

# **PRACTICE NOTE NO. 9**

## **COMPLAINTS MANAGEMENT IN COUNCILS**



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This is a joint publication of the NSW Ombudsman and the  
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INTRODUCTION .....	5
1. UNDERSTANDING COMPLAINANTS .....	6
Why people complain .....	6
Why people don't bother to complain .....	7
Responding to special circumstances .....	9
What people want when they complain .....	10
2. A MODEL APPROACH TO COMPLAINT HANDLING .....	12
3. ESSENTIAL FEATURES OF A COMPLAINT SYSTEM .....	15
A definition of a complaint .....	15
A user-friendly procedure for lodging complaints .....	16
An easy to understand process .....	17
Recording complaints .....	18
Commitment and clear lines of authority .....	18
Staff training and empowerment.....	19
Remedies .....	20
Performance standards .....	21
Alternative remedies.....	22
Policy and procedures .....	22
4. FIRST-TIER: FRONTLINE COMPLAINT HANDLING .....	24
Some guidelines for what staff should do .....	24
Ways to increase the likelihood of success .....	25
What to do when the complainant is still not satisfied .....	27
When frontline complaint handling staff should automatically refer a complaint on .....	27
5. SECOND-TIER: INTERNAL REVIEW OR INVESTIGATION .....	29
Review by a more senior officer or special complaints officer .....	29
Informal complaint resolution by a specialist complaint handler or more senior officer .....	29
Investigation by a specialist complaint handler or more senior officer .....	30
6. THIRD-TIER: EXTERNAL REVIEW .....	33
Alternative dispute resolution .....	33
Referral to external investigation agency .....	33

Councils' statutory obligations to refer complaints to external agencies.....	34
Other appeal mechanisms .....	35
<b>7. COUNCILS' STATUTORY COMPLAINT HANDLING OBLIGATIONS ...</b>	<b>36</b>
Complaints under the code of conduct .....	36
Protected Disclosures .....	38
Complaints about privacy breaches .....	39
Competitive neutrality complaints .....	40
<b>8. WHAT CAN BE LEARNED FROM COMPLAINTS .....</b>	<b>42</b>
Systematic logging of complaints data enables analysis of the cause of problems .....	42
Questions to ask when analysing complaints data .....	43
<b>9. APOLOGIES.....</b>	<b>45</b>
<b>10. MANAGING UNREASONABLE CONDUCT BY COMPLAINANTS ....</b>	<b>49</b>
Identifying unreasonable conduct by complainants .....	51
Examples of unreasonable complainant conduct .....	53
Unreasonable persistence .....	53
Unreasonable demands.....	53
Unreasonable lack of cooperation .....	54
Unreasonable arguments.....	55
Unreasonable behaviours .....	55
Strategies for managing unreasonable complainant conduct.....	55
Strategies for dealing with unreasonable persistence.....	57
Strategies for dealing with unreasonable demands .....	58
Strategies for dealing with unreasonable lack of cooperation .....	59
Strategies for dealing with unreasonable arguments .....	59
Strategies for dealing with unreasonable behaviour .....	60
Applying administrative controls to deal with unreasonable conduct by complainants .....	61
Public interest considerations governing access restrictions .....	61
An unreasonable complainant conduct policy .....	62
Threshold considerations.....	63
Restricting access after internal review .....	64
Restricting services or access .....	65
Withdrawing services or access.....	65
Recording service and access restrictions.....	66
Councils' statutory obligations to provide access.....	67
Staff training and support .....	73

## INTRODUCTION

This practice note has been prepared to assist councils in the management and handling of complaints. It has been designed for use by councils to develop and implement effective complaints management systems.

An effective complaints management system is an essential part of the provision of quality service in local government. It is one method of measuring community satisfaction and provides a useful source of information and feedback for improving a council's services. Complaint handling is also a key component of sound corporate governance and is fundamental to ensuring an appropriate level of accountability in the exercise of council functions.

This publication provides an analysis of the reasons people complain, and outlines how complainants should be treated. It also provides a model approach to complaint handling and sets out the essential features of a complaints management system. It also addresses the issue of dealing with unreasonable conduct by complainants.

The information in this practice note is based on the 2004 edition of the NSW Ombudsman's *Effective Complaint Handling Guidelines*. This is consistent with the Australian Standard, *Customer Satisfaction – Guidelines for Complaints Handling in Organizations (ISO 10002:2006, MOD)*. The practice note also incorporates research recently undertaken by the NSW Ombudsman on managing the impact of unreasonable conduct of complainants on complaint handling agencies as contained in their *Unreasonable Complainant Conduct- Practice Manual 2009*. This information has been adapted to specifically address the needs of councils.

# **1. UNDERSTANDING COMPLAINANTS**

Effective complaint resolution requires responding to the complainant's needs as a person as well as responding to the identified problem. Fixing the problem alone will not necessarily produce satisfaction. How you treat the complainant in the process is equally important to complaint resolution and will be a prime factor in how that person relates to your council in the future.

## **Why people complain**

People make complaints because they are unhappy with a decision, the level of service they have received, or the behaviour of staff. It is important to find out precisely why they are unhappy.

It can be helpful to ask what they want done. Finding out what they want to happen, or what they believe should have happened, usually clarifies the reason for the complaint and helps determine an appropriate response.

It may become apparent that the resolution of a complaint involves giving more information, providing an explanation, suggesting a course of action, or expressing empathy and understanding in situations where there is no ready solution to the problem. A sincere apology for any mistakes or misunderstandings is usually effective.

If a council knows what people expect, it is more than halfway to knowing how particular service recovery opportunities can best be handled to produce a positive outcome.

The feedback about council performance that a complaint may give can be valuable. It can lead to a policy being reconsidered or better targeting of council resources. In many cases, complaints will echo and reinforce staff concerns about similar matters. The feedback collected, properly reported, may itself be a catalyst for change and continuous improvement.

The reason for a complaint may not always be clear at first. It is not uncommon to find at the bottom of a complaint a desire for justice, for fair play or for vindication. Sometimes, complainants can be quite altruistic. They realise something has gone wrong, and even if the wrong cannot be undone as far as they are concerned, they do not want to see the mistake or fault recur.

**Many complaints arise from poor communication or inadequate information.**

The Ombudsman has found many complaints occur, or are exacerbated, simply because of poor communication or because of inadequate publicity about the services and policies and procedures of agencies. The community should have clear information about what they have a right to expect from a council and about the service levels it can provide. With this information complainants can be more focused and specific about what they are asking the council to do.

Complaints can often be kept to a minimum if:

- a council has appropriate and comprehensive policies which can be explained to members of the community
- there are clear procedures for implementing policies which are well understood by all staff, and
- staff are able to communicate well both within the council and with members of the community, (ie they are skilled, informed, capable and courteous).

## **Why people don't bother to complain**

When people are asked why they didn't complain about a genuine grievance or poor service, they consistently give one or more of the following reasons:

- it would not be taken seriously
- it would not make any difference – nothing would be done about it

- there was no available information on how to make a complaint
- it was too difficult to find out who to ring or go to
- it was seen as being too time consuming or stressful
- the person received a negative reception in the past when they raised problems
- the person wanted to avoid further upset after experiencing rudeness
- the person didn't want to be seen as a troublemaker
- the person was worried about retribution given they had to keep dealing with these people/organisation
- the person gave up after initial fob-offs and telephone transfers.

It is useful to consider these barriers when thinking about how to encourage feedback. A good complaint handling system adopts procedures that make giving feedback a much more attractive proposition.

Particular barriers in some sectors may include:

- culture – it is more or less acceptable to complain in some cultures than others and some may not even have the word in their vocabulary
- disability – problems with vision, writing or hearing in particular can create hurdles for people
- language – confidence and competence in written or spoken English may make complaining difficult
- power imbalance and fear – complainants may often be vulnerable people reliant on council or government-funded services for survival. They may fear that a complaint will lead to further marginalisation, retribution, or losing a service altogether
- worker attachment – complainants may by necessity be in close dependent relationships with workers which makes complaining more difficult.

The onus is on the council to be aware of the potential for these issues to arise and to address them as far as is reasonably possible. Councils need to be particularly aware of any obstacles that prevent communication with the public. There is a need to be innovative and flexible in developing strategies to

avoid these problems. Make sure all aspects of service provision and complaints handling functions can be adapted to meet a complainant's developmental age, physical or intellectual ability. Consider different formats or mediums of communication.

## **Responding to special circumstances**

Staff need to be sensitive to information to be able to respond to certain types of complaints appropriately.

### **Complaint types**

Some types of complaint may need to be treated in special ways (eg complaints involving urgent public safety issues). If a complaint concerns corrupt conduct within a council it should be referred to the general manager. The general manager has a duty to report to ICAC any matter he or she suspects on reasonable grounds concerns or may concern corrupt conduct. Complaints made as protected disclosures or under a council's code of conduct, together with councils' other statutory obligations, are discussed later in this practice note.

If a complaint involves allegations of criminal behaviour, they should automatically be referred to the Police. Special arrangements for keeping such complaints confidential may need to be set up. Different types of complaints may simply need to be referred to special sections of the council (eg complaints of financial impropriety may be referred to the internal auditor or the external auditor).

Complaints about staff members can also create special tensions and may need special policies. The application of council's code of conduct will also need to be considered in the context of more serious complaints about staff. A council needs to welcome complaints while taking care that staff do not feel undervalued when management deals with the complainant in a 'customer-focused' way, even if the allegation is unproved. Basic questions such as 'Will staff always be notified of complaints about them?' and 'How will records of

complaints about staff members be used?’ must be addressed. It should be noted that staff the subject of a complaint should not be automatically notified of the complaint where the general manager has reported the matter to ICAC (because it concerns or may concern corrupt conduct), or where it is made as a protected disclosure.

For further information regarding handling protected disclosures see the NSW Ombudsman’s *Protected Disclosures Guidelines*” 6<sup>th</sup> edition.

For additional information about dealing with code of conduct complaints see the Department of Local Government’s *Guidelines for the Model Code of Conduct for Local Councils in NSW*.

### **Complainant types**

Some people are less likely to make complaints. For example, certain sectors of our society may be fearful due to their cultural background, or lack the resources to complain. It may be important to take special measures to encourage those groups to give feedback to the council and to tag any complaint from these targeted groups.

Councils should have policies for sections of the community with special needs, such as young or older people, people with a disability or people from ATSI or NESB backgrounds. Alternatively, this could be addressed through the social planning process. These complaints can then be analysed as perhaps representing an even wider group of non-complainants than is usual.

At the other extreme, some councils may have to deal with complainants who act unreasonably or who place unreasonable demands on the council. A companion policy may need to be developed on the council’s response to such circumstances. The issue of managing unreasonable conduct by complainants is discussed later in this practice note.

### **What people want when they complain**

When people complain they want certain essential things:

- to feel secure
- to be listened to (patiently)
- to be heard, but not judged
- to have their point of view understood, (for some complainants, this may involve acknowledgements that allow them to 'save face')
- to be treated with respect and courtesy, and as an individual
- to be provided with an explanation
- to be given an apology
- to have corrective action taken as soon as possible, and while action is taken, to be kept up to date
- to be compensated
- to be treated fairly, and
- to make sure the problem never happens again.

People are more likely to accept decisions they don't like or that are against their immediate interests if they believe the decision was reached fairly and they were treated fairly. Elements of fairness to consider in handling a complaint are procedural fairness; interpersonal fairness and informational fairness. Even if ultimately the council is unable to take the action they want, if the other elements are provided and the process seems fair, a complainant will usually be reasonably satisfied.

## **2. A MODEL APPROACH TO COMPLAINT HANDLING**

Knowing what the expectations of the community and users of council services are and the extent to which those expectations can be and are being met, is essential to improving service. When the community's expectations unrealistically exceed what the council is able or can afford to deliver, or what a particular program is designed to provide, it highlights areas that need corrective action. Such expectations have to be better managed.

A complaint handling system is an organised way of responding to, recording, reporting and using complaints to improve service to the community. It includes procedures for people to make complaints and guidelines for staff to resolve complaints, and provides information to managers and staff that can assist them to prevent public dissatisfaction in the future.

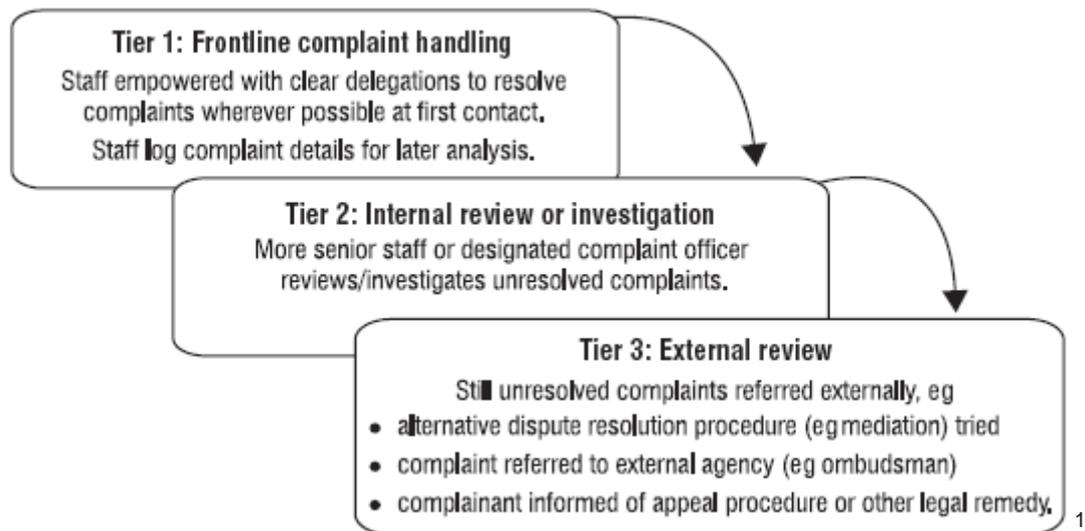
An effective complaints handling system is an essential part of providing quality service. It is a measure of "customer" satisfaction. It provides positive feedback about aspects of the service that work well, and is a useful source of information for improvement.

An effective complaints system will benefit the council in four important ways:

- creating a second chance to provide service and satisfaction to dissatisfied members of the public
- identifying areas that need improvement
- providing opportunities to strengthen public support for the council, and
- assisting in planning and allocation of resources.

Experience from successful complaint handling agencies suggests that a tiered or staged approach to complaint handling is the most effective.

The model looks like this:



The system should aim to resolve the majority of complaints at the first-tier, the frontline.

For this model to be effective, a complaints system will need to have:

- an easily understood procedure for the community to provide feedback to the council:
  - feedback may take the form of complaints, suggestions, enquiries, recommendations or requests for action
- clear delegations to staff that define their responsibility for dealing with complaints and their ability to remedy problems:
  - delegations should detail the scope of staff decision making ability and limits on remedies they can authorise
- staff who are skilled, motivated and empowered to be sensitive to and welcome complaints and feedback
- training for staff about the system and in the skills of listening, problem solving, and conflict resolution
- procedures for conciliating and investigating complaints
- performance standards for complaint handling such as target turn around times and progress reports to complainants
- control systems to make sure complaints are properly dealt with and performance standards are met, and

<sup>1</sup> NSW Ombudsman, Effective Complaint Handling, *Complaint Handler's Tool Kit*, 2004, 7

- a manual, forms or a database for capturing complaints and feedback data to enable problem identification and trend analysis for use in program improvement planning.

An effective complaint handling system will then pass two principal tests:

- it will help resolve complainant dissatisfaction about the service they receive or believe they should receive, and
- the data will assist the council to identify problems and change procedures to prevent similar dissatisfaction and complaints in the future.

### **3. ESSENTIAL FEATURES OF A COMPLAINT SYSTEM**

#### **A definition of a complaint**

A complaints system based on a narrow definition will merely be a way of dealing with serious grievances about the council. If it is to be a means of gaining insight into levels of satisfaction with services so that they can be improved, a broad definition is needed, such as:

*An expression of dissatisfaction with the council's decisions, policies, procedures, charges, employees, agents or the quality of the services it provides.*

On its own, a request for a council service or the exercise by a council of its regulatory functions is not a complaint about a council. Accordingly a council's definition of what constitutes a complaint should not be so broad as to include such requests.

Each council will differ as to what it records, and in what detail. It can be helpful to define what will not be registered as a complaint, eg:

- a request for council services (unless it is a second request, where there was no response to the first)
- a request for documents, information or explanation of policies or procedures
- a request for the council to exercise a regulatory function (unless it is a second request, where there was no response to the first)
- the lodging of an appeal or objection in accordance with a statutory process, standard procedure or policy (unless this is recorded as a complaint about the council's decision making).
- a submission relating to the exercise of a regulatory function (eg an objection to a development application or a submission on a policy).

It may also be useful to develop procedures for dealing with anonymous complaints. The NSW Ombudsman for example, generally only acts on anonymous complaints where the matter is relatively serious and there is sufficient information in the complaint to enable an investigation to be conducted. Similarly, a policy on how to deal with complainants who act unreasonably or internal staff grievances may be needed. The issue of managing unreasonable conduct in complainants is discussed later in this practice note.

## **A user-friendly procedure for lodging complaints**

A complaint system must be both visible and easily accessed by the public.

People basically need to be told they have a right to make a complaint and how to do it. Information about the council's complaint handling system should be included in any access policy or customer service or guarantee of service statement.

Brochures, signs, advertised hotlines, online complaints logging systems and toll free numbers can assist in increasing the flow of information from the community. It is important to make clear to the public who they should approach if they wish to complain in person, and to whom and where they should write if they wish to be more formal. It is very helpful to give telephone numbers, names and expected response times. If feedback or complaint forms are used, they should capture essential information about the problem and what the person expects to be done to remedy the situation.

It is important to consider the wording of forms. A form entitled 'complaint form' may be less enticing than something entitled 'tell us what you think' or 'your opinion counts'. Consideration should be given to publishing such forms and information in languages other than English if relevant to the community profile.

Assistance should be provided to help people to formulate and lodge complaints where necessary. If complainants are unable to write a complaint,

they should be able to lodge it by telephone or face to face. Staff should be trained in identifying and accepting oral complaints.

Sophisticated complaint systems allow people to lodge complaints in many ways. There must, however, be good systems in place to capture and coordinate the complaints and make sure they are all responded to.

## **An easy to understand process**

Good complaint handling systems provide at least three tiers of review. This should be clear to all users of the system, both complainants and complaint handlers.

### **First-tier**

Registration and attempted resolution by frontline staff or referral to an appropriate person or agency to deal with (eg code of conduct issues, protected disclosures, allegations of corrupt conduct).

### **Second-tier**

If a complainant is still dissatisfied, his or her complaint is reviewed or investigated by an identified complaints officer or simply by someone who is more senior, and the results of the review should be reported to the complainant.

If the complainant remains dissatisfied, further consideration should be given to options that may be available to achieve a settlement. This may include conciliation, mediation, or further direct negotiations over remedying the grievance.

### **Third-tier**

If the complaint cannot be resolved within the council, the complainant is referred to an outside agency such as the NSW Ombudsman, the Department of Local Government or to some alternative dispute resolution procedure or, as a last resort, any legal remedy. (It should be noted that where, on the

council's assessment, the complaint concerns or may concern corrupt conduct, it should be reported to ICAC at the first-tier stage as outlined above).

## **Recording complaints**

If complaint information is to be used to identify defects in service provision and to identify where the expectations of the community are not consistent with the standard of service being provided, it is important that complaints be recorded.

Some councils use complaint forms to make it easy for people to lodge feedback. However, to enable proper tracking and analysis, councils will usually need separate forms or data entry screens to log key elements of this information plus the oral complaints made. Careful planning will make the process easier for staff. Forms need to be user-friendly, both for the public and for the staff. It is important to regularly survey staff and complainants to determine whether the complaint/feedback forms work, and make appropriate changes where necessary. Forms with check boxes work best when staff are under time pressure, or when they are recording very common complaints.

Management should also be asked for their input on what information will be useful in planning and systems improvement.

## **Commitment and clear lines of authority**

Successful complaint systems are not just built on good policies and procedures. They must also be imbued with positive attitudes to welcoming feedback and solving people's problems. There needs to be a commitment to efficient and fair resolution of complaints by people at all levels in the council, starting with the general manager.

### **Referral procedures should be known to all frontline staff**

It is imperative that the system clearly defines who is responsible for dealing with complaints at each tier. The responsibility to deal with first-tier complaints

may fall to all staff, or perhaps a special officer in the council, or a special officer in each section or division. Wherever the responsibility lies, each person must be clear about what their role and duty is in dealing with a complaint. All staff must know who to refer complaints to if they cannot handle them themselves.

Usually specialist complaint handling staff such as the public officer, an internal ombudsman or more senior staff will deal with second-tier complaints. Many councils require complaints to be referred to the relevant director or manager for resolution before they are referred to the internal ombudsman or public officer. If the complainant remains dissatisfied, the matter will then be referred to the internal ombudsman or public officer. If the complainant still remains dissatisfied after a second-tier review then the matter can be referred to the appropriate external agency.

## **Staff training and empowerment**

All staff should receive training in a council's complaint handling policy so that they can recognise a complaint and understand their role and responsibilities. Frontline staff and second-tier complaint handlers who are responsible for trying to resolve grievances should also be given training in community contact, communication skills and complaint handling. An understanding of alternative dispute resolution approaches is also helpful. Regular refresher training is also recommended.

Management should assign specific accountabilities to staff, using job statements and mission statements. Management must determine the particular skills and aptitudes necessary for frontline staff and use selection and training procedures that are appropriate to recruit and retain the most suitable staff. Not everyone makes a good complaint handler. It can also be stressful work where burn out is a common problem that needs to be proactively managed.

## **Staff must have clear delegations to resolve complaints**

Staff must be authorised and encouraged to deal with complaints in appropriate ways. Clear delegations must be issued that take into account the sorts of complaints and problems staff may be called upon to deal with. Supervision and feedback should be provided as to how well they are meeting outcome goals. Frontline staff who are positively supported by management are more likely to treat the public in a positive, helpful manner.

Maintaining positive morale is critical. Recognition is a great motivator and morale booster. Recognition can be achieved in many ways, such as personal notes from supervisors, “customer service” awards, presentations and other public pats on the back. Staff also respond well if given a sense of challenge.

The issue of staff training and support for dealing with unreasonable conduct by complainants is discussed later in this practice note.

## **Remedies**

### **Remedies should be appropriate and reasonable**

As well as setting out who is responsible for dealing with complaints, the council will also need to consider empowering and authorising staff to take remedial action. A guiding principle is that where complaints are found to be justified, where practicable, complainants should be put back in the position that they would have been in if things had not gone wrong. This may mean providing the desired service or changing a decision. In other cases, this will not be possible, so some alternative form of redress may be required, such as compensation. In such cases, the complainant’s input will always be useful. Remedies should be consistent and fair for both the council and complainants. Further information on remedies can be found in Chapter 5 of *The Complaint Handler’s Tool Kit, Options for Redress*, NSW Ombudsman, June 2004.

## **Performance standards**

### **Time taken to resolve problems**

#### ***Complaints must be dealt with quickly to ensure satisfaction***

The more promptly a grievance can be resolved, the more likely it is that the complainant will be satisfied and think highly of the council. Complainants expect their complaints to be resolved immediately by the first person they talk to. If that is not possible, then they generally expect a response to a telephone complaint within five days and to a written complaint within three weeks. Dissatisfaction rises sharply if a response takes longer.

It is therefore extremely important to give realistic timeframes for enquiries and responses and to follow up with progress reports if there are any delays. Promises must be realistic and always followed through. People would rather be told a realistic time frame within which their complaint will be dealt with, than be given a promise which may not be fulfilled.

To encourage staff to resolve problems quickly, time limits should be set for each step in the complaint handling procedure, (eg initial acknowledgments by telephone or letter to the complainant; the return of internal requests for information and final response to the complainant). If the complaint requires some form of investigation, performance standards should indicate that the complainant will be kept informed at regular intervals. Complainants need to be assured that even if a problem cannot be immediately resolved, the council is taking appropriate action. Complainants will appreciate ongoing feedback about progress.

The reasons why information should be given to complainants about the progress of an investigation or a complaint include:

- to meet the legitimate expectations of those involved
- to respect the rights and interests of those involved
- to better manage complainants.

A useful resource for councils on reporting on the progress and the results of an investigation is the NSW Ombudsman's publication *Reporting on Progress and Results of Investigations*.

### **Quality of responses**

When complainants do get a response, it must be comprehensive and deal with all the issues articulated in the complaint. Otherwise, second complaints are more likely. The response must be accurate because an inaccurate response undermines the credibility of the council.

### **Alternative remedies**

The complaint system should cater for alternative remedies. Complainants should be told about alternative remedies, especially if the council is unable to resolve the complaint. This may involve telling them about any rights of appeal or their right to make a complaint to an external agency such as the NSW Ombudsman, ICAC or the Department of Local Government.

### **Policy and procedures**

Agreed basic complaint handling policies and procedures that are easy to understand and explain will assist staff in resolving, conciliating and investigating complaints from the simple to the complex. They should always be written down.

#### **Policy**

A model complaint handling policy should address the following:

- reasons for the policy, (eg benefits to the public and staff)
- the aims and objectives of the system
- definition of a complaint
- who is responsible for taking, recording, resolving, and analysing complaints
- how complaints may be lodged
- outline the three-tier structure for handling complaints

- guiding principles, eg
  - “customer” focus – meeting the needs of the community is our core business
  - complaints are an opportunity, not a nuisance
  - complainants will be helped and supported to make complaints
  - redress will be provided for justified complaints
- the resources required
- confidentiality of complaint information and safeguards against victimisation/retribution
- strategies to deal with unreasonable complainant conduct
- reporting obligations.

## **Procedures**

Procedures that should be included in a complaint handling policy should include:

- how feedback from the community will be sought, (eg fold up, self addressed feedback forms)
- what complaints are accepted: oral, written, anonymous
- who is responsible for taking the complaint, and at what point the complaint is referred on
- how complaints and outcomes will be recorded
- timeframes for resolution and other performance standards
  - guidance on what happens if these are not met (you may need different turnaround times and priorities for urgent and complex complaints)
- acceptable forms of redress including delegation levels
- review mechanisms if complainant is not satisfied
- what complaint analysis is to be done and how it is to be reported.

## **4. FIRST-TIER: FRONTLINE COMPLAINT HANDLING**

### **Some guidelines for what staff should do**

Staff who receive complaints directly should:

- give their names, greet the person courteously, and ask in a positive manner how they can help
- listen to what the person has to say:
  - everyone appreciates being listened to and seriously aggrieved complainants may have an emotional need to vent their anger over what has happened, so give them time to tell their story
- arrange for sign/language interpreters or advocates if required
- use good listening skills, (eg use encouragers like nodding and saying “I see”; maintaining eye contact, leaning forward if sitting down, adopting an open body posture, looking interested)
- seek clarification of any points that are not clear in a non-judgemental way; use open-ended questions to do this, starting with how? when? where? who? why?
- try to meet any reasonable requests that would resolve the matter
- make it clear the complaint has been understood by summarising the main points made and asking whether that’s correct
- ask, “What do you want to happen?” or “What do you want to be done?”
- provide any relevant information that will assist complainants to better understand the decision or action that they are aggrieved about
- show empathy:
  - remember whether the complaint is justified or not, the person’s sense of grievance is real and the complaint handler’s job is to deal with that grievance successfully, not just dismiss it out of hand
- treat complainants respectfully, pleasantly and professionally
- decide the appropriate course to adopt and if possible, gain the agreement of the complainant to this action

- take this action and inform the complainant
- take responsibility for solving the problem on the spot if possible
- offer solutions which can be delivered
- handle complaints quickly, within established timeframes, and
- log the complaint and action taken for later trend analysis.

## **Ways to increase the likelihood of success**

### **Give reasons**

If a complaint is generated by a misunderstanding, explain carefully why the action complained about was taken, having regard to the relevant policies, procedures and legislation of the council. Often it is useful to provide the complainant with a copy of a particular policy.

### **Where appropriate, apologise**

If errors have occurred and an apology is warranted, give it there and then in a sincere manner. If an apology that accepts responsibility is not warranted, the act of showing sympathy can be effective in appeasing an aggrieved person. In those cases, express regret for what has occurred such as “I am sorry that this situation has left you feeling dissatisfied with us.” An apology is a sign of confidence.

Useful information on how to deliver an effective apology can be found in the NSW Ombudsman’s *Fact Sheet No. 5 - Apologies by Councils and Apologies, a Practical Guideline*. See also section 9 of this practice note for further guidance on apologies.

### **Be positive**

Be positive and focus on solving the problem rather than blaming or finding fault.

## **Defuse anger**

If the complainant is angry, the anger must be defused before the problem can be dealt with. Courtesy, using good listening skills and showing empathy are extremely important when dealing with high levels of emotion. Sit down with them wherever possible. Maintain eye contact. A good tactic in situations where you have not had the chance to investigate is to agree with any statements they make that do not necessarily apportion blame or responsibility. It is difficult to remain angry with a person who agrees with you. Use statements starting with "I agree" or "You are right..." Statements of fact can usually be agreed with, as well as broad uncontroversial principles and the person's right to hold their own opinions. Don't debate the facts or ask questions until the person is settled.

## **Take action**

Take some action to fix the problem presented. This may involve providing the service not delivered, undertaking to review the decision or action complained about, undertaking to make sure outstanding action is taken in a defined time period, (and doing so, even if the action is someone else's responsibility), or providing some other remedy or compensation for actions that cannot be undone.

## **Referral**

If the complainant has to be referred to another staff member, this should be an appropriate person who should be fully briefed before referral. Being transferred from person to person is perhaps the most frustrating aspect of complaining. Satisfaction decreases with every transfer even if the problem is resolved in the end. People will generally tolerate one transfer if they do not have to explain everything again.

For a more detailed consideration of options for effectively dealing with complaints found to be justified see Chapter 5 of *The Complaint Handler's Tool Kit* entitled *Options for Redress*, NSW Ombudsman, June 2004.

## **What to do when the complainant is still not satisfied**

It will not always be possible to satisfy complainants, or agree to all the terms of settlement that they want. Common sense will dictate what is reasonable or achievable. Further action may not necessarily be needed as long as staff have properly listened to them, understood them, respected them, been fair in any decision and provided an appropriate explanation and/or apology.

The complainant should be told in clear terms what can and cannot be done.

However, if the complainant remains dissatisfied they may need to be referred to the second-tier of the complaint handling system. In such circumstances, the complainant should be told about the availability of council's internal review process.

## **When frontline complaint handling staff should automatically refer a complaint on**

When the complaint is about a staff member's own conduct and he or she is not confident about dealing with it fairly, or if the complainant requests it, the problem should be automatically referred on. Unless the whole matter can be resolved by some kind of conciliation on the spot, staying involved will almost certainly make it harder to resolve the complaint and may encourage escalation of the dispute. In such circumstances, the staff member should politely suggest it would be better for the complainant if someone else reviewed the matter.

Automatically refer the problem on when:

- the problem is clearly outside a staff member's delegation or area of expertise
- there are established internal or external referral procedures, (eg for protected disclosures or code of conduct complaints, ICAC notifications or referral of pecuniary interest matters to the Department of Local Government). These are discussed in more detail below.

- a staff member is alleged to have committed a criminal offence, acted corruptly, or engaged in other serious or controversial conduct, and/or
- significant disciplinary action is a possible outcome.

Whenever a problem is to be referred on, the complainant should be told exactly what they need to do, or what staff will do to refer the matter, and what action the complainant can expect.

## **5. SECOND-TIER: INTERNAL REVIEW OR INVESTIGATION**

Most complaints should be capable of resolution by frontline staff. In some matters however, complainants will not be satisfied unless a more senior officer has dealt with their problem. As stated previously, some types of complaints should be automatically referred on.

### **Review by a more senior officer or special complaints officer**

Different councils have different arrangements in place for second-tier complaint handling. What arrangements a council puts in place will often be dictated by such considerations as the size of the council, the resources available to it, the volume of complaints or any special need or challenge faced by the council. Some councils have a specialist complaint handling officer such as an internal ombudsman or internal auditor to deal with internal reviews. In other councils the public officer fulfils this role.

The easiest second-tier review is simply for a more senior or specialist officer to reconsider the original decision or action and take corrective action where appropriate. Generally a more senior officer will have a wider delegation to overturn previous decisions and apply remedies. The basic guidelines for frontline complaint handling apply equally to these cases.

### **Informal complaint resolution by a specialist complaint handler or more senior officer**

#### **Interviews are a cost-effective complaint handling method**

Semi-formal interviews where a specialist complaint handler or more senior officer has a face-to-face meeting with the complainant are often an effective means of resolving complaints about staff, especially relating to rudeness or other improper conduct. This officer can hear the complainant out, offer (if appropriate) a formal apology on the part of the council, and undertake to take corrective action. The aim is principally to prevent the complaint from

escalating into a larger and more time-consuming dispute. It is best to use experienced people for this task, and preferably people with the necessary skills, whether because of temperament or training.

There are some basic indicators where it would not be appropriate to attempt a resolution interview, including:

- the facts are likely to be in dispute and investigation may be needed because of the complexity of the matter
- disciplinary or criminal action is a strong possible outcome
- the outcome the complainant is demanding cannot be provided by this method
- questions of precedent for the council may be involved.

Timeframes can also be relevant to success. Generally a speedy approach to the complainant following lodgment of a complaint will be better received and the complainant will be more open to resolution. Sometimes, however, passage of time can play an equally important role in resolving a complaint. It may allow tempers to cool, advice to be obtained and alternatives to be investigated and considered.

### **Investigation by a specialist complaint handler or more senior officer**

The majority of complaints can be dealt with speedily and simply. Where a more substantial inquiry is required, the following guidance may be helpful for investigating officers. (For a more detailed consideration of investigation procedures and good investigative practice, see Chapter 3 of *The Complaint Handler's Tool Kit* entitled *Investigating Complaints*, NSW Ombudsman, June 2004.)

- check if the complainant has previously complained
- contact the complainant to:
  - clarify the complaint
  - clarify the outcome sought

- check whether the complainant needs support of any kind, whether they have poor sight, hearing, or a language difficulty, and what they need to understand the discussion properly
  - explain the investigation procedure
- investigators need to brief themselves on the relevant legal and administrative background of the complaint
- assess whether the complaints procedure is the most appropriate way of handling this complaint. If it is not, discuss some alternatives (such as appealing to tribunals, legal action or Police involvement) with the complainant
- consider whether the complaint could be resolved without further investigation
- if the complaint is about proposed action by the council, consider whether the action should be deferred while the complaint is investigated
- obtain all relevant documents:
  - these may include files, log books and time sheets
  - get copies of all documents needed, but the originals should be sighted
- establish the relevant sequence of events from the files and also the names of officers or staff members most directly involved in the complaint
- where the document trail alone does not enable resolution, identify the people with relevant knowledge that you need to speak to:
  - prepare a line of questioning for each person to be interviewed
  - use open, not leading, questions
  - don't express opinions either in words or by body language
  - ask single not multiple questions
- arrange the order of interviews so that witnesses are interviewed first, and the officers most directly involved in the complaint are interviewed last
- inform those to be interviewed that they can be accompanied by a person of their choice, (eg a friend or union representative, provided

- consider whether the investigator needs a witness for a particularly difficult interview
- conduct interviews in an informal and relaxed manner wherever possible:
  - questions should be persisted with if necessary, even if this means asking the same question twice
  - notes should be made of each answer
- try to separate hearsay evidence from fact by asking interviewees how they know a particular fact
- at the end of the interview, summarise the main points covered by the interviewee and ask if he or she has anything to add
- if appropriate, a formal record of the interview should be made from the written notes as soon as possible after the interview while memory is fresh:
  - this should never be left longer than the next day
  - the formal record of interview should be signed by all parties
- identify any facts or conflicts of evidence that need to be checked and validated
- deal with conflicts of evidence by seeking corroborative evidence
- a report should be drafted, setting out the evidence obtained and conclusions
  - if adverse comment is intended about any person, provide an opportunity for the person to comment on the draft report before finalising it and making your recommendation
- suggest a remedy for the complainant wherever possible.

## **6. THIRD-TIER: EXTERNAL REVIEW**

Internal review, conciliation and investigation of complaints do not always result in resolution. When the complaint is serious or the complainant's demands will continue to impact on the time and resources of staff, recourse to external sources of review is appropriate. This can take a number of forms.

### **Alternative dispute resolution**

Sometimes a neutral third party can help settle an escalating dispute. A number of both private and public sector bodies use the services of professional mediators in such situations. The mediator, through a formal face-to-face process of discussion, helps the parties to clarify issues and reach a solution agreeable to both sides.

For more information about mediation, see Chapter 4 of *The Complaint Handler's Tool Kit, Public Sector Mediation Guidelines*, NSW Ombudsman, June 2004.

### **Referral to external investigation agency**

There are a number of accountability/complaint bodies established by the NSW Government that receive and investigate complaints about the conduct of councils.

The Department of Local Government has a statutory role in relation to the investigation of pecuniary interest matters, political donations disclosure matters, councillor misbehaviour and protected disclosures relating to serious and substantial waste. Referral of such matters to the department is discussed later in this practice note. The department also monitors the performance of councils and, in line with this role, focuses on complaints that indicate a serious breakdown in council operations or serious flaws in key council processes.

The NSW Ombudsman has jurisdiction to investigate complaints alleging maladministration by councils, councillors and council staff.

ICAC has jurisdiction to investigate complaints alleging corrupt conduct by councils, councillors and council staff.

Depending on the nature of their complaint, dissatisfied complainants can be referred to these agencies or a joint approach made seeking an external review.

## **Councils' statutory obligations to refer complaints to external agencies**

Councils have a statutory obligation to refer complaints about certain matters to external agencies.

### **Duty to refer corrupt conduct to ICAC**

Under section 11 of the *Independent Commission Against Corruption Act* 1988, a general manager of a council has a duty to report to ICAC any matter he or she suspects on reasonable grounds concerns or may concern corrupt conduct.

### **Obligation to refer pecuniary interest matters to the Department of Local Government**

The Department of Local Government is empowered to investigate breaches of the pecuniary interest provisions of the *Local Government Act*. The Act prescribes how pecuniary interest matters may be referred to the department.

The *Pecuniary Interest Guidelines*, issued by the Department of Local Government in June 2006, make it clear that the general manager has an obligation to refer complaints alleging breaches of the pecuniary interest provisions of the Act to the department. The guidelines state that where a general manager becomes aware of an apparent or possible breach of the pecuniary interest provisions by a councillor, committee member, adviser or designated person, he or she should review all the relevant information. If, having done so, they consider the information shows evidence consistent with

a breach, he or she should notify the department and forward relevant material and a short statement of relevant circumstances.

The Model Code of Conduct for Local Councils in NSW also states that complaints regarding pecuniary interest matters should be reported to the Director General of the Department of Local Government and should not be dealt with by the council's conduct review committee/reviewer.

### **Obligation to refer political donations matters to the Department of Local Government**

Under section 328B of the *Local Government Act*, where a general manager reasonably suspects that a councillor has not complied with the provisions of the code of conduct relating to the disclosure of political donations or the manner of dealing with any perceived conflict of interest in relation to political donations, the general manager is to refer the matter to the Director-General of the Department of Local Government.

The general manager should refer such matters to the Department of Local Government at first instance and they should not be dealt with by the council's conduct review committee/reviewer.

### **Other appeal mechanisms**

Where rights of appeal to outside tribunals or other legal remedies exist, dissatisfied complainants should be advised of these avenues of redress after all others have been exhausted.

## **7. COUNCILS' STATUTORY COMPLAINT HANDLING OBLIGATIONS**

The way in which councils deal with certain types of complaints is prescribed by legislation. Council's statutory obligations for dealing with these complaints are discussed below.

### **Complaints under the code of conduct**

Councils are obliged to adopt a code of conduct applicable to councillors, staff and delegates of council that is consistent with the Model Code of Conduct prescribed by the Regulation. The provisions of a council's adopted code of conduct will have no effect if they are inconsistent with those of the Model Code. However, the provisions of a council's adopted code will not be inconsistent with the Model Code if they simply impose a more onerous obligation than the Model Code.

Members of the public as well as other councillors, staff or delegates of council may make complaints under the code of conduct. The Model Code prescribes certain procedures for dealing with such complaints. Complaints relating to alleged breaches of the code of conduct by a councillor, member of staff or delegate of council must be dealt with in accordance with the procedures prescribed under the Model Code rather than under the council's normal complaint handling procedures.

Care should be taken that council policies clearly direct staff as to the manner in which complaints about staff should be dealt with and when the code of conduct provisions should be activated.

If a complaint has been made to the council that alleges conduct that, if proven, would represent a breach of the code of conduct, it should be dealt with under the code regardless of whether or not the complainant has requested that the complaint be dealt with under the code of conduct.

Councils need to ensure that their complaint handling policies accommodate and are consistent with the requirements of the Model Code and provide for

the referral of complaints relating to alleged breaches of the code to be dealt with in accordance with the procedures prescribed under the Model Code.

The revised Model Code of Conduct, which took effect on 27 June 2008, provides the general manager (or the Mayor in the case of a complaint about the general manager) with a wider range of options for managing complaints made under the code of conduct. The general manager or Mayor must determine to take one of the following courses of action in relation to the complaint:

- take no further action and give the complainant reason/s in writing
- resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing
- discontinue the assessment in circumstances where it becomes evident that the matter should be referred to another body or person and refer the matter to that body or person as well as advising the complainant in writing, or
- refer the matter to the conduct review committee/reviewer.

The revised Model Code prescribes complaint assessment criteria to assist the general manager or Mayor in determining whether to refer a matter to the conduct review committee/reviewer. In assessing the complaint, the general manager and Mayor are to have regard to the following grounds:

- whether there is any prima facie evidence of a breach of the code of conduct
- whether the subject matter of the complaint relates to conduct that is associated with the carrying out of functions of civic office or duties as general manager
- whether the complaint is trivial, frivolous, vexatious or not made in good faith
- whether the conduct the subject of the complaint could reasonably constitute a breach of the code of conduct

- whether the complaint raises issues that require investigation by another person or body, such as referring a matter to the Department of Local Government, the NSW Ombudsman, ICAC or the NSW Police
- whether there is an alternative and satisfactory means of redress
- how much time has elapsed since the events the subject of the complaint took place
- how serious the complaint is and the significance it has for council
- whether the complaint is one of a series indicating a pattern of conduct.

Where a general manager, (or the Mayor, in the case of a complaint about the general manager), is satisfied that a complaint relates to an issue or conduct that, on its face, even if proven would not constitute a breach of the code of conduct, the complaint should be dealt with in accordance with the council's normal complaint handling processes. In the case of such complaints made to the Mayor, where they concern operational issues, they should be referred back to the general manager for appropriate action under council's normal complaint handling processes.

All council staff, including executive staff and the general manager, should receive training in relation to their obligations and responsibilities under the code of conduct and how to deal with complaints that fall under the code of conduct.

For more information on complaint handling processes under the Model Code of Conduct see the *Guidelines for the Model Code of Conduct for Local Councils in NSW*, Department of Local Government, October 2008.

## **Protected Disclosures**

Councillors and council staff are 'public officials' for the purposes of the *Protected Disclosures Act 1994*. That Act, amongst other things, allows public officials to make protected disclosures to the general manager of a council or to any other person authorised to accept protected disclosures under council's internal reporting policy. To be protected under that Act, the disclosure must relate to certain types of conduct, namely corrupt conduct, maladministration

or serious and substantial waste of public money by the council or any of its officers and must be made in accordance with the established procedures for dealing with such disclosures.

The *Protected Disclosures Act* imposes obligations on councils and other public authorities in dealing with disclosures made under the Act. The NSW Ombudsman has issued guidelines to assist public authorities to meet these obligations. The guidelines include model internal reporting policies including one specifically designed for councils. For more information see the NSW Ombudsman's *Protected Disclosures Guidelines* (6<sup>th</sup> edition), 2009.

Councils should adopt a separate internal reporting policy based on the Ombudsman's model internal reporting policy for councils to assist them to meet their obligations under the *Protected Disclosures Act*. They should reinforce this by providing training to all staff on their rights and obligations under the policy and Act.

## **Complaints about privacy breaches**

Councils are public sector agencies for the purposes of the *Privacy and Personal Information Protection Act 1998 (PPIPA)*. Under that Act, a person may seek an internal review by a council of the following conduct:

- a breach of any information protection principles applying to the council
- a breach of the *Privacy Code of Practice for Local Government*
- disclosure of personal information held on a public register in a manner inconsistent with that permitted under the *Privacy Code of Practice for Local Government*
- a breach of a health privacy principle under the *Health Records and Information Privacy Act 2002 (HRIPA)* that applies to the council
- a breach of a health privacy code of practice that applies to the council.

The Act imposes certain obligations on councils on how they conduct internal reviews. Councils are also obliged to notify the Privacy Commissioner of internal reviews and report their findings. Councils are also required to report certain information about internal reviews in their annual reports.

The Act also requires councils to develop privacy plans of management. These are required to include procedures for dealing with internal reviews. The Department of Local Government has issued a Model Privacy Management Plan for councils. This prescribes procedures for conducting internal reviews. However councils may develop their own privacy management plans with different procedures. For more information see circulars 00/41 – *Privacy and Personal Information Protection Act 1998 Model Privacy Management Plan* issued by the Department of Local Government in June 2000 and 00-44 - *Privacy and Personal Information Protection Act 1998 Privacy Code of Practice for Local Government* issued in July 2000.

## **Competitive neutrality complaints**

Competitive neutrality is one of the principles of national competition policy. Competitive neutrality is based on the concept of the 'level playing field' for all competitors in a market, be they public or private sector competitors. Under the principles of national competition policy, all levels of government must establish an effective system to deal with complaints relating to competitive neutrality in respect of their business.

The framework for the application of national competition policy to councils is contained in the State Government's *Policy Statement on the Application of National Competition Policy to Local Government*, issued in August 1996. Under the *Policy Statement*, councils are required to apply a number of different elements of competitive neutrality to their business activities depending on the size of the business. Even where a council is not required to apply a particular element, it is expected to abide by the principle of competitive neutrality in the conduct of the business, namely, "*where councils compete in the market place they should do so on a basis that does not utilise their public position to gain an unfair advantage over a private sector competitor*" (*Policy Statement*, paragraph 4.30).

The *Policy Statement* sets out the framework that applies to competitive neutrality complaints concerning council businesses. Under the *Policy Statement*, councils are responsible for resolving competitive neutrality

complaints at first instance, with review by the Department of Local Government where warranted.

The Department of Local Government's *Guidelines on the Management of Competitive Neutrality Complaints* issued in October 1997 explains how councils should deal with competitive neutrality complaints. A competitive neutrality complaint is:

- a complaint that a council has not met its obligations under the *Policy Statement* or *Pricing and Costing for Council Businesses – A Guide to Competitive Neutrality* issued by the Department of Local Government in July 1997. This includes a concern that a council has not established an effective complaints handling mechanism
- a complaint that a council has not abided by the spirit of competitive neutrality in the conduct of a business activity.

A competitive neutrality complaint is not:

- a complaint regarding the level of service provided by a business activity
- a complaint regarding the cost of the service, unless it is that council has not costed its service to take competitive neutrality into account
- a complaint regarding the trade practices laws and their application to councils.

Complaints that do not concern competitive neutrality should be dealt with under the council's normal complaint handling processes.

## **8. WHAT CAN BE LEARNED FROM COMPLAINTS**

### **Systematic logging of complaints data enables analysis of the cause of problems**

The tendency is for most councils to deal with complaints on an individual basis — grievances are made and addressed in isolation of each other. Councils seldom calculate the cost to the council of repetitive complaints and the failure to fix underlying problems.

Complaints data can be recognised as a useful form of customer satisfaction research. If information on complaints is captured, classified and analysed, systemic and recurring problems will be more easily identified and rectified.

Systems for aggregating complaints data and performing trend analysis are central to this strategy.

As well as allowing the council to take action to deal with individual complaints, complaints data, if captured properly, can help to identify areas that need corrective action. Alternatively, it may show where the community's expectations of service levels exceed what the council can afford to deliver, or what a particular program is designed to provide. Such data may indicate a need for better publicity about, or explanations of, service standards and priorities.

To effectively use complaints data for feedback, it is vital to log all complaints in a systematic way so that information can be retrieved for later reporting and analysis. If a council has a "customer requests" system as distinct from a stand-alone complaints management system, it should ensure that it has a distinct "complaints" category to enable the logging of complaints. Whether a manual or computer system is used to log complaints data, the system needs to use simple, but meaningful, classifications and codes to categorise complaints. Apart from the usual identification information used to monitor the

progress of individual complaints, the critical variables that usually need to be captured are:

- nature of complaint
- mode of complaint, (eg oral or written)
- conduct, services or practices identified in complaint, (using keywords to help with the analysis of data)
- location — division, section, responsible officer
- action taken and response time (including outcome provided to complainant and underlying causes and rectifications).

Just how much information a council receives from complainants depends on how difficult, or how easy, it is for them to complain, and any prior experience they may have with how well a council responded to their feedback.

A complaint handling system is only one way of obtaining feedback. Community satisfaction can be measured via other means, (eg surveys, suggestion boxes, or focus groups). Most councils will use more than one method, checking the results of each to develop a fuller picture.

## **Questions to ask when analysing complaints data**

The best answers to be derived from an analysis of complaints data are first, where the council went wrong, and second, how the council can do better in the future.

### **Where the council went wrong**

Ask these questions (and any that logically follow from the answers):

- was this kind of problem or complaint foreseen
- was there a system in place to deal with such problems
- was the system operating as it should have? If not, why did the system fail?

## **How the council can do better in the future**

Complaints can tell councils what went wrong and how they can improve. Ask these questions:

- could this kind of problem or complaint recur
- how likely is that
- what would prevent that
- would the cure be worse than the problem, (ie would the cost and complication of guarding against another mistake end up being counterproductive?)

## 9. APOLOGIES

When things go wrong, many complainants demand no more than to be listened to, understood, respected and, where appropriate, provided with an explanation and apology. A prompt and sincere apology for any misunderstanding can be effective. It often will avoid the escalation of a dispute and the significant cost in time and resources that can be involved.

The *Civil Liability Act 2002* provides that an apology does not constitute an admission of liability and will not be relevant to the determination of fault or liability, in connection with civil liability of any kind. Furthermore, evidence of an apology is not admissible in a court hearing as evidence of fault or liability. The Act defines an apology as “*an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter whether or not the apology admits or implies an admission of fault in connection with the matter*”.

Certain categories of civil liability are excluded by section 3B of the Act. These include such things as:

- an intentional violent act done with intent to cause injury or death (including sexual assault or misconduct)
- the contraction of a dust disease, or for a personal injury allegedly caused by smoking or the use of tobacco products
- economic loss, non-economic loss or psychological/psychiatric injury to an injured person and liability for the compensation of relatives of a deceased person that arises from a motor accident (or transport accident as defined in the *Transport Administration Act 1998*) to which the *Motor Accidents Act 1988* applies, or from a motor accident or public transport accident to which the *Motor Accidents Compensation Act 1999* applies
- damages payable by an employer for the injury of a worker or the death of a worker resulting from or caused by an injury, and compensation under various workers compensation legislation, the *Victims Support*

Councils should seek legal advice and speak to their insurers before making an apology in relation to any of the matters listed in section 3B as an apology in relation to these matters may act as an admission of liability.

The *Defamation Act 2005* contains similar protection from liability (ss20 and 38)

The NSW Ombudsman has issued a fact sheet to assist councils to make apologies (see *Council Fact Sheet No. 5 - Apologies by Councils*). The NSW Ombudsman advises that the most appropriate form and method of communication of an apology will depend on the circumstances of the particular case, the harm suffered, and what is hoped to be achieved by giving the apology, (for example restoration of reputation, acknowledgement of the wrong done, reconciliation or an assurance that a problem has been addressed or will not recur).

The NSW Ombudsman advises that in principle, the most effective apologies incorporate the following ten elements which can be grouped under the six headings — recognition, responsibility, reasons, regret, redress and release:

**Recognition:**

- *description of the wrong* — a description of the relevant problem, act or omission (the wrong) to which the apology applies
- *recognition of the wrong* — an explicit recognition that the action or inaction was incorrect, wrong, inappropriate, unreasonable, harmful, etc
- *acknowledgement of the harm* — an acknowledgement that the affected person has suffered embarrassment, hurt, pain, damage or loss

**Responsibility:**

- *acceptance of responsibility* — an acknowledgement/admission of responsibility for the wrong and harm caused.

**Reasons:**

- *explanation of the cause* — a simple, plain English explanation of the reasons for or cause of the problem, or a promise to investigate the cause (which could include a reference to any mitigating circumstances, eg, whether the act or omission was not discretionary or was unintentional)

**Regret:**

- *apology* — an expression of sincere sorrow or remorse, ie, that the action or inaction was wrong or at the very least an expression of regret
- *sincerity of communication* — a form or means of communication of an apology is very important as such matters can indicate or emphasise the level of sincerity of the apologiser

**Redress:**

- *action taken or proposed* — a statement of the action taken or specific steps proposed to address the grievance or problem, by mitigating the harm or offering restitution or compensation
- *promise not to repeat* — a promise or undertaking that the action or inaction will not be repeated

**Release:**

- *request for forgiveness* — a release from blame (an optional element)

For more information on apologies see *Council Fact Sheet No. 5 - Apologies by Councils* issued by the NSW Ombudsman; *Apologies, a Practical Guideline*, NSW Ombudsman, 2009 and Chapter 5 of *The Complaint Handler's Tool Kit, Options for redress*, NSW Ombudsman, June 2004.



## **10. MANAGING UNREASONABLE CONDUCT BY COMPLAINANTS**

All councils should be committed to providing a quality service to the community. This should include:

- treating the public in a courteous, attentive and sensitive manner
- giving information and advice clearly and with a level of complexity appropriate to the situation
- allowing members of the community a voice and listening to their views
- ensuring members of the community receive their full entitlements
- following fair procedures
- acting impartially
- making decisions based on merit
- maintaining confidentiality and privacy of personal information, and
- using resources efficiently and effectively.

It is important to appreciate that some complainants are more challenging than others. This may be because of frustration after having made prior approaches to the council without satisfaction. Some complainants may be distressed, obsessive or even aggressive for any number of reasons connected with their personal circumstances.

It is important to note that this section of the practice note is not intended to apply to complainants who are justifiably or understandably angry or upset because of an error by a council, whether real or perceived, or out of frustration with their dealings with the council. It is intended to apply to complainants who exhibit what may be termed as challenging behaviour. Examples of challenging behaviour are described later in this section of the practice note.

Unreasonable conduct by complainants, if not properly managed, has the potential to pose significant resource management and equity issues for councils. Such behaviour has the potential to force councils to divert

resources to address the demands of a small and often undeserving minority that may have been more appropriately allocated elsewhere.

The NSW Ombudsman has drawn on its extensive complaint handling experience to develop guidelines to assist public sector agencies, including councils, to manage complainants who exhibit challenging behaviour. These include the *Complaint Handler's Toolkit*, NSW Ombudsman, June 2004 and more recently, *Unreasonable Complainant Conduct – A Practice Manual*.

### **A new approach**

Recently, the NSW Ombudsman has undertaken a research project aimed at finding ways to better manage unreasonable conduct by complainants<sup>2</sup>. It involved developing specific management strategies for dealing with complainant conduct that complaint handlers find difficult and trialling them with other Australian Ombudsman offices.

Underpinning this new approach to dealing with difficult complainants is the recognition that complaint handlers are not qualified to analyse the personality of complainants or to manage their behaviour. However while complaint handlers cannot manage or change the behaviour of complainants, they can manage their response to that behaviour.

The strategies being developed by the NSW Ombudsman are designed specifically with specialist complaint handling agencies in mind. These strategies are described later in this section of the practice note. In 2007, the NSW Ombudsman released an interim practice manual for public authorities, including councils, who wish to trial these strategies<sup>3</sup>. A final practice manual is due for release in 2009 that includes refined strategies adapted to meet the needs of other public sector agencies, including councils. This is available on the NSW Ombudsman's website at [www.ombudsman.nsw.gov.au](http://www.ombudsman.nsw.gov.au).

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<sup>2</sup> See NSW Ombudsman, *Unreasonable Complainant Conduct: Interim Practice Manual*, August 2007.

<sup>3</sup> NSW Ombudsman, *Unreasonable Complainant Conduct: Interim Practice Manual*, August 2007. A new manual is due for publication in 2009. The NSW Ombudsman's Office is also able to provide training on the use of these strategies on a fee for service basis.

## Identifying unreasonable conduct by complainants

Relevant research has found that “unusually persistent complainants pursued their complaints for longer, supplied more written material, telephoned more often and for longer, intruded more frequently without an appointment and ultimately were still complaining when the case was closed”. It found that these complainants often wanted what a complaint handling system could not deliver: vindication, retribution, revenge.<sup>4</sup>

The NSW Ombudsman’s new approach to dealing with unreasonable conduct by complainants is characterised by a shift in focus away from the person to the person’s behaviour. The NSW Ombudsman’s approach suggests that complaint handlers identify difficulty by reference to a person’s observable conduct, rather than by trying to identify their mental state or possible motives. That approach is based on a number of principles, namely that:

- unreasonable complainant conduct should be managed by complaint handlers based on responding appropriately to observable conduct, not on an assessment of the psychological state or possible motives of such complainants
- there are a range of reasonable and appropriate management strategies available to complaint handlers for responding to different types of observable unreasonable conduct
- these management strategies reflect the distinction between ‘issues’ and ‘complaints about issues’ — while the complaint handler ‘owns’ the complaint, the complainant generally ‘owns’ the issue.

Focusing on observable conduct:

- allows for the fact that many people often generically labelled as ‘difficult’ complainants will exhibit different types of unreasonable conduct that warrant different management responses — this enables more focused management strategies that target particular conduct

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<sup>4</sup> Lester G, Wilson B, Griffin L, Mullen PE, Unusually Persistent Complainants, *British Journal of Psychiatry*, 2004, 184, p345

- allows for implementation by people who are not mental health professionals or social workers
- facilitates greater transparency in interactions between complaint handlers and complainants for the purpose of responding to or dealing with unreasonable conduct (indicating to a person that you believe they are acting unreasonably is likely to have a more positive result than indicating that a person is being vexatious, querulous, or even difficult), and
- facilitates the separation of behaviour from the issue in question so that the issue can be effectively addressed.

Drawing on its experience of dealing with unreasonable conduct by complainants, the NSW Ombudsman has identified an inventory of specific unreasonable behaviours. This provides an objective and transparent basis for determining whether special strategies need to be employed to manage that behaviour.

The NSW Ombudsman collectively identifies its inventory of trigger behaviours as *unreasonable complainant conduct*. It has sorted this inventory into five categories:

- unreasonable persistence
- unreasonable demands
- unreasonable lack of cooperation
- unreasonable arguments and
- unreasonable behaviours

However, the mere fact that a complainant is persistent, makes demands or may be angry will not necessarily mean that their conduct is unreasonable in most circumstances. For conduct to be unreasonable, it must go beyond the norm of situational stress that many complainants experience.

## **Examples of unreasonable complainant conduct**

Unreasonable complainant conduct can be any one or a combination of a number of the following categories of conduct.

### **Unreasonable persistence**

Examples of unreasonable persistence include:

- persisting with a complaint even though it has been comprehensively considered by the council, and even where all avenues of internal review have been exhausted
- reframing a complaint in an attempt to get it taken up again
- showing an inability to accept the final decision
- persisting in interpreting the law or policy in a way that is not in accordance with generally accepted or expert views on the issue and insisting that action be taken accordingly
- demanding a review because it is available but not arguing a case for a review
- making an issue out of anything
- getting gratification from the process of regular contact with the case officer, possibly including inventing unnecessary reasons for having such contact.

### **Unreasonable demands**

Examples of unreasonable demands include:

- insisting on outcomes that are unattainable, (eg demanding outcomes that are beyond a council's power to deliver, demanding unreasonable outcomes, wanting to turn back time, unreasonable prosecution of individuals)
- insisting on a 'moral' outcome, (eg. justice in the community interest, when really a personal interest is at stake)
- demanding an apology and/or compensation when no reasonable basis for expecting such outcomes exists

- wanting revenge, retribution
- wanting what is not possible or appropriate, (eg. copies of sensitive documents, private contact details of staff, other complainants or whistleblowers, etc).
- issuing instructions and making demands as to how a complaint should be handled
- providing supporting details that are extraordinarily detailed when such detail is not relevant to the complaint
- making unreasonable resource demands, expecting resources in excess of or out of proportion to the seriousness of issue
- wanting regular and lengthy phone contact where this is not warranted
- showing reactions or demands for action that are out of proportion to the significance of the issue
- moving the goal posts — changing the desired outcome
- shopping for a sympathetic ear in the council — demanding to talk to a supervisor or the general manager personally
- placing the complaint handler or the council on an extensive email copy list and expecting responses to numerous emails
- consistently creating complexity where there is none
- presenting as overly needy or dependent

### **Unreasonable lack of cooperation**

Examples of unreasonable lack of cooperation include:

- presenting a large quantity of information which is not organised, sorted, classified or summarised, where the complainant is clearly capable of doing this
- presenting information in dribs and drabs — refusing to present all available information at the outset
- refusing to define issues of complaint, ('the attached speaks for itself' — usually a large quantity of information) where the complainant is clearly capable of doing this
- focusing on 'principles' rather than substantive issues

- changing the complaint, raising new issues in the process of the council's consideration of it
- displaying unhelpful behaviour, (eg. withholding information, dishonesty, misquoting others, swamping council with documents).

## **Unreasonable arguments**

Examples of unreasonable argument include:

- holding irrational beliefs, (eg. seeing cause and effect links where there are clearly none)
- holding what is clearly a conspiracy theory unsupported by any evidence
- insisting that a particular solution is the only correct one in the face of valid contrary or alternative arguments
- interpreting facts in a clearly irrational/unreasonable way and insisting this interpretation is the correct one
- insisting on the overwhelming importance of an issue that is clearly trivial.

## **Unreasonable behaviours**

Examples of unreasonable behaviours include:

- displaying confronting behaviour, eg. rudeness, aggression, threats
- sending rude, confronting, threatening letters
- making threats of self harm
- making threats of harm to others
- displaying manipulative behaviour, (eg overly ingratiating, tears, veiled threats).

## **Strategies for managing unreasonable complainant conduct**

Grouping unreasonable complainant conduct into categories such as those that have been described above allows the development of a range of management strategies that are specifically tailored to deal with the conduct

within each category. Strategies will vary depending on the circumstances. However they ought to be informed by the basic principles described below for each category of unreasonable complainant conduct.

The strategies outlined below need to be adapted by councils to suit their particular circumstances. They should supplement, not replace, existing operational policies and procedures.

By adopting these strategies, councils can maintain control of their complaints processes rather than finding themselves in a position of pandering to the often unpredictable and manipulative conduct of complainants whose conduct is unreasonable. At the same time, it needs to be stressed that the context and players in each complaint are different and a good deal of insight, flexibility and imagination by the officer dealing with them must accompany the application of strategies.

It is also important that every complaint is managed as well as possible from the beginning to minimise the chances of misunderstandings and unrealistic expectations. Strategies for this might include:

- managing expectations from the outset
- adopting a firm, clear and authoritative communication style both in writing and orally
- making sure the communication style is appropriate to the specific complainant
- making sure the complainant understands the council's role
- defining the key issues and keeping the focus on them
- keeping the complainant informed of progress, and
- providing clear reasons for decisions.

For more information on strategies for managing unreasonable complainant conduct see *Unreasonable Complainant Conduct - A Practice Manual*, NSW Ombudsman, 2009.

## **Strategies for dealing with unreasonable persistence**

Strategies for dealing with unreasonable persistence are about saying 'no'.

Examples of such strategies may include:

- communicating clearly and transparently, (eg. telling complainants firmly that something is 'not going to happen')
- requiring complainants who want an internal review to provide an argument for one, (ie. to explain how the complaint handler has erred or provide new information; if they don't, their file will remain closed)
- providing one review only
- making it clear following internal review that, for better or worse, council has made its decision and advising the complainant that if they remain dissatisfied, they should seek an independent external review of that decision by raising their concerns with the appropriate external agency, (see the section above on third-tier complaint handling)
- maintaining a 'no means no' stance following internal review
- adopting, when appropriate, a firm no-further correspondence/contact stance and requiring any variation from this to be authorised at a high level
- not allowing complainants to reframe the complaint to re-enter the process, unless they raise new and important issues
- ending telephone calls that are unproductive
- asserting the council's position, (eg. 'I acknowledge that your view is different, however we see it this way', or 'I acknowledge that your view differs from ours, however, our job is to make a decision about.... and this is what we have decided').

Managing unreasonable persistence also includes:

- managing expectations from the outset, including ensuring initial expectations are realistic
- adopting a firm and authoritative communication style both in writing and verbally
- defining key issues and keeping the focus on them.

## **Strategies for dealing with unreasonable demands**

Strategies for dealing with unreasonable demands are about setting limits.

Examples of such strategies include:

- letting complainants know in advance how the council intends to deal with the complaint, (ie. having a plan and sticking to it)
- making sure the complainant understands that the council decides how the complaint should be handled
- clarifying the limitations of the council's complaint handling system
- avoiding being drawn into hypothesis, hysteria, conspiracy theories, unproductive argument and personal attacks
- restricting contact to defined times and staff members where necessary
- responding only to emails and mail addressed to the council directly/not responding to mail where the council is copied in
- ending telephone calls that are unproductive
- limiting contact to writing only
- not doing for unreasonably demanding complainants something the council would not normally do for any other complainant, just to appease them
- as a last resort, informing the complainant that the council finds his or her interaction with it is placing unreasonable demands on its staff and resources and setting defined limits for further contact.

Managing unreasonable demands also includes:

- managing expectations from the outset, including ensuring initial expectations are realistic
- adopting a firm and authoritative communication style both in writing and verbally
- defining key issues and keeping the focus on them.

## **Strategies for dealing with unreasonable lack of cooperation**

Strategies for dealing with unreasonable lack of cooperation are about setting conditions.

Examples of such strategies might include:

- requiring complainants to organise or summarise the information they have provided before you look at the complaint, (where they are clearly capable of doing this)
- requiring complainants to define what their issues are or to pursue further enquiries before you will look at the complaint
- telling complainants that you will not look at their complaint until all the information has been presented
- ending your involvement in the complaint where it is discovered that the complainant has been wilfully misleading or untruthful in a significant way and inviting them to raise their concerns with the appropriate external agency if unhappy with council's response, (see the section above on third-tier complaint handling).

Managing unreasonable lack of cooperation also includes:

- managing expectations from the outset, including ensuring initial expectations are realistic
- adopting a firm and authoritative communication style both in writing and verbally
- defining key issues and keeping the focus on them.

## **Strategies for dealing with unreasonable arguments**

Strategies for dealing with unreasonable arguments are about declining or discontinuing involvement at the earliest opportunity.

Complaints that are based on unreasonable arguments need to be declined at the outset, or discontinued as soon as it becomes clear that the arguments are unreasonable or the complaint is otherwise groundless.

Alternatively, where unreasonable arguments are mixed with reasonable arguments, the strategy should be to refuse to deal with the unreasonable portion.

Where council does so, it should invite the complainant to raise their concerns with the appropriate external agency if unhappy with council's response, (see the section above on third-tier complaint handling).

### **Strategies for dealing with unreasonable behaviour**

The strategies for dealing with unreasonable behaviour include protocols for dealing with aggression, anger and threats of harm in writing, on the phone and in person and setting limits and conditions.

Also:

- return letters framed in rude and intemperate language and request that the complainant reframe their concerns in more moderate language
- end telephone calls and interviews where the complainant becomes abusive and confronting
- set conditions to encourage acceptable behaviour where the complainant wants further contact with the organisation.

Information on strategies for dealing with angry or aggressive complainants, physical security arrangements and post incident reporting and debriefing is provided in the NSW Ombudsman's *Unreasonable Complainant Conduct – A Practice Manual* 2009.

# **Applying administrative controls to deal with unreasonable conduct by complainants**

## **Public interest considerations governing access restrictions**

### **The rights of the public**

Strategies to manage 'unreasonable' complainants at some point nearly always have to confront the issue of limiting access to the council. It is important that such decisions be made within the wider framework of public access rights and responsibilities.

Any approach to the question of limiting the access rights of the public to the services provided by a council must begin with a clear understanding that:

- in the absence of very good reasons to the contrary, the public have a right of access to council to seek advice, help or the services the council provides to the community
- in addition to this, members of the public have specific statutory rights to inspect council documents and to attend council meetings that cannot be restricted and to make certain kinds of complaints. These are discussed below
- members of the public are entitled to seek to raise their concerns with their elected representatives on council
- criticism and complaints are a legitimate and necessary part of the relationship between councils and the community and may be dynamic forces for improvement and policy development by councils, and
- nobody, no matter how much time and effort is taken up in responding to his or her complaints or concerns, should be unconditionally deprived of the right to have those concerns addressed.

As councils also have an obligation to use resources efficiently and effectively, at some point, it may be necessary and reasonable for a council to decide to limit the nature or scope of its responses to unreasonable conduct by

complainants. However, these situations should be the exception rather than the rule.

### **Access policies**

To ensure that the issue of restricting access is dealt with appropriately, each council should develop a comprehensive policy on public access.

Such a policy should outline the council's commitments in regard to:

- responding to correspondence, answering telephone enquiries and dealing with face-to-face inquiries from the public at the council's offices
- service provision to the public, including the council's guarantee of service and circumstances where the provision of services may be withheld or withdrawn, and
- rights of review or appeal.

At the start of their access policies, councils should outline their general commitment to public access and then outline the reasons why this commitment may be qualified in certain circumstances, for instance where full access would be likely to:

- compromise the council's obligations as an employer
- be an unreasonable invasion of a person's privacy
- be excessively wasteful of the council's resources, and
- encourage or allow behaviour that contravenes the rules of common courtesy.

### **An unreasonable complainant conduct policy**

Staff need clear guidelines on how to deal with unreasonable conduct by complainants. They need to know precisely what actions the council will tolerate and not tolerate, and what actions they are able to take when dealing with complainants with challenging behaviours.

Councils should develop policies that identify the circumstances in which restrictions will be imposed and set out a clear process for doing so. Such a process should ensure that council complies with the requirements of procedural fairness in imposing any restriction.

Councils cannot develop policies that attempt to avoid or limit statutory access and service rights. The issue of how council can limit access in a way that is consistent with their statutory obligations is discussed below.

To ensure appropriate implementation of the procedures councils develop to deal with unreasonable conduct by complainants, policy and procedures must be properly documented and made available to all staff. They should provide clear, step-by-step guidance, setting out who is responsible for what and the circumstances in which extreme actions, such as calling the police for assistance, should be used.

The policy and procedures should be reviewed at least every two years to keep their currency.

## **Threshold considerations**

In determining whether to restrict, withhold or withdraw the provision of services to complainants who are behaving unreasonably, there are three key threshold considerations:

- has the complaints procedure been correctly implemented so far as possible to this point and no material element of the complaint been overlooked or inadequately addressed
- has the complainant demonstrated one or more of the behaviours the NSW Ombudsman has identified as *unreasonable complainant conduct* (see above)
- does that behaviour constitute an unreasonable demand on the council's resources or does the council have an obligation to protect its staff from that behaviour?

It is clearly inappropriate and unacceptable to limit access to services merely because a person has made a complaint about the council or its staff. Where a council normally provides a service to the public, the official or unofficial criteria for determining the nature and scope of the service to be provided to any person must not include whether that person has availed him/herself of the right to complain in any way about the council or its staff.

### **Restricting access after internal review**

Generally, internal review or appeal procedures should be exhausted before service or access restrictions are placed on habitual or obsessive complainants. Information about internal review processes is provided above in this practice note. Councils should also inform their complainants of any external rights of appeal or review that may be available, (eg to the Administrative Decisions Tribunal, Land and Environment Court, or the NSW Ombudsman). Information about external review processes is provided above in this practice note.

Some people may find it difficult to accept any decision which does not accord completely with their wishes. Such people often seek further reviews until the council gets the decision 'right', (ie agrees with them). Councils need to be confident about the integrity and quality of any internal review mechanisms. Where they are, it may be appropriate to adopt a 'one review' policy.

Sometimes a person seeking further review indicates that not all available information was provided when the initial complaint, request or application was made. A suggestion may be made that more can be provided or obtained. The complainant then feels able to challenge the decision on the basis that it was decided on incomplete information. The appropriate response to such complainants is to inform them that they are expected to provide all information available at the outset so their case can be assessed on that basis. See the strategies suggested above for dealing with unreasonable lack of cooperation for more information.

## **Restricting services or access**

Councils should have in place clear guidelines setting out the procedures to be used before limitations are placed on the nature and scope of a council's response to a complainant who is acting unreasonably, (ie limiting access to the council or the services it provides).

The process a council follows to limit access should ensure that it complies with the requirements of procedural fairness in doing so. This includes giving prior notice of the grounds on which the limitation is being imposed and nature of the restrictions to be imposed. The person the restrictions are to be imposed on should be given an opportunity to respond and council should consider that response before deciding to limit access.

Decisions to restrict access should only be made by the general manager, who should also approve and sign any letters notifying a member of the public to that effect.

Steps to limit access to a council should only be taken with the greatest reluctance, where to act differently would be to rob other meritorious matters of the resources to which they are entitled, or compromise the council's obligations as an employer.

## **Withdrawing services or access**

The only circumstances where a council should contemplate completely withdrawing services or access should be where the person concerned:

- is consistently rude or abusive, or makes threats to staff or other members of the public using the services of or in the premises of the council
- causes damage to the property of the council or threatens physical harm to staff or other third parties, and
- is physically violent or produces weapons.

Depending on the importance of the service to the physical or mental well being of the person concerned, even if the person exhibits one or more of the

abovementioned behaviours, it may be preferable to modify the way a service is provided rather than to withdraw or withhold the service. Possible strategies might include constructing special security accommodation at the council's premises, or using specially trained staff for interviewing certain people, or delivering material to the person's home rather than having it collected from the council. For more information, see the NSW Ombudsman's *Unreasonable Complainant Conduct – A Practice Manual 2009*

## **Recording service and access restrictions**

A senior officer of the council, (eg the general manager or public officer) should maintain a list of people whose access to the council has been restricted in any way, including the specific directions in relation to each person.

Copies of relevant correspondence should be referred to that senior officer for this purpose. Against each person's name and file number on the list should be the name of a staff member who is familiar with the person and the complaint or concern who can be called upon if further issues arise.

The senior officer should be responsible for maintaining and regularly updating the list. It may also be appropriate for this list to be accessible to reception or other frontline contact points responsible for granting access to other staff or council premises.

Appropriate notations should be inserted in all relevant case files or relevant computerised case records to make access restrictions clearly evident to any staff member accessing the records, (eg 'No further correspondence letter issued [date]' or 'No further personal contact letter issued [date]').

When a person on the 'no personal contact list' contacts the council by telephone or in person, he or she should be reminded of the council's decision in the terms outlined in the correspondence, and the conversation or contact politely brought to an end.

Correspondence informing these complainants of the decision not to approach the council except in writing should also warn that they might be escorted from the council's premises if they do approach, and that telephone calls will be terminated.

If the person appears at the offices of the council and refuses to leave, it may be necessary to call building security, or the police to remove them.

## **Councils' statutory obligations to provide access**

In addition to general rights of access that members of the community have to councils, councils also have specific statutory obligations to provide access. Councils are still required to comply with these even if they have decided to restrict or withdraw access. These obligations and how councils can reconcile them with any decision to restrict access are discussed below.

### **The right to inspect council documents**

Members of the public have the right to inspect certain council documents identified in section 12(1) of the *Local Government Act*. Councils are also required to allow members of the public to inspect all other documents unless the council is satisfied that allowing inspection of a document would, on balance, be contrary to the public interest or the documents deal with the following matters:

- personnel matters concerning particular individuals other than councillors
- the personal hardship of any resident or ratepayer
- trade secrets
- a matter, the disclosure of which would constitute an offence against an Act or found an action for breach of confidence
- any part of a draft or adopted management plan relating to places and items of Aboriginal significance that council has resolved to keep confidential.

For the purpose of determining whether allowing inspection of a document would be contrary to the public interest, it is irrelevant that inspection of the document would:

- cause embarrassment to the council or to councillors or staff
- cause a loss of confidence in the council
- cause a person to misinterpret or misunderstand the information contained in the document because of an omission or another reason.

Access to council documents is to be given free of charge. The right to inspect a document also includes a right to take away a copy of the document. Councils are entitled to impose reasonable copying charges.

Section 12 is a provision of the *Local Government Act* that can be much abused by unreasonable complainants. Dealing with numerous and persistent requests to inspect documents under section 12 has the potential to consume enormous resources. Council staff will need to identify and retrieve the relevant file and take copies of documents where they are requested. A member of staff will also need to remain while the file is inspected to ensure that documents are not removed or the file otherwise interfered with. This can take a member of staff away from their normal duties for extended periods of time.

Councils can minimise the impact on council resources and staff of repeated section 12 requests by complainants whose conduct is unreasonable by asking the complainant to identify all documents and files they are interested in at the outset. Councils should not only provide copies of these but also any other documents that the council identifies may be relevant to their issues of concern at the outset. Councils should also make a detailed record of what copies of documents are provided.

While this may consume considerable resources in the short term, it will prevent repeated requests being made to inspect documents that have previously been provided. Also, assuming the complainant has an interest in a

single discrete issue, if they are given copies of all relevant documents at the outset, it will minimise future requests to inspect additional documents.

However, this strategy will have minimal benefit where the complainant develops an interest in new and different issues over time or where the complainant makes numerous requests in relation to a number of different issues. In such circumstances, in the interests of managing the impact of these requests on staff and the council's limited resources, it may be open to a council to limit the number of requests it will deal with in a week or a month and/or the amount of time that it makes available to deal with those requests each week or month. Provided a council does not prevent access to documents that should otherwise be available under section 12, such arrangements will not be inconsistent with a council's obligations under that section.

A common misunderstanding is that section 12 imposes on councils an obligation to provide information. Some complainants will therefore often use section 12 to demand that councils respond to numerous questions that they put to them. This is not the case. Section 12 merely imposes on councils an obligation to allow members of the public to inspect existing documents. It does not impose an obligation to create new documents or to provide information that is not contained in an existing document.

Where access has been completely withdrawn, (ie the complainant has been banned from accessing the council administration building) the complainant should be informed that any section 12 requests must be made in writing and that copies of the documents requested will be sent to the complainant's contact address.

### **The right to attend council meetings**

Members of the public have a right under section 10 of the *Local Government Act*, to attend council meetings and committee meetings where all committee members are councillors unless the meeting has been closed to the public under section 10A.

However, members of the public (and councillors) may be expelled from a council or committee meeting where they engage in an act of disorder. A member of the public may be expelled by a resolution of the meeting or by the person presiding at the meeting where they have been authorised by a resolution of council to exercise that power. Where a person fails to leave after being expelled from a meeting they may be removed by a police officer or another person authorised by council.

Councils cannot 'ban' people from attending future meetings as a result of an act of disorder at previous meetings. Each act of disorder must be dealt with at the meeting at which it occurs.

Councils have faced the situation where members of the public repeatedly disrupt their meetings. In such circumstances, the meeting will need to be adjourned for an extended period of time to allow the police to be called to remove the person. This can prevent councils from getting through its business at meetings. Such conduct, where it occurs at a number of successive meetings, can impact on the capacity of a council to meet the needs of the wider community.

Where a person repeatedly engages in an act of disorder at meetings councils should consider engaging a security guard to attend meetings to remove the person in the event they are expelled, thereby minimising the time in which the meeting is adjourned.

The right of members of the public to attend council meetings does not confer a right to address the meeting. However, many councils permit members of the public to address council prior to or at meetings on items to be considered at the meeting or other matters. This often represents a means by which complainants and other members of the public can have an input into council decisions that affect them. However, a balance needed to be struck between this and the need for council meetings to be conducted in an efficient and orderly manner.

The opportunity to address council meetings is something that is within a council's discretion to confer or refuse. Where councils allow public participation in council meetings they should develop rules that guide the exercise of this discretion. Rules should identify the following:

- how members of the public may register to address council
- who may speak
- the topics people may address council on
- how long people may speak
- any limits on the number of people who may address council on a single topic
- how people should conduct themselves when addressing council.

Rules for public participation should also make the following clear:

- that council at all times retains the discretion to refuse a person the opportunity to address council
- that a person engaging in an act of disorder may be required to leave the meeting.
- the circumstances in which a person may be suspended or banned from addressing council for an act of disorder or breaches of the public participation rules.

For more information on dealing with acts of disorder in council or committee meetings, see *Practice Note 16 – Meetings Practice Note*, issued by the Department of Local Government.

### **Access to elected representatives**

Section 232(2) of the *Local Government Act* defines the role of a councillor as an elected person as follows:

- to represent the interests of the residents and ratepayers
- to provide leadership and guidance to the community
- to facilitate communication between the community and council.

It is important that councillors are able to access such information as may be necessary to enable them to exercise their responsibilities as elected representatives of the community. Different councils have different processes to enable councillors to do so. In some councils this is done by way of questions at council meetings. Other councils have formal processes by which councillors may lodge requests with senior staff.

Some unreasonable complainants will continue to pursue their concerns through their elected representations after their access to the council has been restricted or withdrawn. While councils may restrict or withdraw access to staff or to the council administration building, it will be up to individual councillors to decide whether they wish to continue to have dealings with a complainant whose conduct is unreasonable.

Where a councillor raises concerns or asks questions on behalf of someone whose complaint has previously been finalised under council's complaints processes and access restricted, the question or request should be dealt with in accordance with the council's normal procedures for dealing with such requests or questions. However, in responding to councillor requests or questions, staff should ensure the councillor has a complete understanding of the context in which the concerns have arisen. The response should include an explanation of the history of the matter, the steps taken to address the complainant's concerns and why the restriction has been imposed.

The general manager is entitled to put in place appropriate processes that enable councillors to exercise their responsibilities as elected representatives in a structured way that does not to impede the ongoing operations of the council. As a matter of good practice, councils should maintain a record of requests made by councillors and of information provided in response to such requests.

Where councillors seek information that has been previously provided or where requests become so numerous or onerous as to impact on the operations of council, the general manager may need to consider whether to refuse to respond to further requests in relation to the matter. Where the

general manager does so, he should prepare a report to council explaining his or her reasons for doing so. This should include an explanation of the history of the matter, the steps taken to address the complainant's concerns and why the restriction has been imposed.

## **Staff training and support**

To ensure the effective management of the impact on unreasonable complainant conduct on a council, it is essential that front line and complaint handling staff are given the training, support, encouragement, guidance and direction necessary to overcome the natural tendency to avoid involvement with people who are perceived to be unreasonable. Staff should feel confident that if they apply the council's strategies for dealing with unreasonable complainant conduct appropriately that management will support them. Management should regularly reinforce this with staff. Management should also provide staff with the opportunity to debrief after particularly stressful incidents.

If staff have the knowledge to recognise difficulties as soon as they arise and the confidence, resources and organisational backing to appropriately engage with people exhibiting unreasonable behaviours, the chances are that the difficulties will be contained at that point. Such training and support must become an integral and ongoing part of the management of the council.