


# Unreasonable Complainant Conduct Policy

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| <b>Date policy was adopted:</b> | 26 June 2019 | <b>CEO Signature and date</b><br> |
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| <b>Strategic Pillar</b>         | Capability   |   |
| <b>Responsible Branch</b>       | Governance   | 26 June 2019  |

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## 1. OUTCOMES:

- 1.1 Council recognises that the vast majority of complainants behave in a respectful manner when dealing with our organisation. However, in a very small number of cases, some complainants behave in ways that are inappropriate and unacceptable where they are aggressive, verbally abusive, threaten harm and violence, bombard us with unnecessary and excessive calls and emails, make inappropriate demands on time and resources and refuse to accept our decisions and recommendations in relation to their complaint. This policy aims to address these complainant conducts and behaviours when they arise.
- 1.2 To assist staff in managing unreasonable complainant conduct (UCC), and
- 1.3 To ensure that staff:
  - 1.3.1 Feel confident and supported in taking action to manage unreasonable complainant conduct.
  - 1.3.2 Act fairly, consistently and appropriately when responding to unreasonable complainant conduct (UCC).
- 1.4 Understand the types of circumstances when it may be appropriate to use mechanisms to manage unreasonable complainant conduct.
- 1.5 Make complainants aware of what constitutes unreasonable complainant conduct and the actions Council staff may take to deal with this.

## 2. POLICY:

- 2.1 QPRC is committed to having a Complaint Management Framework that is people focussed, responsive, which acts fairly and objectively and ensures no detriment. However, it recognises that occasionally complainant behaviour and conduct can become unreasonable where it can directly impact upon:
  - 2.1.1 Our ability to do our work and perform our functions
  - 2.1.2 The health, safety and security of our staff, and
  - 2.1.3 The ability to allocate resources fairly across the delivery of our services.
- 2.2 This policy provides guidance on how we will manage unreasonable complainant conduct (UCC).

## 3. SCOPE OF THE POLICY:

- 3.1 The aim of this policy is to work in concert with Council's Complaint Management Policy and only become active when complainant behaviour morphs into unreasonable complainant conduct (UCC).

## 4. DEFINITIONS:

### **Unreasonable Complainant Conduct**

Unreasonable Complainant Conduct (UCC) is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for our organisation, staff, other service users and complainants, or the complainant themselves.

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UCC is divided into five Categories of Conduct consisting of:

- Unreasonable Persistence
- Unreasonable Demands
- Unreasonable Lack of Cooperation
- Unreasonable Arguments
- Unreasonable Behaviours

Appendix 1 of this policy provides explanations of these Categories of Conduct.

## **Complaint Management Framework**

QPRC has developed a Complaint Management Framework (See Appendix 2) which sets out the parameters of its complaint management system. The core aspects of its Framework are:

- Charter of Individual Rights and Mutual Responsibilities of the Parties of a Complaint
- Complaint Management Policy
- Unreasonable Complainant Policy
- Competitive Neutrality Complaints Policy

## **Charter of Individual Rights and Mutual Responsibilities of the Parties to a Complaint** (See Appendix 3)

The Charter sets out the rights and responsibilities which must be observed and respected by all parties to the complaint process.

## **Procedure for Reporting, Managing and Responding to Unreasonable Complainant Conduct (UCC)**

The Council Procedure which sets out how Council will manage unreasonable complainant conduct and the restrictions which can be implemented.

## **Relevant Service Manager**

The Relevant Service Manager is the Service Manager responsible for the Service where a complainant's unreasonable conduct is occurring.

## **5. LEGISLATIVE OBLIGATIONS AND/OR RELEVANT STANDARDS:**

- Local Government Act 1993
- Practice Note No.9 – Complaints Management in Councils, DLG and NSW Ombudsman, August 2009
- AS/NZ 10002: 2014 Guidelines for Complaint Management in Organisations, October 2014
- ISO 10002 Quality Management – Customer Satisfaction – Guidelines for Complaint Handling in Organisations, 2018
- Effective Complaint Handling Guidelines, NSW Ombudsman, 3rd Edition February 2017
- Managing Unreasonable Complainant Behaviour Manual and Guidelines, NSW Ombudsman, Feb 2013
- Managing Unreasonable Complainant Conduct – A manual for frontline staff, supervisors and senior managers, 2<sup>nd</sup> Edition, NSW Ombudsman, May 2012

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## 6. CONTENT:

### 6.1 Roles and Responsibilities.

#### 6.1.1 All Staff

All staff are responsible for familiarising themselves with this policy as well as the *Charter of Individual Rights and Mutual Responsibilities of the Parties to a Complaint* (See Appendix 3). Staff are also encouraged to provide and explain the contents of this Charter to all complainants particularly those who engage in UCC or exhibit the early warning signs for UCC.

#### 6.1.2 The Relevant Service Manager

The *Relevant Service Manager* in consultation with relevant staff, has the responsibility and authority to change or restrict a complainant's access to our services in the circumstances identified in this policy.

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

#### 6.1.3 Portfolio General Manager and CEO/GM

Portfolio General Managers and the CEO/GM are responsible for supporting staff to apply the strategies in this policy, and for ensuring compliance with the procedures identified in this policy and ensuring that all staff members are trained to deal with UCC – including on induction.

Portfolio General Managers will also ensure that staff are provided with proper support and assistance including medical and/or police assistance and support through programs such as Employee Assistance Program (EAPS), if necessary.

### 6.2 Managing and Responding to UCC

6.2.1 The provisions of this policy will only be triggered when a staff member reports to their supervisor or Relevant Service Manager an incidence of Unreasonable Complainant Conduct (UCC) as defined by Appendix 1 of this policy.

6.2.2 The reporting of UCC incidents will be as per Council's *Procedure for Reporting, Managing and Responding to Unreasonable Complainant Conduct*.

6.2.3 In the first instance Complainants will be warned either by the front-line staff and/or supervisor of the unacceptability of their conduct or by a warning letter from the Relevant Service Manager.

6.2.4 If the UCC continues then Council will implement restrictions upon the complainant.

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

- **Who they have contact with** – eg limiting a complainant to a sole contact person/staff member in our organisation.
- **What they can raise with us** – eg restricting the subject matter of communications that we will consider and respond to.
- **When they can have contact** – eg limiting a complainant's contact with our organisation to a particular time, day, or length of time, or curbing the frequency of their contact with us.

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- **Where they can make contact** – eg limiting the locations where we will conduct face-to-face interviews to secured facilities or areas of the office.
- **How they can make contact** – eg limiting or modifying the forms of contact that the complainant can have with us. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to our premises, contact through a representative only, taking no further action or terminating our services altogether.

Council's *Procedure for Reporting, Managing and Responding to Unreasonable Complainant Conduct* sets out the specifics of these types of limitations.

- 6.2.2 When using the restrictions provided in this section we recognise that discretion will need to be used to adapt them to suit a complainant's personal circumstances, level of competency, literacy skills, etc. In this regard, we also recognise that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy. (See Council's *Procedure for Reporting, Managing and Responding to Unreasonable Complainant Conduct*).
- 6.2.3 All UCC cases where this policy is applied will be reviewed every **6 months** after the service change or restriction was initially imposed or continued/upheld.
- 6.2.4 The Relevant Service Manager will invite the complainant to participate in the review process unless they determine that this invitation will provoke a negative response from the complainant (ie further UCC).
- 6.2.5 The invitation will be given and the review will be conducted in accordance with the complainant's access restrictions (eg if contact has been restricted to writing only then the invitation to participate will be done in writing).
- 6.2.6 The Relevant Service Manager will notify the complainant of the outcome of their review using the appropriate/relevant method of communication as well as a written letter explaining the outcome, as applicable.
- 6.2.7 In rare cases, and as a last resort when all other strategies have been considered, the CEO/GM may decide that it is necessary to terminate a complainant's access to our services.
- 6.2.8 This will only occur if it is unlikely that the complainant will modify their conduct and/or their conduct poses a significant risk to our staff and other parties

## 6.3 Using Alternative Dispute Resolution

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

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## 6.4 Right of Appeal

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

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

## 7. REVIEW

7.1 This policy is a local policy and accordingly will be **reviewed or confirmed within the first 12 months** after the declaration of the poll for the next NSW general local government election, unless revoked sooner by Council. [**Note:** automatic revocation of this policy is provided for under s.165(4) of the *Local Government Act 1993*. The next general local government election is scheduled to be held in September 2020].

This policy may be reviewed and updated as necessary if:

- (a) legislation requires it, or
- (b) Council's functions, structure or activities change.

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## Appendix 1: Categories of Unreasonable Complainant Conduct

Unreasonable Complainant Conduct is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for our organisation, staff, other service users and complainants, or the complainant themselves. This can consist of the following:

### 1. Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources. Some examples of unreasonably persistent behaviour include:

- 1.1 An unwillingness or inability to accept reasonable and logical explanations including final decisions that have been comprehensively considered and dealt with.
- 1.2 Persistently demanding a review simply because it is available and without arguing or presenting a case for one.
- 1.3 Pursuing and exhausting all available review options when it is not warranted and refusing to accept further action cannot or will not be taken on their complaints.
- 1.4 Reframing a complaint in an effort to get it taken up again.
- 1.5 Bombarding our staff/organisation with phone calls, visits, letters, e-mails (including cc'd correspondence) after repeatedly being asked not to do so.
- 1.6 Contacting different people within our organisation and/or externally to get a different outcome or more sympathetic response to their complaint – internal and external forum shopping.

### 2. Unreasonable demands

Unreasonable demands are any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources. Some examples of unreasonable demands include:

- 2.1 Issuing instructions and making demands about how we have/should handle their complaint, the priority it was/should be given, or the outcome that was/should be achieved.
- 2.2 Insisting on talking to a senior manager or the [CEO / Director / Senior Manager] personally when it is not appropriate or warranted.
- 2.3 Emotional blackmail and manipulation with the intention to guilt trip, intimidate, harass, shame, seduce or portray themselves as being victimised – when this is not the case.
- 2.4 Insisting on outcomes that are not possible or appropriate in the circumstances – eg for someone to be sacked or prosecuted, an apology and/or compensation when no reasonable basis for expecting this.
- 2.5 Demanding services that are of a nature or scale that we cannot provide when this has been explained to them repeatedly.

### 3. Unreasonable lack of cooperation

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

- 3.1 Sending a constant stream of comprehensive and/or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues being complained about – only where the complainant is clearly capable of doing this.
- 3.2 Providing little or no detail with a complaint or presenting information in 'drips and drabs'.
- 3.3 Refusing to follow or accept our instructions, suggestions, or advice without a clear or justifiable reason for doing so.
- 3.4 Arguing frequently and/or with extreme intensity that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- 3.5 Displaying unhelpful behaviour – such as withholding information, acting dishonestly, misquoting others, and so forth.



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## 4. Unreasonable arguments

Unreasonable arguments include any arguments that are not based in reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon our organisation, staff, services, time, and/or resources. Arguments are unreasonable when they:

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

## 5. Unreasonable behaviour

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

Some examples of unreasonable behaviours include:

- 5.1 Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks
- 5.2 Harassment, intimidation or physical violence.
- 5.3 Rude, confronting and threatening correspondence.
- 5.4 Threats of harm to self or third parties, threats with a weapon or threats to damage property including bomb threats.
- 5.5 Stalking (in person or online).
- 5.6 Emotional manipulation.



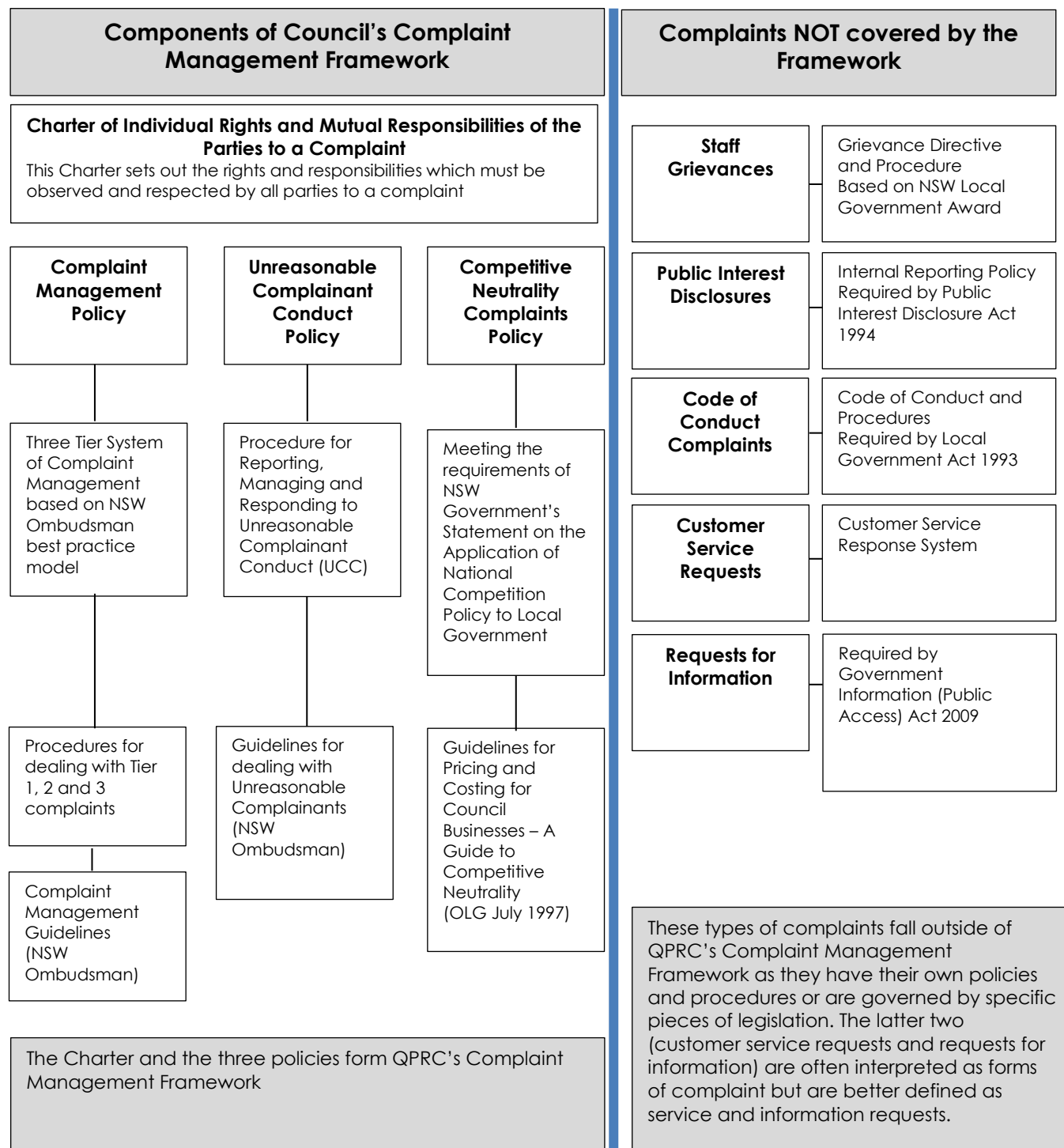
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## Appendix 2: QPRC Complaint Management Framework

### QPRC COMPLAINT MANAGEMENT FRAMEWORK

#### Definition of what constitutes a 'complaint' at QPRC

A Complaint is an "Expression of dissatisfaction made to us or about us, our services, staff or the handling of a complaint where a response or resolution is explicitly or implicitly expected or required."



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## Appendix 3: QPRC Charter of Individual Rights and Mutual Responsibilities of the Parties to a Complaint



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

Queanbeyan-Palerang Regional Council is committed to ensuring that all complaints are dealt with fairly, efficiently and effectively and that workplace health and safety standards and duty of care obligations are adhered to. To assist with this, Council has developed this Charter which sets out the rights and responsibilities which must be observed and respected by all of the parties to the complaint process.

#### 1. Individual rights<sup>1</sup>

##### 1.1 Complainants have the right:

- 1.1.1 To make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate.
- 1.1.2 To a reasonable explanation of the organisation's complaints procedure, including details of the confidentiality, secrecy and/or privacy rights or obligations that may apply.
- 1.1.3 To a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case.
- 1.1.4 To a fair hearing<sup>2</sup>.
- 1.1.5 To a timely response.
- 1.1.6 To be informed, in at least general terms, about the actions taken and outcome of their complaint.
- 1.1.7 To be given reasons that explain decisions affecting them.
- 1.1.8 To at least one right of review of the decision on the complaint<sup>3</sup>.
- 1.1.9 To be treated with courtesy and respect.
- 1.1.10 To communicate valid concerns and views without fear of reprisal or other unreasonable response.

##### 1.2 Staff have the right:

- 1.2.1 To determine whether, and if so how, a complaint will be dealt with.
- 1.2.2 To finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances<sup>4</sup>.
- 1.2.3 To expect honesty, cooperation and reasonable assistance from complainants.
- 1.2.4 To expect honesty, cooperation and reasonable assistance from fellow staff members, organisations and people within jurisdiction who are the subject of a complaint.
- 1.2.5 To be treated with courtesy and respect.
- 1.2.6 To a safe and healthy working environment.
- 1.2.7 To modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant<sup>5</sup>.

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

- 1.3.1 To a fair and impartial assessment and, where appropriate, investigation of the allegations made against them.
- 1.3.2 To be treated with courtesy and respect by staff of Queanbeyan-Palerang Regional Council (QPRC).
- 1.3.3 To be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated.
- 1.3.4 To be informed about the substance of any proposed adverse comment or decision.
- 1.3.5 To be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made.

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- 1.3.6 To be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them.
- 1.3.7 To be protected from harassment by disgruntled complainants acting unreasonably.

## 2. Mutual responsibilities

### 2.1 Complainants are responsible for:

- 2.1.1 Treating staff of QPRC with courtesy and respect.
- 2.1.2 Clearly identifying, to the best of their ability, the issues of complaint, or asking for help from QPRC staff to assist them in doing so.
- 2.1.3 Providing, to the best of their ability, QPRC with all the relevant information available to them at the time of making the complaint.
- 2.1.4 Being honest in all communications with QPRC.
- 2.1.5 Informing QPRC of any other action/s they have taken in relation to their complaint.
- 2.1.6 Cooperating with the staff who are assigned to assess/ investigate/resolve/determine or otherwise deal with their complaint.

**Note:** If complainants do not meet their responsibilities QPRC may consider placing limitations or conditions on their ability to communicate with staff or access certain services and facilities. QPRC has a zero tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant. Any conduct of a criminal nature will be reported to police and in certain circumstances legal action may also be considered.

### 2.2 Staff are responsible for:

- 2.2.1 Providing reasonable assistance to complainants who need help to make a complaint and, where appropriate, during the complaint process.
- 2.2.2 Dealing with all complainants and people or organisations that are subject of a complaint professionally, fairly and impartially.
- 2.2.3 Giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant.
- 2.2.4 Giving people or organisations that are the subject of a complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made.
- 2.2.5 Informing people or organisations of the subject of the investigation, at an appropriate time, about the substance of the allegations made against them and the substance of any proposed adverse comment or decision that they may need to answer or address.
- 2.2.6 Keeping complainants informed of the actions taken and the outcome of their complaints.
- 2.2.7 Giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them.
- 2.2.8 Treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances.
- 2.2.9 Taking all reasonable and practical steps to ensure that complainants are not subjected to any detrimental action in reprisal for making their complaint.
- 2.2.10 Giving adequate warning of the consequences of unacceptable behaviour.

**Note:** If QPRC or its staff fail to comply with these responsibilities, complainants may complain to the Council's Service Manager, Governance.

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## 2.3 Subjects of a complaint are responsible for:

- 2.3.1 Cooperating with the staff of QPRC who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction.
- 2.3.2 Providing all relevant information in their possession to QPRC or its authorised staff when required to do so by a properly authorised direction or notice.
- 2.3.3 Being honest in all communications with QPRC and its staff.
- 2.3.4 Treating the staff of QPRC with courtesy and respect at all times and in all circumstances.
- 2.3.5 Refraining from taking any detrimental action against the complainant in reprisal for them making the complaint.

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

## 2.4 QPRC is responsible for:

- 2.4.1 Having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints.
- 2.4.2 Decisions about how all complaints will be dealt with.
- 2.4.3 Ensuring that all complaints are dealt with professionally, fairly and impartially.
- 2.4.4 Ensuring that staff treat all parties to a complaint with courtesy and respect.
- 2.4.5 Ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence.
- 2.4.6 Finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances<sup>7</sup>.
- 2.4.7 Implementing reasonable and appropriate policies/procedures/practices to ensure that complainants are not subjected to any detrimental action in reprisal for making a complaint, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints.
- 2.4.8 Giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

**Note:** If QPRC fails to comply with these responsibilities, complainants may complain to the Council's Service Manager, Governance.

## Footnotes:

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

<sup>2</sup> The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.

<sup>3</sup> Such a right of review can be provided internally by the organisation, for example by a person not connected to the original decision.

<sup>4</sup> Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint.

<sup>5</sup> Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc. as defined within QPRC's Unreasonable Complainant Policy.

<sup>6</sup> For example whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings at foot.

<sup>7</sup> Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.