making the complaint
- Being honest in all communications with the City of Sydney
- Informing the City of Sydney of any other action they have taken in relation to their complaint<sup>13</sup>
- Cooperating with the staff who are assigned to assess/ investigate/resolve/determine or otherwise deal with their complaint.

If customers do not meet their responsibilities, the City of Sydney may consider placing limitations or conditions on their ability to communicate with staff or access certain services.

<sup>9</sup> See for example WH&S laws and the common law duty of care on employers

<sup>10</sup> Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.

<sup>11</sup> Other than where there is an overriding public interest in curtailing the right, for example where to do so could reasonably create a serious risk to personal safety, to significant public funds, or to the integrity of an investigation into a serious issue. Any such notifications or opportunities should be given as required by law or may be timed so as not to prejudice that or any related investigation.

<sup>12</sup> Depending on the circumstances of the case and the seriousness of the possible outcomes for the person concerned, a reasonable opportunity to put their case, or to show cause, might involve a face to face discussion, a written submission, a hearing before the investigator or decision maker, or any combination of the above

<sup>13</sup> For example whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings at foot.

City of Sydney 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 customer.<sup>14</sup> 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 customers who need help to make a complaint and, where appropriate, during the complaint process
- Dealing with all complaints, customers and people or organisations the subject of complaint professionally, fairly and impartially
- Giving customers or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the customer
- 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<sup>15</sup>
- Informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them<sup>16</sup> and the substance of any proposed adverse comment or decision that they may need to answer or address<sup>17</sup>
- Keeping customers informed of the actions taken and the outcome of their complaints<sup>18</sup>
- Giving customers reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- Treating customers 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 customers<sup>19</sup> are not subjected to any detrimental action in reprisal for making their complaint<sup>20</sup>
- Giving adequate warning of the consequences of unacceptable behaviour.

If the City of Sydney or its staff fail to comply with these responsibilities, customers may complain to the NSW Ombudsman.

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

- Cooperating with the staff of the City of Sydney 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<sup>21</sup>
- Providing all relevant information in their possession to the City of Sydney or its authorised staff when required to do so by a properly authorised direction or notice
- Being honest in all communications with City of Sydney and its staff

<sup>14</sup> Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant

<sup>15</sup> See Endnote 11

<sup>16</sup> Other than where an allegation is so lacking in merit that it can be dismissed at the outset

<sup>17</sup> See Endnote 11.

<sup>18</sup> See Endnote 5.

<sup>19</sup> 'Complainants' include whistle-blowers/people who make internal disclosures.

<sup>20</sup> 'Complaints' includes disclosures made by whistle-blowers/people who make internal disclosures.

<sup>21</sup> This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.

- Treating the staff of the City of Sydney with courtesy and respect at all times and in all circumstances
- Refraining from taking any detrimental action against the customer<sup>22</sup> in reprisal for them making the complaint.<sup>23</sup>

If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws and/or the City's Code of Conduct and other policies.

**City of Sydney 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<sup>24</sup>
- 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<sup>25</sup>
- Implementing reasonable and appropriate policies/procedures/practices to ensure that customers<sup>26</sup> are not subjected to any detrimental action in reprisal for making a complaint<sup>27</sup>, 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 City of Sydney fails to comply with these responsibilities, customers may complain to the NSW Ombudsman.

<sup>22</sup> See Endnote 19.

<sup>23</sup> See Endnote 20

<sup>24</sup> See Endnote 3.

<sup>25</sup> Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.

<sup>26</sup> See Endnote 19.

<sup>27</sup> See Endnote 20.

## Appendix B

### Sample checklist for the Review Panel to consider when deciding to modify or restrict a customer's access.

- We have received a signed and completed incident form from the case officer(s) involved (attach copy).
- We have spoken with relevant case officer(s) to obtain further information, as needed.
- We have reviewed the customer's record and all the relevant information in it.
- We have referred to and considered Part 5.2 Criteria to be considered which includes an assessment of the following:
  - The merits of the customers case  
\_\_\_\_\_  
\_\_\_\_\_
  - The customer's circumstances  
\_\_\_\_\_  
\_\_\_\_\_
  - Jurisdictional issues  
\_\_\_\_\_  
\_\_\_\_\_
  - Proportionality  
\_\_\_\_\_  
\_\_\_\_\_
  - Organisational or case officer responsibility  
\_\_\_\_\_  
\_\_\_\_\_
  - Responsiveness, including previous conduct  
\_\_\_\_\_  
\_\_\_\_\_
  - Case officer's personal boundaries  
\_\_\_\_\_  
\_\_\_\_\_
  - Conduct that is unreasonable in all circumstances (assault, threats of harm etc.)  
\_\_\_\_\_  
\_\_\_\_\_
- Along with the case officer concerned and *[any other nominated senior officers]*, I have considered all reasonable options for managing the customer's conduct, including those that do not involve restricting their access to our services.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- The customer has been warned about their conduct in writing, and the letter has been signed by the Director if applicable.
- The customer has been advised in writing of our decision to restrict their access to our organisation, and the letter has been signed by the Director if applicable.
- I have made a record of my assessment and decision about the customer's conduct and all relevant staff members have been notified of my decision.
- An alert has been created in that notifies any staff dealing with this customer 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 customer (including who they should direct any communications from the customer to).

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

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

