Complaints Management Procedure - Unreasonable Complainant Conduct

Section 1 - Purpose

(1) This procedure supports identification and management of unreasonable conduct by individuals who make a complaint to, or refuse to follow the formal complaints processes of, Charles Sturt University (the University).

Scope

(2) This procedure applies to:

a. all students, staff and other persons under the scope of the Complaints Management Policy
b. any complaint being investigated under the Complaints Management Procedure or Complaints Procedure - Workplace (the procedures set out in this document may be applied together with the University's Complaints Management Policy and procedures to any case when a complainant displays or exhibits the early warning signs of unreasonable complainant conduct), and
c. any unreasonable complainant conduct across the full range of University services and via all communication channels, including but not limited to face-to-face, telephone, mail, email, submissions to the media, and social media.

(3) Where there are inconsistencies, the provisions in the relevant Complaints Management Policy and Complaints Management Procedure will prevail.

Section 2 - Policy

(4) This procedure supports the Complaints Management Policy and should be read alongside that policy.

Section 3 - Procedure

Unreasonable complainant conduct

(5) Complaints to the University will be managed and investigated, as relevant, under the Complaints Management Procedure or Complaints Procedure - Workplace. However, where a complainant's conduct is unreasonable, this procedure will also apply.

(6) The University will consider a current or past complainant's conduct to be unreasonable if, because of the nature or frequency, it raises substantial health, safety, resource, or equity issues for the parties to a complaint. So far as a complainant's conduct is unacceptable and arises during, or as a direct result of, professional work/services provided by the University or its staff, it will be characterised as unreasonable conduct.

(7) The responsibilities, standards and expected conduct of complainants with regards to making a complaint to the University are set out in the Complaints Management Policy and clause 16 of this procedure.

(8) When complainants behave unreasonably in their dealings with University staff and/or its functions such as the University Ombudsman, Division of People and Culture (DPC), Student Services etc., their conduct can significantly affect the University's ability to manage the complaint or to provide assistance. As a result, the University will take proactive and decisive action to manage any complainant conduct that negatively or unreasonably affects the University, its staff, students, resourcing, efficiency levels or its operations.

(9) The University's ability to respond to complaints depends on:

a. the complainant acting in good faith and only lodging a complaint that is not frivolous, vexatious or otherwise without merit (not consistent with facts)
b. the complainant and University staff relevant to the complaint acting in a fair and reasonable manner by providing requested information or documents in a timely manner, attending scheduled meetings and actively participating in University proceedings (where relevant)
c. the ability of University staff to do their work and perform their functions in the most effective and efficient ways possible
d. staff productivity and their health, safety, and wellbeing, and
e. the ability of the University to allocate its resources appropriately across all complaints received.

(10) The University 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.

(11) Any conduct of a criminal nature will be reported to law enforcement. Inappropriate conduct, in whatever form, may also be reported to relevant governing or regulatory bodies. In certain cases, legal action may also be considered by the University.

(12) This procedure should be applied, cautiously and sparingly, in rare instances where a complainant's conduct exceeds what most people would consider reasonable in the circumstances.

(13) This procedure is to assist University staff handling complaints to:

a. feel confident and supported in taking action to manage unreasonable complainant conduct
b. recognise and escalate unreasonable complainant conduct (or its early warning signs) to appropriate University staff
c. act fairly, consistently, and appropriately when responding to unreasonable complainant conduct
d. create awareness and clarify roles and responsibilities in managing unreasonable complainant conduct, and
e. be aware of the expectations the complainant and other relevant University staff are required to satisfy in the course of managing a complaint.

(14) Unreasonable complainant conduct may be inconsistent with the University's Code of Conduct (for staff) and/or Student Charter (for students). Where required, unreasonable complainant conduct will be managed in accordance with the relevant codes, charters, policies and procedures.

(15) All staff are responsible for familiarising themselves with this procedure as well as the Individual Rights and Responsibilities of the Parties to a Complaint document associated with this procedure. Staff are also encouraged to explain the contents of this document to complainants, particularly those who engage in unreasonable complainant conduct or exhibit the early warning signs of unreasonable complainant conduct.

Standards and expectations of complainant conduct

(16) In accordance with the Complaints Management Policy and procedures, the complainant is expected to:

a. not lodge a complaint that is frivolous, vexatious or otherwise without merit
b. act in good faith in all their dealings with relevant University staff, including:
    i. responding honestly to any questions
    ii. not withholding relevant information
    iii. supplying relevant documents, information or other forms of evidence to support the complaint or when requested by University staff
c. attend scheduled meetings that pertain to the complaint
d. treat the complaint, and dealings (in any form) with University staff about the complaint, as being confidential and not to be discussed, communicated or disclosed, either directly or indirectly, to other members of the University staff
e. comply with any directions given by University staff or their representative, with respect to the complaint and its management
f. meaningfully participate in any University processes or proceedings related to the complaint
g. not intimidate, coerce, influence or otherwise target University staff, students or relevant stakeholders involved in the complaint, and
h. not damage, or attempt to damage, University property, which includes disposal or destruction of University records.

Actions for unreasonable conduct

(17) Strategies may vary from case to case according to the circumstances and response to the case. More than one strategy may apply at any time. The appropriate strategy for dealing with unreasonable complainant conduct will depend on the specific circumstances and may include:

a. placing a reasonable and proportionate limitation on one or more of the following:
    i. who the complainant has contact with, such as limiting interaction to a sole contact person
    ii. how a complainant can make contact, such as the manner of engagement
    iii. where a complainant can make contact, such as all contact to be via a single email address
    iv. when a complainant can have contact, such as limiting contact to a particular time, day, or length of time, or frequency of contact with the University
    v. what complaints can be received and processed, such as defining or limiting the scope or subject matter of communications that the University will consider and respond to
    vi. subject matter of communications, such as where a reasonable person would believe that a specific issue has been adequately addressed
    vii. access to University IT systems
    viii. access, including prohibiting entry, to the University premises
    ix. who the complainant reports to (staff)
b. other strategies as advised by government agency guidelines on dealing with such conduct
c. where a complainant's conduct is unacceptable (e.g threats, abuse, physical harm or threats of physical harm directed at staff or students), referral to the University's Director, Security and Resilience (CSO) or law enforcement, where appropriate, and/or
d. in exceptional circumstances, termination of access to all University services and/or prohibited access to University campuses.

(18) The type of change and/or level of restrictions that are applied may also be adjusted according to the complainant's response.

Identifying unreasonable complainant conduct

(19) This procedure is intended as a guide for staff and recognises that the most effective way to manage unreasonable complainant conduct (or the early warning signs of unreasonable complainant conduct) is to deal with a complainant's observable conduct and the content of their communications – rather than speculating on the possible motivations behind them or the person's mental health status. This ensures that:

a. people who are not mental health professionals, counsellors or social workers are able to confidently manage instances of unreasonable conduct without being experts in psychoanalysis or behavioural psychology
b. complaint managers can take a more focused approach to dealing with unreasonable conduct by responding directly to the things and behaviours they observe, rather than the things they assume or suspect
c. a person's behaviour does not negatively affect how their complaints are dealt with (if valid) or the level of attention that is given to the valid complaint, and
d. unreasonable conduct and its impacts are managed in ways that are transparent, reasonable, and fair to all those involved in a complaint and the way it is handled.

(20) 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 the parties to a complaint.

(21) The parties to a complaint that might be detrimentally impacted by unreasonable complainant conduct include:

a. the individual responsible for managing a complaint
b. the complaints manager tasked with investigating a complaint
c. any respondents to a complaint
d. the complainant themselves (including members of their families and friends), and/or
e. other complainants and third parties.

(22) Early warning signs that a complainant's conduct is or may become unreasonable include, but are not limited to, where a complainant has:

a. had a significant number of previous interactions with the University about their issue or related issues
b. made a significant number of complaints (informal or formal) about the same issue
c. made repeated contact with other organisations such as members of Parliament, government regulators and/or oversight bodies about their issue
d. made a number of access to information requests for information about how their issue has been handled by the University
e. complained about a complaint manager's (or the University's) integrity or competence without justification, citing concerns largely or solely related to their dissatisfaction with the outcome of their complaint, the level of attention they were given, etc.
f. suffered disproportionate losses in their personal or professional lives because of pursuing their issue, such as unemployment problems, financial difficulties, or mental health issues
g. a known history of physical violence or serious verbal threats, including having a previous history with police in relation to such issues
h. safety alerts on their file, and/or
i. a history of substance abuse or mental health issues.

(23) Unreasonable conduct is not limited to telephone communications or face-to-face interactions. It can also take place online or in written correspondence. So far as a person's conduct is unacceptable and arises during, or as a direct result of, professional work/services provided by the University or its staff, it can legitimately be characterised

as unreasonable conduct.

(24) The University and its staff can also experience unreasonable conduct from people who are not (yet) complainants but have an issue with the University or its staff.

Assess the situation and decide

(25) If a staff member believes a complainant is exhibiting unreasonable conduct or behaviour, or the warning signs of unreasonable conduct or behaviour, they will contact the University Ombudsman (for student and third-party matters) or the Division of People and Culture (for staffing matters) for advice in the first instance.

(26) The University Ombudsman or Executive Director, People and Culture (ED, PC), in consultation with relevant management, may change or restrict University interaction with a complainant. As part of this process, the University Ombudsman or ED, PC should consider:

a. the circumstances giving rise to the unreasonable complainant conduct
b. the impact or likely impact of the complainant's conduct on the University, staff, time, resources, etc.
c. the complainant's responsiveness to the staff member's warnings or requests to stop the unreasonable behaviour
d. other actions staff have taken to manage the complainant's conduct, if any, and
e. options for managing the situation.

Formally warn the complainant

(27) When a complainant's conduct has been assessed as unreasonable (as expressed in this procedure) the University Ombudsman or ED, PC may provide a formal written warning to the complainant. If the conduct continues after a formal warning has been provided, the complainant may be referred under the Student Misconduct Rule 2020 (if a student), or the Code of Conduct (if staff).

(28) A formal written warning may not be provided if it is likely to provoke a negative response or aggravate a complainant's conduct.

(29) Where a complainant's conduct poses a risk to the health, safety or wellbeing of staff or others, the University may refer the matter to the Executive Director, Safety, Security and Wellbeing and/or law enforcement.

Restriction of access

(30) In exceptional circumstances, a complainant may be restricted from any contact or access to the University staff and services, including its campuses and premises. For example, where the complainant has not, or is unlikely to change their unreasonable conduct, or their conduct poses a significant risk to the University staff or others because it involves one or more of the following types of conduct:

a. Acts of aggression, such as verbal and/or physical abuse, threats of harm to themselves or others, harassment, intimidation or stalking against any member of the University community.
b. Damage to University property.
c. Threats with, or of, a weapon or any other items that could reasonably be used to harm themselves or others.
d. Physically preventing a University staff member from moving freely or carrying out their duties.
e. Potentially unlawful conduct.

(31) The complainant's access to the University will be restricted if their unreasonable conduct:

a. continues after they have been formally warned

b. poses a risk to the health, safety, or wellbeing of others in the University, and/or
c. involves unlawful or unacceptable conduct.

(32) The decision to restrict a complainant's access to the University or its staff or services (suspension orders and temporary restriction orders) will be applied in accordance with:

a. Student Misconduct Rule 2020 provisions for temporary restriction orders and suspension orders
b. Delegation Schedule D - Facilities and Information Technology
c. Facilities and Premises Policy and Facilities and Premises Procedure - Access, Use and Security
d. Information Technology Policy and Information Technology Procedure - Acceptable Use and Access.

(33) Complainants who have engaged in unreasonable complainant conduct may also be subject to misconduct proceedings and referred under the Student Misconduct Rule 2020.

(34) A written notification will be issued to the complainant outlining the decision and the duration of the restriction(s), indicating non-compliance may be in breach of the Inclosed Lands Protection Act 1901 (NSW).

Notify the complainant of proposed restriction of access

(35) The relevant delegated or authorised officer (see clause 32) will send the complainant written notification of any restriction that will apply, including restriction periods.

Notify other staff

(36) To ensure the health, safety and wellbeing of staff and others at the University, where a complainant is prohibited from entering the University campuses or from accessing University services, the University Ombudsman or Executive Director, Safety, Security and Wellbeing, will notify the Executive Leadership Team and any relevant staff of the University.

(37) The University Ombudsman will record any change or restriction affecting a complainant's access to University campuses and/or services in the University's recordkeeping systems.

Monitor and review

(38) The University Ombudsman, in consultation with the Executive Director, Safety, Security and Wellbeing, will review any restriction imposed upon a complainant, following a request by a staff member, or following any further incidents that meet the threshold of unreasonable complainant conduct.

(39) As part of the review, the University Ombudsman, in consultation with the Executive Director, Safety, Security and Wellbeing, should consider:

a. the complainant's ongoing conduct, their compliance with the restriction period and whether they have contacted or attempted to contact University staff outside of the restrictions placed upon them during the restriction period
b. any information or submissions made by the complainant about the restriction, and
c. any other information that may be relevant in the circumstances.

(40) Where the University Ombudsman determines that the restriction has been ineffective in managing the complainant's unreasonable conduct, further restrictions could be imposed and ultimately access to the University services could be withdrawn in accordance with clause 32.

Frivolous, vexatious or otherwise unreasonable conduct

(41) In accordance with the Complaints Management Policy and procedures, when investigating a complaint the complaints manager, in consultation with the University Ombudsman (students and third parties) or DPC (staff), will consider whether the complaint is frivolous, vexatious or whether the complainant is misusing the complaints process.

(42) Where the complaint is determined to be frivolous or vexatious, or the complainant is misusing the complaints process, the complaint will be declined or discontinued and the complainant notified in accordance with the Complaints Management Policy and procedures.

Student health, safety and wellbeing

(43) The University takes its responsibility to support student health, safety, wellbeing and recovery very seriously. Students will be directed to appropriate support services throughout the application of this procedure.

Staff wellbeing and safety

(44) The University takes its responsibility to support staff health, safety, wellbeing and recovery very seriously. All staff are responsible for notifying their supervisor of unreasonable complainant conduct (or the early warning signs of) that they have been subjected to and that they reasonably believe requires intervention.

(45) Following an interaction or exposure to a complainant's unreasonable conduct or behaviour, supervisors should provide affected staff with the opportunity to debrief or express their concerns, either formally or informally. Managers should ensure that staff are provided with appropriate support and assistance, including access to the University's Employee Assistance Program (EAP), or other forms of support, as required. The supervisor is required to report the incident as a work health and Safety issue in accordance with the University's Health, Safety and Wellbeing Procedure - Incident Reporting and Investigation.

Recordkeeping and reporting

(46) Details of the complaint, including the processes followed, interactions with the complainant and the basis of decisions made, must be recorded in the University's recordkeeping system.

(47) The University's recordkeeping system enables the University to monitor and respond consistently to persons or situations that pose potential threats in the future. The University Ombudsman or delegate is responsible for monitoring and reporting on the number and type of cases where this procedure is applied.

Further assistance

(48) For information, training and other support please contact:

a. Office of Governance and Corporate Affairs, University Ombudsman

Section 4 - Guidelines

(49) Nil.

Section 5 - Glossary

(50) This procedure uses terms defined in the Complaints Management Policy, as well as the following:

a. Early warning signs of unreasonable complainant conduct - refers to the complainant's history and whether the complainant has:
    i. had a significant number of previous interactions with the University about their issue or related issues
    ii. made a significant number of complaints (informal or formal) about the same issue
    iii. made repeated contact with other organisations such as Members of Parliament, government regulators and/or oversight bodies about their issue
    iv. made a number of access to information requests for information about how their issue has been handled by the University.
    v. complained about a complaint manager's (or the University's) integrity or competence without justification, citing concerns largely or solely related to their dissatisfaction with the outcome of their complaint, the level of attention they were given etc.
    vi. suffered disproportionate losses in their personal or professional lives as a result of pursuing their issue such as unemployment problems, financial difficulties, or mental health issues
    vii. a known history of physical violence or serious verbal threats, including having a previous history with police in relation to such issues
    viii. safety alerts on their file, and/or
    ix. a history of substance abuse or mental health issues.
b. Unreasonable complainant conduct – means any behaviour by a current or former complainant which, because of its nature or frequency, raises substantial health, safety, resource, or equity issues for the parties to a complaint and is not limited to telephone communications or face-to-face interactions. It can also take place online or in written correspondence. So far as a person's conduct is unacceptable and arises during, or as a direct result of, professional work/services provided by the University or its staff, it can legitimately be characterised as unreasonable conduct.

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