

Part 1. What is unreasonable conduct by a complainant?

1.1. Overview

Public and private sector organisations deal with hundreds of thousands of complaints every year. Organisations that value complaints and respond to them fairly and promptly are more likely to:

- strengthen relationships with the people who use their services or premises, or with whom they otherwise interact
- identify problems in the operations of their organisation or the conduct of their staff
- improve their operations, service delivery and systems
- improve the standard of the services they provide.

Some people who complain are justifiably disappointed and angry because they have suffered harm through no fault of their own. Some may have been treated unfairly or disproportionately without reasonable explanation. They may have been given incorrect information or advice that they relied on to their detriment or may have suffered substantial losses as a result of an improper decision that was made against them. Despite these challenges, many people who make complaints are able to manage their frustration and anger, and productively engage with the systems, processes and people with whom they are interacting.

Organisational scientists have put forward a theory to describe how people react to decisions and the way they are made, arguing that parties to a dispute may well care as much about how a decision was made as they do about the outcome. They commonly refer to this theory as 'organisational justice theory' when looking at decision-making processes within an organisation, or 'justice theory' when looking at decision-making processes external to an organisation. This theory is relevant for complaint handlers.

If people who make complaints see the complaint handling process as fair and reasonable, believe they were treated with respect and are given enough information, they are more likely to accept decisions or outcomes that are unfavourable to them.

However, this is not true for everyone. For some people, their frustration or anger about the subject matter of their complaint, how it was handled or its outcome can lead to aggressive and abusive conduct towards the organisations and staff handling their complaints. In such circumstances some people may threaten harm, be dishonest, provide intentionally misleading information or deliberately withhold information that is relevant to their complaint. Others may make repeated and unnecessary telephone calls, send frequent emails providing large amounts of irrelevant information, or insist on things they are not entitled to and outcomes that are clearly not possible, realistic or appropriate in the circumstances. When a complaint is finalised, such people may be unwilling to accept decisions and continue to demand further action when they have exhausted all available internal review options.

It is also very common for people who have gone down this path to escalate their complaints to external review bodies when an objective assessment would show they were unlikely to be successful. Some also lose perspective and change the focus of their complaint – shifting from the substantive issues and the people or organisation responsible for them, to allegations of incompetence, collusion, conspiracy and corruption by the case

officers and organisations with whom they have been dealing. This means their complaints are often with a number of organisations at the same time – including being dealt with by one or more organisations, external review bodies, Ministers, local MPs or the courts where they enter the complaints cycle all over again.

One of the main challenges for organisations dealing with people who display these types of behaviours is that it is normal that most staff, regardless of their job description, will prefer not to deal with people they view as ‘difficult’. In fact, many will try to actively avoid or minimise circumstances where they have to deal with such people. We have seen such avoidance behaviour resulting in organisational cultures where these people are seen as an irritant or interference to other more ‘important’ work. In these circumstances, their complaints are often:

- delegated to junior staff members
- assigned to someone in the organisation who is considered to be ‘naturally good’ at dealing with difficult people
- declined with little consideration of the merits of their issues
- only escalated to a more experienced or senior staff member once the situation has spiralled out of control.

These approaches often increase stress levels for staff dealing with these complaints and, because of differences in skill levels, lead to significant disparities in the ways that people exhibiting challenging behaviours are dealt with.

This manual is designed to help organisations and their staff take a systematic and consistent approach to managing their interactions with people engaging in unreasonable conduct. It provides a series of suggestions and strategies to assist all staff members – not just frontline officers – to appropriately interact with all people they come in contact with in the course of their work, particularly those who are perceived to be behaving unreasonably. The strategies have been developed by complaint handlers for complaint handlers – and although the focus of this manual is on the public sector, the suggested strategies are equally applicable to private sector situations.

The key issue in this manual was first addressed by the NSW Ombudsman in a publication in 1998 entitled ‘Dealing with Difficult Complainants’. In 2006 all Australian Parliamentary Ombudsmen agreed to pilot a new approach to categorising and managing what we referred to as ‘difficult complainants’. This pilot project led to an interim practice manual being published in 2007, with the first edition of the practice manual being published in 2009 and the second edition in 2012 – both titled ‘Managing Unreasonable Complainant Conduct’. To highlight the importance of not labelling individuals and focusing on the conduct not the person, this edition of the practice manual has been renamed ‘Managing Unreasonable Conduct by a Complainant’.

The framework of management strategies in the manual is based on original work by the NSW Ombudsman’s office. It has been refined through extensive consultation with a range of Ombudsman offices, complaint handlers and professionals from a variety of disciplines – including consumer behaviour, suicide intervention, intercultural communication and mental health. The development of the manual was also informed and supported by a 2004 study into ‘unusually persistent complainants’ conducted by Grant Lester, Beth Wilson, Lynn Griffin and Professor Paul E. Mullen.¹

1. Lester G, Wilson B, Griffin L & Mullen PE, (2004) ‘Unusually Persistent Complainants’, *British Journal of Psychiatry*, 184: 352-356.

The framework was trialled for 12 months by Australasian Parliamentary Ombudsman offices in 2007. It is now used by staff from a wide range of organisations, both public and private, around the world.

While preparing the second edition, we held focus groups with approximately 180 public sector staff from 80 organisations across Australia. Among the various issues discussed during these sessions was the effectiveness of the approach and framework for managing unreasonable conduct set out in the first edition of the manual. All of them confirmed that the framework was a primary tool for responding to unreasonable conduct – particularly those organisations that do not have the discretion to terminate services, or are small or remote with limited resources to devote to managing unreasonable conduct.

This third edition builds on the experiences of our office over the last five years, and the refined and updated advice and guidance we have developed for our managing unreasonable conduct training. It also covers a number of important issues such as:

- how best to respond to the cultural background of people who make complaints and any disability a complainant may have
- recognising and responding to ‘high conflict’ people
- the implications for complaint handlers of the changes that can be expected in the attitudes and behaviours of the parties to a complaint as a complaint related conflict escalates
- the impact of factors such as certain cognitive and motivational biases
- the importance of fairness in the complaints process.

The manual is not intended to tell you exactly how to deal with every situation.

There is no ‘one size fits all approach’ to managing unreasonable conduct by some complainants.

Further, the suggestions in this manual will not be effective in all situations. The strategies should be adapted to suit the circumstances of each case and should also supplement rather than replace existing organisational policies, procedures and protocols.

1.2. What is unreasonable conduct and why does it happen?

We define unreasonable conduct as any behaviour by a person which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for the people involved in the complaint process.

These can include

- the organisation responsible for handling a complaint,
- the case officer(s) dealing with a complaint,
- any subjects of complaint,
- the person who made the complaint (potentially including members of their families and friends),
- other people who have or make a complaint,
- and other service users.

Unreasonable conduct can happen anywhere. It 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 the course of, or as a direct result of, professional work/services provided by an organisation or its staff, it can legitimately be characterised as unreasonable conduct for the purposes of this manual. Organisations can also experience unreasonable conduct from people who are not (yet) complainants, but have an issue with the organisation or its staff.

1.2.1. Why do some people behave unreasonably?

From our experience, there are a wide range of reasons why some people behave unreasonably. Most of the reasons fall into one or more of the following motivational categories:

- Attitudes – they are dissatisfied with a person, an organisation, or the systems and processes with which they are interacting.
- Emotions and personalities – they are highly angry, frustrated or disappointed and express those emotions in unacceptable ways, or they have an inflated sense of entitlement and are unable to accept any personal blame for their issue.
- Aspirations – they are seeking 'justice', a 'moral outcome' or are obsessively pursuing their issue on 'a matter of principle'.
- Vindication – they want to prove that they are right or justified, but this is something complaints processes are generally not designed to deliver.
- Recreational interests – they are carrying out an all-consuming hobby or are making a career of complaining, or they are deriving pleasure from the activities associated with the complaint process or are enjoying the social contact with the case officer or organisation.
- Unmet needs and expectations – their expectations, physical needs or emotional needs are not being met or have not been met.
- Misinterpretations – the behavioural traits and communication patterns of people from different cultural backgrounds may differ from those of the staff or the organisation.

- Revenge and/or retribution – an intention to cause harm that can override all other considerations.
- Ulterior motives – they may make a complaint or series of complaints as a strategy in an ongoing conflict or with the intention of harassing, intimidating, embarrassing or annoying another person or organisation.

Some people who make complaints use the complaints system as an information gathering process for subsequent legal cases, while others may be experiencing personal or mental health problems we cannot control.

While psychiatrists and psychologists look closely at what causes a person's behaviour in order to assess their mental state or make a psychological diagnosis, it is not our role as complaint handlers to do this. Our focus is complaint handling in a culturally sensitive and inclusive manner. We deal with people who are dissatisfied with a service they have received, a failure to follow a process or procedure, or improper/incorrect conduct or decisions.

It is important to stress that most complaint handlers do not have the qualifications to assess and diagnose complainants. Even those who do will rarely have enough face-to-face contact with a complainant to make a valid diagnosis about their mental health.

This means the suggestions in this manual are based on recognising that the most effective way to manage unreasonable conduct is to deal with a person's observable conduct and the content of their communications – rather than speculating on the possible motivations behind them or the person's mental health. This ensures that:

- 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.
- Complaint handlers 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.
- 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 them.
- 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.

1.2.2. The impact of unreasonable conduct

Although relatively few people who make complaints behave unreasonably, their behaviour can have profound effects on organisational resources and efficiency levels – as well as staff productivity, safety and wellbeing. The feedback we have received suggests that for most organisations unreasonable conduct by complainants is only an issue in about 3–5% of cases, and can involve just one or two complainants at any one time. However, such unreasonable conduct can:

- Take up approximately 25–30% of an organisation's resources – in some cases this can be a large amount of an organisation's complaint handling resources, as well as the time and attention of senior managers.
- Cause significant equity problems for organisations that are forced to substantially and unreasonably divert resources away from other complaints and functions to manage it.

- Be a major source of stress for the staff members who have to deal with it – including in some cases affecting their right to dignity, physical and emotional safety, wellbeing and work performance.
- Have damaging and sometimes devastating consequences for the people who engage in these types of behaviours. It almost always hinders their ability to achieve appropriate and acceptable outcomes for themselves and, in extreme cases, can result in unemployment, bankruptcy or self-harm.²
- Have negative consequences for external review agencies and regulatory bodies that have to dedicate time and resources to dealing with review requests/applications that have little or no merit and have been escalated by people who cannot ‘let go’ of their issue.

2. Lester G, Wilson B, Griffin L & Mullen PE, (2004) ‘Unusually Persistent Complainants’, *British Journal of Psychiatry*, 184.

1.3. Understanding the approach and framework

1.3.1. Core objectives and underlying principles

The approach to managing unreasonable conduct in this manual has three core objectives. These are to:

- Ensure equity and fairness for all complainants – regardless of their conduct, ethnic identity, national origin, religion, linguistic background, sex, gender expression, sexual orientation, physical ability or other cultural or personal factors.
- Effectively manage resource allocation and improve efficiency in handling complaints.
- Protect the health and safety of staff who interact with people whose conduct is unreasonable.

To achieve these objectives, you also need to be guided by three categories of broad underlying principles – prevention, management and accountability.

Ensure equity and fairness

Make sure that all current and potential complaints are dealt with equitably and fairly – regardless of ethnic identity, national origin, religion, linguistic background, sex, gender expression, sexual orientation, physical ability or other cultural or personal factors – and resources are distributed on the basis of the merits of a complaint, rather than a complainant's demands or conduct.

Improve effectiveness and efficiency

Improve overall effectiveness and efficiency by allocating sufficient time and resources to dealing with unreasonable conduct which, if left unmanaged, can be a massive drain on the complaint handling resources of an organisation.

Protect health and safety

Comply with work health and safety and duty of care obligations by identifying the potential risks posed by unreasonable conduct to staff health, safety and wellbeing and implementing measures to eliminate or control those risks. Staff safety is the number one goal.

See – 4.1. Management roles and responsibilities.

Prevention principles

Manage expectations from the outset

Manage the expectations of people making complaints from the beginning of the complaints process to ensure that they are reasonable and realistic. Unmet expectations are one of the primary triggers for unreasonable conduct by a complainant (UCC).

See – 3.1. Effectively managing complainants and their expectations from the outset.

Recognise and respond to cultural differences

Some people who make complaints come from cultural backgrounds that are different from the dominant culture in which your organisation operates. They may be acting in a way that is seen as respectful and polite within their own culture, but not within your

organisation. This may mean that staff members have to tell them about your written policies, procedures and mechanisms as well as the unwritten expectations for respectful behaviour, cooperation and transparency. Staff members should also be taught to recognise some of the specific non-dominant behavioural and communication patterns that they may encounter in the course of doing their jobs.

See – 3.3. Cultural communication styles.

Insist on respect and cooperation

Insist that people show respect for and cooperate with staff as a prerequisite to receiving services and having any further contact with or communication from the organisation.

It is also vital that complaint handlers show the same respect and courtesy to the people who make complaints, regardless of how those people may behave towards them.

Implement policies and procedures

Implement appropriate policies and procedures for managing unreasonable conduct and ensure that all staff are familiar with and receive training on how to apply them.

See – Unreasonable Conduct by a Complainant: A model policy and procedure for organisations – available at www.ombo.nsw.gov.au.

Management principles

Exercise ownership and control over complaints

Exercise ownership and control over complaints and ensure that people who make complaints are aware that the organisation and its staff effectively ‘own’ the complaint – they decide whether it will be dealt with and if so by whom, how quickly it will be dealt with, the priority and resources it will be given, the appropriateness of the outcome achieved, and so on. People who make complaints ‘own’ their issue – they can raise it in any other forum, including oversight agencies, the courts and tribunals, the media or with a politician.

Focus on specific, observable conduct

Move away from any approach that labels or categorises people as ‘difficult’. Other terms used to describe those with problematic behaviours include resource-intensive, high maintenance or high conflict people, vexatious or querulous complainants. These terms all focus on labelling the person as being difficult or challenging rather than on managing how to respond to their behaviour – which is the real issue. Also, when these terms are used by case officers to describe certain people who make complaints, it can negatively influence how these people are perceived and dealt with by other staff.

Saying ‘unreasonable conduct by a complainant’ allows us to focus on the problematic behaviour and respond to it openly and transparently – without the worry that we have incorrectly labelled someone.

Respond appropriately and consistently

Make sure that you make full use of the framework and strategies in this manual when dealing with unreasonable conduct. The framework provides a series of strategies and a ‘thinking tool’ that can be used to prevent and respond to such conduct. It can also ensure consistency in how matters are dealt with individually and across the board – both within and across public sector agencies.

Communicate effectively

Provide people who make complaints with clear, timely, firm and culturally or personally appropriate communication – including regularly informing them about the status of their complaints, even if there has been no progress.

If people who have made a complaint are not kept informed about the progress of their complaint, they are more likely to reach negative assumptions about how they are being dealt with. This includes assuming that no one is working on the complaint, that it is the subject of a significant investigation (when it is not), or that there has been a mistake.

See – 3.1. Effectively managing complainants and their expectations from the outset.

Accountability principles (supervisors and senior managers)**Commitment**

Showing management commitment and support for the approach outlined in this manual for managing unreasonable conduct is critical to its success. It is not enough to send staff for training and expect them to be able to deal with the challenges presented by unreasonable conduct.

Senior managers need to:

- Actively and clearly endorse and support the strategies adopted by the organisation to manage unreasonable conduct.
- Demonstrate their commitment to the approach by applying it consistently.
- Support their staff with the necessary policies, directives and authorisations to use the strategies – staff need to understand what they are and are not specifically authorised to do when dealing with unreasonable conduct and the appropriate escalation procedures to follow.

Supervision

Make sure that supervision – as far as the person engaging in unreasonable conduct is concerned – happens behind the scenes, except in limited circumstances. This could be when a staff member decides they are unable to manage the person's conduct and/or that access to a senior manager will defuse the situation.

It is usually not necessary or appropriate to allow a complaint to be escalated to a supervisor just because the person who made the complaint demands it. People who are treated this way can feel that they are getting preferential treatment in having their matter escalated or can make false assumptions about the importance of their issue. Also, once a person has got through to a senior manager, they may well continue to expect similar treatment in their future interactions with the organisation – especially when they do not get their own way.

Unless a person who has made a complaint wants to make a complaint about a case officer, which they should be asked to do in writing if at all possible, case officers should be strongly encouraged not to escalate calls to supervisors and senior managers – unless customer loyalty and repeat custom are important to the organisation.

Supervisors also play an important role in ensuring that case officers are given adequate support with handling individual instances of unreasonable conduct.

See – 4.1. Management roles and responsibilities.

Recognition

It is important that management recognises that managing unreasonable conduct is a core organisational responsibility, rather than a peripheral issue, and is given proper priority and adequate resources. This includes ensuring that staff are given adequate time to deal with these cases.

Although this may require greater initial outlays in terms of time, training and supervisory support, taking this approach is likely to result in significant overall savings for the organisation.

Accountability principles (all staff)**Remain calm**

It is important that staff remain calm in the face of conduct that they find to be unreasonable and maintain control over their emotions and reactions to such conduct. Keep in mind that ‘calmness’ does not preclude adapting communication style.

See – 3.3. Cultural communication styles.

Show respect

Show respect to all people you interact with, including people who may attempt to provoke you. ‘Showing respect’ may require you to adapt how you hear a person’s expressive, circular or somewhat unfamiliar communication style. With training and practice you may even develop the ability to adapt your own preferred communication styles.

Words or actions that people interpret as disrespectful are a significant trigger for people to react in ways we find to be challenging, if not unreasonable. Showing respect is therefore fundamental to preventing, or successfully managing, unreasonable conduct. Everybody believes they deserve respect no matter how they behave – and a failure to show respect will invariably lead to a negative response from any person you are dealing with. As a result, it does not matter how a person treats or responds to you – you should treat them with respect. This is not about faking an emotional response, but about words and actions – being courteous, polite, attentive and responsive in ways that the person will recognise.

See – 2.13. Dealing with anger through effective communication.

See – 3.3. Cultural communication styles.

Demonstrate impartiality

Demonstrate impartiality throughout the complaints process and do not act as an advocate – particularly when dealing with people who try to pressure, intimidate or manipulate you. The obvious exception to this is if advocacy is a part of your job.

Be professional

Understand that you must promote productive and professional interactions with all people you interact with at work. Be professional in all your dealings with them, even when they are acting unreasonably.

1.3.2. The framework

The framework in this manual divides unreasonable conduct into five broad categories – unreasonable persistence, unreasonable demands, unreasonable lack of cooperation, unreasonable arguments and unreasonable behaviours. The framework provides an overarching strategy for managing each one. It also identifies the specific behaviours that fall under each category and provides corresponding options for each one.

Unreasonable persistence

This includes people persisting with their issues even though they have been finalised, refusing to accept a final decision, and sending excessive amounts of correspondence.

The best approach for dealing with unreasonable persistence is to say ‘no’ – not necessarily using the word but the same principle.

See – 2.3. Strategies for managing unreasonable persistence.

See – 2.4. Scripted responses to unreasonable persistence.

Unreasonable demands

This includes people insisting on outcomes that are unattainable, moving the goal posts or demanding to have their matters dealt with in particular ways.

The best approach for dealing with unreasonable demands is setting limits – such as limiting how often they can telephone the organisation, who they can call and for how long.

See – 2.5. Strategies for managing unreasonable demands.

See – 2.6. Scripted responses to unreasonable demands.

Unreasonable lack of cooperation

This includes people providing disorganised, excessive or irrelevant information, failing to provide relevant information that might not suit their position or argument, being unwilling to consider other valid viewpoints, or refusing to define their issues of concern when they are capable of doing so.

The best approach for dealing with unreasonable lack of cooperation is setting conditions – such as requiring the person to define their issues of concern, organise information they have submitted in support of their complaint, or supply all relevant information in their possession at the outset.

See – 2.7. Strategies for managing an unreasonable lack of cooperation.

See – 2.8. Scripted responses to an unreasonable lack of cooperation.

Unreasonable arguments

This includes people seeing cause and effect arguments where there is none, holding conspiracy theories unsupported by evidence, or irrationally interpreting facts or laws and refusing to accept other interpretations.

The best approach for dealing with unreasonable arguments is declining and discontinuing – for example, refusing to deal with complaints (or aspects of complaints) that are not supported by any evidence or are clearly illogical.

See – 2.9. Strategies for managing unreasonable arguments.

See – 2.10. Scripted responses to unreasonable arguments.

Unreasonable behaviours

This includes extreme anger, aggression, threats or other threatening or violent conduct.

The best approach for dealing with unreasonable behaviours is setting limits and conditions about acceptable and unacceptable behaviour and, if necessary, applying risk management strategies and/or security policies and procedures.

Threats or other threatening or violent conduct are not acceptable in any culture, but you may want to check 3.3 Cultural communication styles to see if the person's expressive communication style makes it appear as if they are angry or aggressive when they are actually displaying passion for their cause.

See – 2.11. Strategies for managing unreasonable behaviours.

See – 2.12. Scripted responses to unreasonable behaviours.

1.3.3. Benefits of the approach and framework

By using this approach and framework you can be confident that:

- The people involved will not be any worse off if you use the suggested strategies – whether or not the strategies are successful in addressing their problematic behaviour.
- The rights of individuals will be protected.
- All people, whether their behaviour is challenging or not, will be dealt with in a more equitable, fair, respectful and consistent way.
- By taking control of interactions with people engaging in conduct that is unreasonable, you can separate the way you manage their behaviour from the way you deal with their issues.
- You will be able to easily implement the strategies, while also relying on your own professional knowledge, skills and experience to deal with unreasonable conduct.
- Your safety will be a central consideration when dealing with unreasonable conduct – and you will help your employer to meet their duty of care and work health and safety obligations.
- The impact of unreasonable conduct on organisational resources will be reduced.