

**From:** LGOIMA  
**To:** [REDACTED]  
**Subject:** RE: LGOIMA request - Unreasonable Complainant Policy questions - Reference: 1888 Friday, 5 April 2024  
**Date:** 3:47:38 pm  
**Attachments:** [Unreasonable Complainant Behavior Policy - 2024.pdf](#)

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Kia ora [REDACTED],

We refer to your official information request dated 25 March 2024. The information you have requested is below:

1. **Could you please advise me of the legal framework that authorizes the Tasman District Council to approve a policy for managing unreasonable complainant conduct?**

Council is entitled to adopt policies on how to manage unreasonable complainant conduct. This is consistent with the Ombudsman's guidance which can be found here - [managing\\_unreasonable\\_complainant\\_conduct\\_manual\\_october\\_2012.pdf](#) ([ombudsman.parliament.nz](#))

2. **Could you please advise me of the scope of such policy as per legal framework? Please give effect to affected parties for such a policy in your explanation.**

The scope of the policy is contained within it – a copy of the policy is **attached**.  
- *“Unreasonable Complainant Behaviour Policy – 2024.pdf”*

3. **Could you please advise me of the processes Council applied for implementing the unreasonable complainant conduct policy? Please include any policy and process documents the council was following from drafting to implementing the policy as well as all relevant staff and their role during the process.**

Council relied on the Ombudsman's guidance and reviewed other policies adopted by Councils around the country. It was worked on by a range of legal and business improvement staff before being approved by the Executive Leadership Team and the Chief Executive.

4. **Was any feedback and suggestion from policy CS29 used to inform the drafting process for the unreasonable complainant conduct policy?**

We have included a review period which was missing from the new policy and made the list of restrictions clearer.

5. **On 4 March 2024 policy CS29 titled „Unreasonable complainant policy“ was released following a request for information. Does this policy continue to apply or was this policy discontinued? If so, when?**

The new policy will apply going forward. Any restrictions made under the old policy continue to apply. When they are reviewed that review will be done in line with the new policy.

6. **Was the „unreasonable complainant conduct policy“ , approved 6 March 2024, effective 11 March 2024 presented to Council, any Committee or Community Board prior to being approved or becoming effective?**

No, it is an operational policy and so Council approval is not required.

**7. Was there any public notification on the unreasonable complainants conduct policy coming into effect through any of the council's communication channels?**

No, it is an internal policy.

If you are not satisfied with Council's response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

If you wish to discuss this decision with us, please feel free to contact the Legal and Democracy Services team on [lgoima@tasman.govt.nz](mailto:lgoima@tasman.govt.nz).

Yours sincerely,  
Legal Services Officer

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## Unreasonable Complainant Conduct Policy

<b>POLICY REFERENCES</b>	
• Sponsor:	<b>Chief Operating Officer</b>
• Effective date:	<b>11 March 2024</b>
• Internal review due:	<b>11 March 2026</b>
• Legal compliance:	Local Government Act 2002 Local Government Official Information and Meetings Act 1987 Privacy Act 2020
• Associated Documents/References	<a href="#">Complaints Policy</a> <a href="#">Managing Risks to personal safety at work</a> <a href="#">What constitutes workplace bullying</a> <a href="#">Managing unreasonable complainant conduct practice manual – October 2012</a>
• Approved by Chief Executive	<b>6 March 2024</b>

### Contents

Introduction	2
Purpose	2
Definitions	2
Unreasonable complainant conduct is:	3
Unreasonable persistence	3
Unreasonable demands	4
Unreasonable lack of cooperation	4
Unreasonable arguments	5
Unreasonable behaviour	5
Managing unreasonable complainant conduct under this policy	6
Informal behaviour management strategies	6
Application of restrictions	6
Types of restrictions	6
Decision maker	7
Notifying the customer of the decision to impose restrictions	7
Right of appeal	8
Periodic Reviews	8

## Introduction

Tasman District Council is committed to being accessible and responsive to all customers seeking assistance, lodging a complaint, or requesting information or a service.

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

- our ability to do our work and perform our functions in the most effective and efficient ways possible
- the health, safety, wellbeing, and security of our staff
- our ability to allocate our resources fairly across all customers we serve.

In a very small number of cases, the behaviour of customers can become unreasonable, vexatious, or abusive and can have a disproportionate and unreasonable impact on our staff, services, time or resources.

When this happens, the Council will take action to manage any conduct that negatively and unreasonably impacts on the organisation, its staff or ability to allocate resources fairly across all the complaints we receive.

This policy does not apply to elected members management of unreasonable customer behaviour – this is covered by their respective codes of conduct.

## Purpose

This policy, alongside the Ombudsman's practice manual, is intended to assist all staff members to better manage unreasonable complainant conduct/behaviour by:

- ensuring that Council supports and protects staff dealing with unreasonable behaviour.
- assisting all staff members to better manage unreasonable customer behaviour.
- defining unreasonable customer behaviour
- explaining the types of behaviour we might consider unreasonable customer behaviour.
- providing an overview of the procedural fairness components required in order to provide a robust and just process.

## Definitions

Most customers who contact us act reasonably and responsibly, even if they are experiencing distress, frustration or anger about their complaint or concern.

However, in a very small number of cases some customers behave in ways that are inappropriate and unacceptable. They can continuously contact us with unnecessary or excessive phone calls and emails, make inappropriate demands about our time and resources, or refuse to accept our decisions and recommendations in relation to their complaints, concerns or outcomes.

When customers behave in these ways, we consider their conduct to be 'unreasonable'. On some occasions, customers can be aggressive and verbally abusive towards our staff or threaten harm or violence.

For the purpose of this policy, such conduct is referred to as 'unreasonable', however the Council will act immediately in relation to any violence, harm or threat, received by staff.

## Unreasonable complainant conduct is:

**Behaviour that, because of its nature or frequency, impacts health, safety, wellbeing, resource or equity for our organisation, staff, service users or customers (including the complainant).**

Unreasonable conduct can be divided into five categories:

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

## Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a customer that impacts health, safety, wellbeing, resource or equity for our organisation, staff, service users or customers (including the complainant).

Some examples of unreasonably persistent behaviour include:

- contacting staff with unreasonably high levels of phone calls, visits, letters, emails (including being copied in on correspondence)
- persistently requesting a review without presenting any new and compelling reasons for review
- excessive requests for information under LGOIMA
- refusing to accept further action cannot or will not be taken on their complaint or concern, after a final decision has been made
- reframing a complaint in an effort to get it taken up again
- persistently sending copies of information that has been sent already or that is irrelevant to the complaint or concern
- contacting different people within our organisation or externally in an attempt to get a different outcome or more sympathetic response to their complaint or concern
- an unwillingness or inability to accept reasonable explanations, including final decisions that have been comprehensively considered and communicated
- using the complaints process to raise new trivial complaints in an effort to reopen the original issue or prevent the work needed to implement a decision
- repeatedly changing the substance of a complaint or raising unrelated concerns
- logging repeated requests for action which require Council investigation, in an effort to provide evidence to warrant Council to reconsider an original decision
- high frequency of communication which impedes Council from pursuing a legitimate aim or implementing a legitimate decision.

We consider access to Council services and processes to be important but sometimes such repeated use may be considered unreasonable and result in an abuse of Council services and processes. In such cases consideration will be given to restricting access on a case-by-case basis.

## Unreasonable demands

Unreasonable demands are any demands (express or implied), made by a customer, that impacts health, safety, wellbeing, resources or equity for our organisation, staff, service users or customers (including the complainant).

Some examples of unreasonable demands include:

- repeatedly demanding responses within an unreasonable timeframe
- insisting on seeing or speaking to a particular member of staff or elected representative when that is not possible, appropriate, or warranted
- requesting the names of staff members whose names are not required for any lawful purpose
- insisting on the issue being progressed or determined outside of the normal framework for progressing such requests
- repeatedly changing the substance of a complaint or raising unrelated concerns and demanding that these are considered and investigated through the original process
- issuing instructions and making demands about how we have handled or should handle their complaint, the priority it was given or should be given, or the outcome that was or should be achieved
- insisting on outcomes that are not possible or appropriate in the circumstances, such as calling for someone's employment to be terminated or prosecuted, an apology or compensation when there is no reasonable basis for expecting this
- demanding services or an outcome that are of a nature or scale that we cannot provide.

Unreasonable demands consume an excessive amount of staff time which can disadvantage other customers and can prevent the complaint or concern from being dealt with in a reasonable timeframe.

## Unreasonable lack of cooperation

Unreasonable lack of cooperation is the lack of willingness or ability of a customer to cooperate with our organisation, staff and processes which impacts on health, safety, wellbeing, resources or equity for our organisation, staff, service users or customers (including the complainant). Some examples of unreasonable lack of cooperation include:

- providing little or no detail with a complaint or presenting information in a sporadic, nonsensical, or disorganised manner
- providing us with no further information, evidence or comments where it is requested to progress the issue
- refusing to help us by summarising their concerns or completing necessary documentation for us
- sending incomprehensible or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues being complained about
- refusing to follow or accept our instructions, requirements, processes, or advice, without a clear and justifiable reason for doing so
- withholding information, only providing partial information, acting dishonestly, misrepresenting facts or misquoting others.

We will always seek to assist someone if they have a specific, genuine difficulty complying with a request in line with Council's obligations to provide reasonable accommodation for people with disabilities. However, we consider it to be unreasonable to bring a complaint or issue to us and then not respond or cooperate with our reasonable requests to progress the complaint or issue.

## Unreasonable arguments

Unreasonable arguments include any arguments that are incomprehensible, false or inflammatory, that impacts on health, safety, wellbeing, resource or equity for our organisation, staff, service users or customers (including the complainant).

Some examples of unreasonable arguments are when they:

- insist on the importance of an issue which is not supported by evidence
- make pseudo-law/sovereign citizen type assertions and arguments
- make allegations using unsupported or irrelevant information
- refuse to accept other valid contrary arguments
- make allegations of bullying, harassment, or victimisation which are unsubstantiated
- attempt to undermine staff, for example by challenging professionalism or making unnecessary personal comments or demanding personal details about staff carrying out their roles, such as qualifications, work experience, authority to act, in an attempt to alter a decision or outcome
- are false, irrational, inflammatory, defamatory, or nonsensical.

## Unreasonable behaviour

Unreasonable behaviour is conduct that is unacceptable in all circumstances – regardless of how stressed, angry or frustrated a customer is – because it compromises the health, safety, wellbeing and/or security of our staff, other service users or customers (including the complainant).

Examples of behaviour which is unacceptable include:

- physical violence
- threats, whether:
  - direct or indirect threats of harm to others, including staff or other customers (such as a direct threat of violence)
  - direct or indirect threats of harm to self
  - threats with a weapon or threats to damage property, including bomb threats
  - threatening or intimidating posture or body language.
- stalking (in person or online)
- harassment or intimidation (in person or online)
- abusive, degrading, and insulting language (including any derogatory, discriminatory, or defamatory remarks)
- repeated use of inappropriate tone, volume, and language
- rude, confronting, or aggressive communication.

Council acts immediately to respond towards violence, harm or threats. Any conduct of this kind will be dealt with in accordance with our duty of care and occupational health and safety responsibilities, and where appropriate, may result in the involvement of the police

and courts, or other agencies. In addition, the unreasonable behaviour may be considered under this policy or any other relevant policy.

## Managing unreasonable complainant conduct under this policy

### Informal behaviour management strategies

Where a customer's conduct exhibits any of the unreasonable behaviours outlined in this policy, or there are wellbeing concerns arising from having to deal with the conduct, Council may try to minimise the impact of the conduct by first applying some informal behaviour management strategies.

This type of informal behaviour management is not a restriction under this policy, but a tool that all staff can use to manage customer interactions. Informal behaviour management strategies include:

- customers may be asked to moderate their language, tone, or frequency of their interactions with Council
- customers may be asked to engage only with a nominated single point of contact who will work with the customer until a solution can be reached.

Council is not required to try the informal strategies outlined above. Ultimately the Chief Executive or Chief Operations Officer has the discretion to decide whether informal behaviour management is appropriate or whether restrictions should be applied under this policy.

### Application of restrictions

If the steps taken to work with a customer do not achieve a resolution, and the customer behaviour continues to have unreasonable impacts, or if the behaviour is sufficiently serious, measures may be introduced to manage or minimise the impact of the behaviours.

These management measures are called "restrictions" for the purposes of this Policy and may include imposing restrictions or modifications on a customer's access to our services or taking a coordinated or managed approach to an individual.

The following considerations apply in deciding how or what restrictions to apply:

- natural justice – such as the ability to have your grievance heard.
- procedural fairness will be followed insuring that the decision maker is impartial.
- the restrictions will be tailored to deal with individual circumstances (that is, be proportionate to the complainant's personal circumstances, level of competency or literacy skills)
- the restrictions will not be applied in ways that go beyond what is appropriate and necessary to manage a customer's conduct (that is, the least restrictive and proportionate for the context)
- the focus will be on managing the impact of the behaviour on staff.
- recognition that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

### Types of restrictions



Unreasonable behaviour will generally be managed by modifying the ways that we interact with or deliver services to customers to minimise the impacts and risks posed by their conduct.

Examples of types of restrictions which may be imposed are outlined below. The list is not exhaustive, and a combination of several restrictions may be appropriate to manage the impact of the behaviour most effectively.

- **Who** a complainant can make contact with within Council. Including limiting contact to a single appointed contact person in our organisation.
- **What** / the subject matter we will respond to. Including restricting the subject matter that we will consider and respond to.
- **When** a customer can make contact with us. Including placing limits on the number of times a customer can contact us or limiting the customer's contact with us to a particular time, day, or length of time.
- **Where** a customer can interact with us. Including limiting the locations where contact occurs, whether we will interact face-to-face, on Council premises or in a neutral location.
- **How** a customer can contact us. Including limiting or modifying the channels of contact that the complainant can have with us. This can include requiring 'writing only' contact; or restricting access to direct staff emails and only allowing access through one of Council's general email accounts; prohibiting access to our premises; or contact through a representative only.

While restrictions are in place for a customer, Council will not ignore new interactions, service requests, LGOIMAs or complaints; however, how or if Council responds to the customer may differ. This includes the discretion to apply the restrictions to the new interactions/topic should the unreasonable behaviour continue.

## Decision maker

The decision to apply restrictions can only be made by the Chief Executive or the Chief Operating Officer. This will usually require a memo which sets out the unreasonable behaviour of the customer with examples and showing how it meets the definition of unreasonable under this policy. This memo can be drafted by anyone but will usually be endorsed by a member of the Senior Leadership Group.

Once the decision is made then it will be stored in a register which will prompt staff when the review date is approaching.

It is noted that this memo, or parts of it, may be subject to release under LGOIMA.

## Notifying the customer of the decision to impose restrictions

The customer will usually be formally notified of the decision by a letter from the Chief Executive or Chief Operating Officer to impose restrictions indicating:

- what restrictions have been put in place
- why the restrictions have been put in place (what the behaviour was and why it was considered unreasonable). This may include, where appropriate, a summary or copies of the evidence of unreasonable behaviour
- how the restrictions will impact them and their future interactions with Council while the restrictions are in place

- how long the restrictions will be in place
- what will happen if they contravene the restrictions
- what right of appeal is available
- details of the review process.

The exception to notification is in circumstances where the Council is concerned that the health, safety or wellbeing of either staff or the complainant would be jeopardized by informing them of the restrictions. In those cases, the reasons for departing from the usual process will be recorded alongside the decision on restrictions.

## Right of appeal

As the decisions on restrictions will only be made by the Chief Executive or Chief Operating Officer there is no internal right of appeal. If the complainant considers that the Council has not followed proper process, then they may complain to the Ombudsman or apply to the High Court for a judicial review of the decision.

## Periodic Reviews

When any restrictions are put in place, a review date will be set. This is usually on an annual basis, although depending on the circumstances, and at the discretion of the Chief Executive or Chief Operating Officer restrictions could be put in place for two years.

The Chief Executive or Chief Operating Officer, with the assistance of the team who originally requested the restriction, will review the customer's behaviour and decide, based on the factors above, whether the restrictions should remain.

If the outcome of the review is that the restrictions will continue, the Chief Executive or Chief Operations Officer will write to the customer to inform them of the continuation and any modifications to the restrictions.

If the restrictions end and the customer's behaviour deteriorates again the Chief Executive or Chief Operations Officer has the discretion to reinstate the previous restrictions without going through the decision-making process above.

### Authorised by:

Leonie Rae, Chief Executive



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**Date of approval:** 6 March 2024