

The City of Newcastle

Policy

The City of Newcastle Managing Unreasonable Complainant Conduct 2010

PO Box 489 (282 King Street)
NEWCASTLE NSW 2300
Ph 02 4974 2000
Fax 02 4974 2222
Email mail@ncc.nsw.gov.au
www.newcastle.nsw.gov.au



Managing Unreasonable Complainant Conduct



Policy title	The City of Newcastle Managing Unreasonable Complainant Conduct Policy (2010)
Policy owner	General Manager
Prepared by	Customer Service, Communications and Consultation Services
Approved by	Executive Leadership Team
Date approved	27 January 2011
Version	1
Category	Administration
Keywords	Conduct, customers, complaints, grievance
Revision date	20 January 2013
Amendments	Dates of approved policy revisions
Relevant strategic direction	Open and Collaborative Leadership
Relevant legislation/codes	Local Government Act 1993
Related policies/documents	The City of Newcastle Complaints Handling Policy (2009) Effective Complaints Handling User Guide – NSW Ombudsman (2004) Managing Unreasonable Complainant Conduct Practice Manual – NSW Ombudsman (2009) Practice Note No.9 – Complaints Management in Councils – Division of Local Government (July 2009)
Related forms	

Table of Contents

Part A - Preliminary	1
1. Purpose.....	1
2. Title, Commencement and Interpretation.....	1
3. Definitions.....	1
4. Objectives.....	1
Part B - Identifying Unreasonable Complainant Conduct	2
5. Definition of Unreasonable Complainant Conduct.....	2
6. Warning Signs of Unreasonable Complainant Conduct.....	2
7. Categorising Unreasonable Complainant Conduct.....	4
Part C - Managing Unreasonable Conduct	5
8. Initial Response to Unreasonable Complainant Conduct.....	5
9. Informal Unreasonable Complainant Conduct management strategy.....	5
10. Formal Unreasonable Complainant Conduct management strategy.....	6
11. Limitation on access to Council.....	7
Part D - Unreasonable Complainant Conduct Register	9
12. Unreasonable Complainant Conduct Register.....	9
Part E - Process Flowchart	10
13. Unreasonable Complainant Conduct.....	10
14. Determination to Refuse Access.....	11

Part A - Preliminary

1. Purpose

This Policy provides Council with a framework for:

- 1.1.1. Assessing Complainant conduct and identifying if that conduct is Unreasonable Complainant Conduct
- 1.1.2. Managing Unreasonable Complainant Conduct
- 1.1.3. The duty of care of the physical or mental wellbeing of Council officers.
- 1.1.4. Recording Unreasonable Complainant Conduct in the Unreasonable Complainant Conduct register.

2. Title, Commencement and Interpretation

- 2.1. This Policy should be cited as **The City of Newcastle Council Managing Unreasonable Complainant Conduct Policy (Policy)**.
- 2.2. This Policy was adopted by the Executive Leadership Team on 27 January 2011.

3. Definitions

- 3.1. In this Policy, unless the context determines otherwise:
 - 3.1.1. **Act** means the *Local Government Act 1993* (NSW).
 - 3.1.2. **Case Officer** means the Council officer handling the Complaint.
 - 3.1.3. **Complaint** means an expression of dissatisfaction or grievance with Council including a policy, process, service or Council officer.
 - 3.1.4. **Complainant** means the person initiating the Complaint.
 - 3.1.5. **Council** means the administration of Newcastle City Council.
 - 3.1.6. **Public Officer** means Council's public officer appointed under Chapter 11 of the Act.
 - 3.1.7. **Supervisor** means the Case Officer's supervisor.
 - 3.1.8. **Unreasonable Complainant Conduct** means conduct of the type described in clause 5.
- 3.2. A reference to a clause is a reference to a clause of this Policy unless stated otherwise.

4. Objectives

- 4.1. In preventing Unreasonable Complainant Conduct, Council commits itself to managing Complaints in accordance with **The City of Newcastle Council Complaint Handling Policy**.
- 4.2. In managing Unreasonable Complainant Conduct, Council's objectives are to:
 - 4.2.1. Ensure equity and fairness in the allocation of resources across all Complaints.
 - 4.2.2. Improve efficiency in the use of resources.
 - 4.2.3. Ensure ownership and control of Complaints by deciding whether the Complaint will be dealt with and, if so, who by, how quickly and with what priority and what resources will be allocated to it.
 - 4.2.4. Focus on the conduct of the Complainant, not the Complainant and refer specifically to the conduct, not the Complainant.

- 4.2.5. Recognise that dealing with Unreasonable Complainant Conduct is part of Council's core work.
- 4.2.6. Implement and consistently apply the Unreasonable Complainant Conduct management strategies outlined in this Policy.
- 4.2.7. Provide Case Officers with the authority, skill, knowledge and support to effectively handle Unreasonable Complainant Conduct.
- 4.2.8. Allow Case Officers adequate time and resources to effectively handle Unreasonable Complainant Conduct.
- 4.3. In managing Unreasonable Complainant Conduct, Case Officers' responsibilities are to:
 - 4.3.1. Exhibit a calm demeanour.
 - 4.3.2. Show respect to all Complainants.
 - 4.3.3. Demonstrate impartiality.
 - 4.3.4. Exhibit professionalism.
 - 4.3.5. Implement and consistently apply the Unreasonable Complainant Conduct management strategies outlined in this Policy.

Part B - Identifying Unreasonable Complainant Conduct

5. Definition of Unreasonable Complainant Conduct

- 5.1. Unreasonable Complainant Conduct is conduct by a Complainant which goes beyond the norm of situational stress taking into account the following factors:
 - 5.1.1. The merits of the case – Is there an inherent right or wrong in the matter?
 - 5.1.2. The circumstances of the Complainant – Is the Complainant able to meet the requirements of the Complaints process? Is there anything Council has done to create or exacerbate the Unreasonable Complainant Conduct?
 - 5.1.3. Jurisdictional issues – Does any specific legislation impact on the subject of the Complaint or the Complainant's conduct?
 - 5.1.4. Proportionality – Is the Complainant's distress in reasonable proportion to the loss or wrong alleged to have been suffered?
 - 5.1.5. The Complainant's responsiveness – Do calming measures and explanations help to settle the Complainant down?
 - 5.1.6. The Case Officer's personal boundaries – Has the Complainant been threatening, overly stressful or otherwise inappropriate to the Case Officer?
 - 5.1.7. Overt anger, aggression, violence and assault – These behaviours should never be tolerated and are always Unreasonable Complainant Conduct.
- 5.2. The mere fact that a Complainant is persistent, makes demands or may be angry will not necessarily mean that their conduct is Unreasonable Complainant Conduct.

6. Warning Signs of Unreasonable Complainant Conduct

The warning signs of Unreasonable Complainant Conduct include:

- 6.1.1. **Complainant history** – The Complainant may have:
 - (a) Made a number of previous Complaints about the issue or related issues.
 - (b) Made a number of review requests about the same issue.

- (c) Made contact with other government bodies about the issue (such as the Independent Commission Against Corruption, The Division of Local Government and/or Ministers of Parliament).
 - (d) Made access to information requests about the issue or related issues.
 - (e) Raised issues about the Case Officer's integrity or competence in handling the case.
 - (f) Expanded the subject matter of their Complaint to include other people, agencies or conspiracy theories.
- 6.1.2. **Outcomes sought** – The Complainant may want:
- (a) An inappropriate provision of services.
 - (b) Inappropriate compensation.
 - (c) An illogical or irrational solution.
 - (d) An apology where this is clearly not warranted or where the terms of the apology sought are unreasonable.
 - (e) What amounts to revenge or retribution.
 - (f) Unrealistic outcomes, often framed in terms of morals, justice, principles or the public interest.
- 6.1.3. **Written correspondence** – The Complainant may:
- (a) Display excessive and idiosyncratic emphasis.
 - (b) Use inappropriate or excessive formatting, highlighting, font changes or punctuation.
 - (c) Use legal terminology inappropriately.
 - (d) Imitate an official reporting style.
 - (e) Use excessively dramatic language.
 - (f) Include excessive and/or irrelevant language.
- 6.1.4. **Interacting with Council** – The Complainant may:
- (a) Make excessive written and telephone contact with Council.
 - (b) Give forceful instructions about how the Complaint must be handled.
 - (c) Refuse to define issues of Complaint.
 - (d) Be resistant to the Case Officer's explanation if this runs counter to their own views.
 - (e) Refuse to accept the Case Officer's reasonable advice.
 - (f) Provide information in dribs and drabs.
 - (g) Withhold information.
 - (h) Provide false information.
 - (i) Provide previously withheld information at the end of the Complaint process.
 - (j) Make excessive demands on resources, for example, copies or expert opinion.
 - (k) Be rude, confrontational, threatening, angry or aggressive.

- (l) Be overly ingratiating or manipulative.
- 6.1.5. **Reacting to the news that their Complaint will not be taken up or will be discontinued** – The Complainant may:
- (a) Refuse to accept the decision.
 - (b) Reframe their Complaint in an attempt to have it taken up again.
 - (c) Raise a range of minor or technical issues, arguing that these call into question the merits of the decision.
 - (d) Expect a review of the decision based merely on an expression of dissatisfaction, unsupported by any arguments or new evidence.
 - (e) Demand a second review after the first review.
 - (f) Take the Complaint to other forums or agencies and go on to allege bias, corruption or incompetence on the part of Council simply because the decision went against them.

7. Categorising Unreasonable Complainant Conduct

Unreasonable Complainant Conduct may be categorised as:

7.1.1. Unreasonable persistence

Unreasonable persistence refers to conduct that involves a Complainant persisting with a Complaint even though it has been comprehensively considered by a Case Officer and all avenues of review have been exhausted. Unreasonable persistence may include a refusal to accept Council's decision.

7.1.2. Unreasonable demands

Unreasonable demands refers to conduct that involves a Complainant making unreasonable demands for information or outcomes that are not available. This includes making unreasonable resource demands or requests for regular or lengthy contact where it is not warranted.

7.1.3. Unreasonable non-cooperation

Unreasonable non-cooperation refers to conduct that involves a Complainant being unreasonable through non-cooperative behaviour. This includes situations where a Complainant supplies information which is poorly prepared (where the Complainant is clearly capable of preparing the information), withholds information, is dishonest or provides misleading information.

7.1.4. Unreasonable arguments

Unreasonable arguments refers to conduct that involves a Complainant presenting arguments based on irrational beliefs, unsupported conspiracy theories, trivia or a Complainant interprets facts in a clearly irrational and unreasonable way.

7.1.5. **Unreasonable behaviour**

Unreasonable behaviour refers to conduct that involves a Complainant exhibiting unreasonable or confronting behaviours such as rudeness, aggression, threats (including threats of self-harm and harm to others), harassment and manipulative behaviour.

Part C - Managing Unreasonable Conduct

8. Initial Response to Unreasonable Complainant Conduct

- 8.1. If a Case Officer believes a Complainant is exhibiting Unreasonable Complainant Conduct (not including violence or threats of violence), the Case Officer must:
 - 8.1.1. Advise the Complainant that the Complainant's conduct is unreasonable and that should it continue or occur again the interaction will cease.
 - 8.1.2. Cease their interaction with the Complainant.
 - 8.1.3. Make a record of the suspected Unreasonable Complainant Conduct and provide it to their Supervisor.
- 8.2. If the Unreasonable Complainant Conduct includes **violence or threats of violence** (including against property):
 - 8.2.1. The Case Officer must immediately:
 - (a) Cease their interaction with the Complainant.
 - (b) Make a record of the Unreasonable Complainant Conduct and provide it to the Supervisor.
 - 8.2.2. The Supervisor must:
 - (a) Inform a Service Unit Manager of the Unreasonable Complainant Conduct.
 - (b) Report the threat to the police.

9. Informal Unreasonable Complainant Conduct management strategy

- 9.1. The Supervisor and the Case Officer may manage the Unreasonable Complainant Conduct by formulating and implementing an informal Unreasonable Complainant Conduct management strategy.
- 9.2. An informal Unreasonable Complainant Conduct management strategy must include:
 - 9.2.1. The Case Officer documenting all interactions with the Complainant and maintaining a file of those records.
 - 9.2.2. The Case Officer informing the Supervisor of any further Unreasonable Complainant Conduct.
 - 9.2.3. The Supervisor providing background support and advice to the Case Officer.
 - 9.2.4. The Supervisor providing the Case Officer with the authority to handle the Complaint.

- 9.2.5. The Unreasonable Complainant Conduct being referred to a Service Unit Manager if the Supervisor determines that the conduct requires a formal management strategy.
- 9.3. An informal Unreasonable Complainant Conduct strategy must not limit or restrict the Complainant's access to Council.

10. Formal Unreasonable Complainant Conduct management strategy

- 10.1. A Service Unit Manager may determine that the Unreasonable Complainant Conduct requires a formal Unreasonable Complainant Conduct management strategy.
- 10.2. A formal Unreasonable Complainant Conduct management strategy may include the following management strategies:
- 10.2.1. If the Unreasonable Complainant Conduct is categorised as **unreasonable persistence**, the preferred management strategies are about saying "no". These include:
- (a) Reiterating Council's final decision.
 - (b) Informing the Complainant that they are provided one opportunity for review, which shall occur only if the Service Unit Manager is satisfied that the Complainant has made a case for review.
- 10.2.2. If the Unreasonable Complainant Conduct is categorised as **unreasonable demands**, the preferred management strategies are about setting limits. These include:
- (a) Clearly informing the Complainant about how Council intends to deal with the Complaint.
 - (b) Clarifying the limitations of the Complaint handling process.
 - (c) Avoiding being drawn into hypothesising, conspiracy theories, unproductive argument and personal attacks.
 - (d) Responding only to correspondence addressed directly to Council and not responding where Council is copied into the correspondence.
 - (e) Ceasing interactions that are unproductive.
 - (f) Avoiding taking actions that Council would not normally take simply to appease the Complainant.
- 10.2.3. If the Unreasonable Complainant Conduct is categorised as **unreasonable non-cooperation**, the preferred management strategies are about setting conditions. These include:
- (a) Informing the Complainant that Council will only consider the Complaint if the Complainant is cooperative.
 - (b) Requiring the Complainant to organise or summarise the information that they have provided before Council considers the Complaint.
 - (c) Requiring the Complainant to define their Complaint.
 - (d) Informing the Complainant that Council will not consider the Complaint until all the information has been provided.
 - (e) If the Complainant has wilfully mislead Council or otherwise been untruthful about a Complaint, informing the Complainant that contact with Council regarding the Complaint will cease as a result of the behaviour.

- 10.2.4. If the Unreasonable Complainant Conduct is categorised as **unreasonable arguments**, the preferred management strategy is to inform the Complainant that Council will not investigate their Complaint or continue to investigate their Complaint. If the Complainant is making unreasonable arguments together with reasonable arguments, the Complainant should be advised that the portion of the Complainant's arguments that are unreasonable will not be dealt with by Council.
- 10.2.5. If the Unreasonable Complainant Conduct is categorised as **unreasonable behaviour**, the preferred management strategies are about informing the Complainant that their behaviour is unacceptable and setting conditions for future interactions. These include:
 - (a) Returning letters that contain inappropriate language and requesting that the Complainant reframe their concerns in more appropriate language.
 - (b) Immediately ceasing interactions if the Complainant displays unreasonable behaviour.
 - (c) Informing Complainants that they must display appropriate behaviours in all interactions with Council for Council to continue to consider their Complaint.
- 10.2.6. Any other management strategy deemed appropriate by the Service Unit Manager including strategies set out in NSW Ombudsman's *Managing Unreasonable Complainant Conduct Manual* (June 2009).
- 10.3. If a Service Unit Manager determines to implement a formal Unreasonable Complainant Conduct management strategy, the Service Unit Manager must inform the Complainant in writing that:
 - 10.3.1. Their conduct constitutes Unreasonable Complainant Conduct and the reasons why their conduct constitutes Unreasonable Complainant Conduct.
 - 10.3.2. Council has determined to implement a management strategy to deal with their Unreasonable Complainant Conduct and detailed information about the management strategy.

11. Limitation on access to Council

- 11.1. The Public Officer may determine that the Unreasonable Complainant Conduct requires Council to limit the Complainant's access to Council by one or more of the following:
 - 11.1.1. Limiting the frequency and/or duration of the Complainant's contact with Council. For example, limiting contact to between 12 pm and 4 pm every Thursday or limiting contact to one email or letter per week;
 - 11.1.2. Limiting the Complainant's contact with Council to only specified Case Officers;
 - 11.1.3. Limiting the number of issues the Complainant may raise with Council during a specified period;
 - 11.1.4. Limiting the Complainant's access to Council on a specific issue if all appropriate avenues of review or appeal have been exhausted by informing the Complainant that:

- (a) Council will not interact with the Complainant regarding that specific issue; and
 - (b) All correspondence dealing with that specific issue will be received, read and filed but only acknowledged or responded to if it provides significant new information about that specific issue;
- 11.1.5. Limiting the forms in which the Complainant may contact Council. For example, limiting the contact to written correspondence with a direction not to enter Council premises and not to contact Council officers by telephone or any other means; and/or
- 11.1.6. Any other limitation which the Public Officer considers reasonable and appropriate subject to legislative requirements.
- 11.2. The Public Officer may determine to refuse access to Council if the Unreasonable Complainant Conduct involves:
 - 11.2.1. Consistent abuse or threats to Council officers or members of the public at Council's premises;
 - 11.2.2. Damage to Council's property;
 - 11.2.3. Physical violence; and/or
 - 11.2.4. Production of a weapon.
- 11.3. Before determining to limit or restrict access to Council, the Public Officer must consider that:
 - 11.3.1. Members of the public have a right to access Council to seek advice, help and services.
 - 11.3.2. Members of the public have a right to raise their concerns and have them addressed and a member of the public should not unconditionally be deprived of that right.
 - 11.3.3. Complaints are a legitimate and necessary part of the relationship between Council and our community.
 - 11.3.4. Council's obligation to use resources efficiently and effectively
 - 11.3.5. Any justifiable concerns for the physical or mental wellbeing of Council officers.
- 11.4. If the Public Officer determines to limit or restrict an Unreasonable Complainant's access to Council, the Public Officer must inform the Complainant in writing that:
 - 11.4.1. Their conduct constitutes Unreasonable Complainant Conduct and the reasons why their conduct constitutes Unreasonable Complainant Conduct.
 - 11.4.2. Council has determined to place limitations on their access to Council to manage their Unreasonable Complainant Conduct and detailed information about the limitations.
 - 11.4.3. The limitations on the Complainant's access to Council will be reviewed after a period of 6 months at which time:
 - (a) The limitations may be extended if the Complainant has exhibited further Unreasonable Complainant Conduct.

- (b) The limitations may be extended if the Unreasonable Complainant Conduct involved violence or threats of violence (including against property) or gave rise to justifiable concerns for the physical or mental wellbeing of Council officers; or
- (c) The limitations may be removed.

11.4.4. The Complainant has been entered onto Council's Unreasonable Complainant Conduct register.

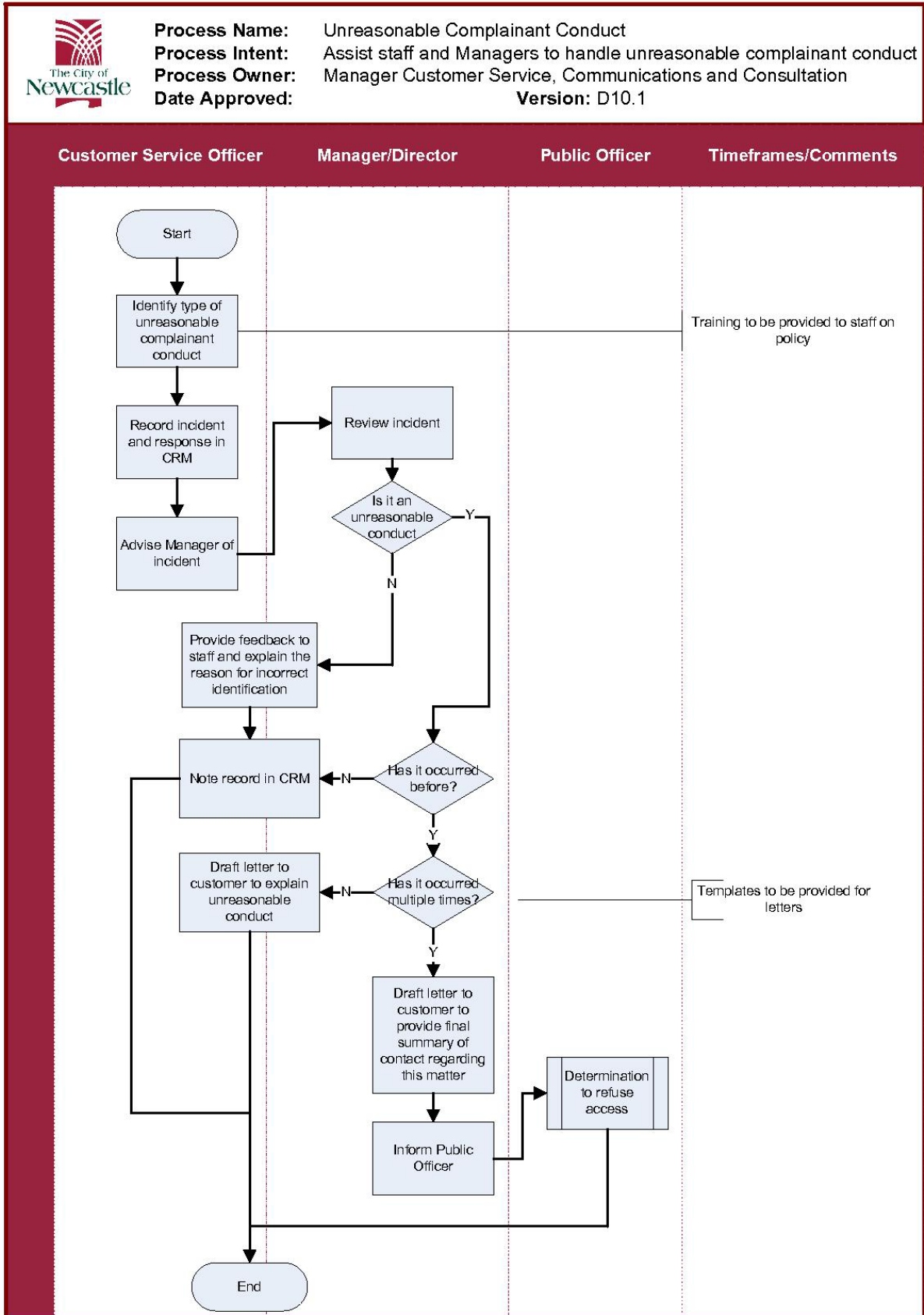
Part D - Unreasonable Complainant Conduct Register

12. Unreasonable Complainant Conduct Register

- 12.1. Council must maintain an Unreasonable Complainant Conduct register that records:
 - 12.1.1. Details of the Complainant.
 - 12.1.2. Details of the Complainant's Unreasonable Complainant Conduct.
 - 12.1.3. Details of the limitation placed on the Complainant's access to Council.
 - 12.1.4. Any specific directions relating to the Complainant.
 - 12.1.5. The date that the Complainant's entry on the Unreasonable Complainant Conduct register will be reviewed.

Part E - Process Flowchart

13. Unreasonable Complainant Conduct



14. Determination to Refuse Access



Process Name: Determination to refuse access
Process Intent: For the public officer to assess whether a customer should be refused access to Council
Process Owner: Manager Customer Service, Communications and Consultation
Date Approved: **Version:** D10.1

