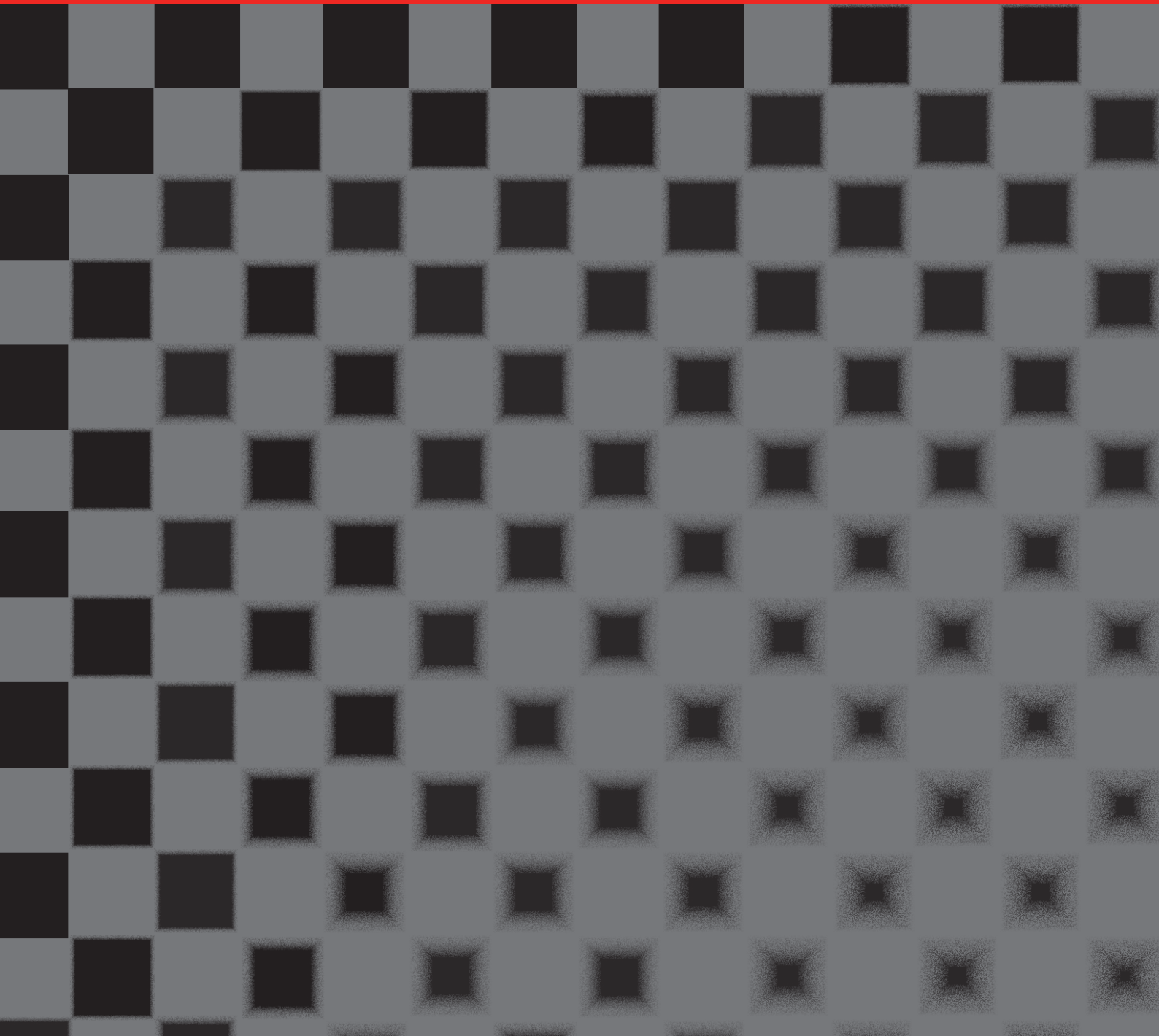


**BETTER PRACTICE GUIDE TO
MANAGING UNREASONABLE
COMPLAINANT CONDUCT**



MANAGING UNREASONABLE COMPLAINANT CONDUCT PRACTICE MANUAL



Managing unreasonable complainant conduct – 1st Edition

June 2009

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Foreword

In any given year, ombudsman offices and government agencies around Australia hear from thousands of customers who believe they have been treated unfairly or unreasonably and who wish to complain about their treatment.

Making a complaint is a valid way of alerting an organisation to a potential problem in the way that it conducts business. Through the investigation of complaints—by agencies themselves or independent bodies such as an ombudsman—agencies can gain a realistic understanding of how or where things might be going wrong.

Getting to the bottom of complaints is an important and valuable exercise for public administrators. It allows them to analyse how they administer policies and programs, deal with customers and manage issues. It also helps them to identify areas that need work, leading to innovative solutions to problems, improvements in service delivery and better decision making.

Understandably, by the time a customer feels ‘wronged’ enough to make a complaint, they have often developed a strong emotional link to the problem and to its resolution. Sometimes this emotion is expressed in ways that most reasonable people would consider inappropriate—they exhibit ‘unreasonable conduct’.

This practice manual is the product of a joint Australian Parliamentary Ombudsman project, led by the office of the NSW Ombudsman, to develop strategies to manage unreasonable complainant conduct.

Complaint handling can be difficult, especially when complainants are upset and emotional, but difficult conduct by a complainant should not be the basis for rejecting the benefits of effective complaint handling.

I recommend the manual as an excellent practical guide for all staff in agencies who deal directly with the public. The manual contains sound, sensible advice on dealing with unreasonable complainant conduct. I believe it is an invaluable tool for helping staff to resolve difficult situations in the most efficient and effective manner possible.

Prof. John McMillan
Commonwealth Ombudsman

Managing unreasonable complainant conduct – A manual for staff and management

Please note

This publication has been prepared as an informative guide for public sector agencies, public officials and members of the public. It is designed to contribute to fairness, integrity and good public administration in relation to handling complaints and investigations.

We have done the best we can within our resource constraints. Where the matter raises complex questions of law, where there is a real possibility of litigation or where the matter is otherwise highly contentious, further legal or other professional advice should be sought before taking action.

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1.1. The problem

Government agencies deal with many thousands of complainants each year, most of whom act responsibly. Agencies also deal with many complainants who have come to the end of their tether. Some are justifiably upset, angry and generally difficult because they are caught up in some outrageous wrong. Others are difficult for reasons that go beyond the circumstances of their case. These complainants often tend to be angry, aggressive and abusive to staff members. They threaten harm, they are dishonest or intentionally misleading in presenting the facts, or they deliberately withhold relevant information. They flood agency offices with unnecessary telephone calls, emails and large amounts of irrelevant printed material. These complainants tend to insist on outcomes that are clearly not possible or appropriate, or demand things they are not entitled to. At the end of the process they are often unwilling to accept decisions and continue to demand further action on their complaint. Frequently, they also take their complaint to other forums such as Ministers, local MPs or courts of law where they start up the complaint cycle again.

It is very common for these complainants to change the focus of their complaints – from the substantive issue and the organisation responsible for it to the agency's handling of their complaint. So the substantive complaint can be followed by a string of complaints about how their case is being dealt with. The same person's complaint can also often be found in a number of agencies at the same time. It can form the basis for FOI applications and ultimately may end up as a review application, or even a string of review applications, to the relevant external review body.

In summary, these are behaviours that go beyond what is acceptable from people, even when they are experiencing a wide range of situational stress about the issue of their complaint.

Anecdotal evidence from a wide range of organisations and jurisdictions indicates that this problem is widespread. What's more, the number of people who present as difficult seems to be on the increase and the nature of the difficulties that agencies have to deal with seems to be getting more complex.

Over the years, Ombudsman offices have observed a change in complainant conduct which suggests an increasing generalised failure to recognise the link between rights and responsibilities. Some complainants tend to overlook that a condition of being able to exercise one's own rights is, in most cases, an acceptance of the rights of others. They are not mindful of the need to balance their right to make a complaint with the rights of staff to safety and respect and the rights of other complainants to equal time and resources. In other words, they do not seem to recognise that there is a mutual relationship between rights and responsibilities.

Most people would prefer not to deal with those whose behaviour is difficult. In fact, most people will actively try to avoid or minimise circumstances where they have to deal with such people. This avoidance often seems to be reflected in the culture of at least those parts of an agency responsible for dealing with complaints. Challenging complainants are seen as a nuisance, an irritant and a side issue interfering with the core complaint handling business. As a result, many agencies do not have a systematic approach to dealing with their more difficult complainants. This leads to problems with resource management, inequity in case handling and staff stress.

1.2. Some words about this manual

This manual is designed to help agencies and their staff take a systematic and consistent approach to managing challenging interactions with their complainants. The information in it is the result of a joint project of all Australian Parliamentary Ombudsmen, conducted over two years between 2006 and 2008, and referred to in this manual as 'the project'.

The approaches advocated here were developed by complaint handlers for complaint handlers. The material was originally published in the project's *Interim Practice Manual* in 2007, and was trialled in Ombudsman offices around Australia over a 12 month period during 2007 and 2008. This is a new version of the 2007 manual, updated to reflect project experience and trial outcomes and findings.

The manual provides guidelines and suggestions. It is not intended to be prescriptive in any way. The strategies outlined here need to be adapted by agencies to suit their particular circumstances. They should supplement, not replace, existing operational policies and procedures.

In the end, it is hoped that this manual will contribute to shaping a complaint handling approach across all complaint handling agencies that systematically discourages complainant behaviour which the project came to call 'unreasonable complainant conduct'. By consistently adopting the approach advocated in this manual, agencies will not only help themselves but all other agencies too.

1.3. The benefits

The approach outlined in this manual has a number of benefits:

- It can be easily implemented by complaint handlers using their own professional knowledge, skills and experience.
- The interests and rights of complainants are protected.
- All complainants, whether their behaviour is challenging or not, are treated with fairness and respect.
- By taking control of interactions with complainants, managing complainant behaviour can be separated from managing their issue.
- By applying management strategies in response to complainant behaviour, complainants will not be worse off – whether or not the strategies are successful in achieving their goals.
- By providing an integrated approach, staff stress is likely to be significantly reduced and this will help agencies meet their duty of care obligations.
- The impact of unreasonable conduct on agency resources is minimised.
- Equity and consistency in the handling of all complaints is maximised.

Chapter 2. Key features of the approach

The approach for dealing with unreasonable complainant conduct advocated in this manual has 20 key elements. A tear out summary of these elements is at Appendix 7. It is intended to be used as a ready reference that can be placed within easy view. They cover the objectives of the approach, managing and preventing unreasonable complainant conduct, and the responsibilities of agencies and their staff.

Objectives

1. Ensure equity and fairness

Ensuring equity and fairness in the allocation of resources across all complaints includes also recognising that the challenging conduct of some complainants can actually hinder their ability to achieve appropriate and acceptable outcomes for themselves.

2. Improve efficiency

Improving efficiency in the use of resources reduces what can be a massive drain on the complaint handling resources of an agency.

3. Ensure health and safety

Agencies need to ensure the health and safety of their staff and comply with their OH&S and duty of care obligations as employers.

Managing unreasonable conduct

4. Focus on the conduct, not the person

The focus needs to be on the conduct of the complainant, rather than on the complainant as a 'difficult' person. The difference between the two ways of looking at the problem is, in essence, the difference between the proper and appropriate focus of mental health professionals on the one hand and the appropriate focus of complaint handlers on the other.

In a medical context, psychiatrists and psychologists have identified certain behaviours that complaint handlers often see in their day-to-day work. For example, Lester G, Wilson B, Griffin L and Mullen PE – in their 2004 study of unusually persistent complaints – observed behaviours that are consistent with the psychiatric diagnosis of querulance.¹ And Bill Eddy bases his approach to what he calls 'high conflict people' in legal disputes on personality disorders described in the Diagnostic and Statistical Manual of the American Psychiatric Association.²

It is clearly appropriate for psychiatrists and psychologists to focus on the person – to assess their mental state and, based on that professional assessment, develop an approach to dealing with that person within a clinical context. Complaint handlers, however, are not competent to assess and diagnose their complainants in this way and it is not their role. Their role and expertise is complaint handling.

The approach outlined here suggests that the most effective way for case officers to manage a complainant's challenging behaviour is to manage their own response to that behaviour. For this reason, the focus is on individual instances of observable conduct. This focus allows for:

- People who are not mental health professionals, counsellors or social workers to confidently manage challenging behaviours by reference to their own knowledge, experience and expertise.³
- A more specific targeting of challenging behaviours and the implementation of a range of strategies to manage them.

1 Lester G, Wilson B, Griffin L, Mullen PE, Unusually Persistent Complainants, *British Journal of Psychiatry*, 2004, 184.

2 Eddy B, *High Conflict People in Legal Disputes*, Janis Publications, Canada 2006.

3 Even if a complaint handler is also a psychologist or social worker, in their case handling role they are unlikely to have enough face-to-face contact with or information about a complainant to make a valid assessment of the complainant's mental state or underlying motivations.

- The separation of behaviour from the issue, so that the issue can be effectively addressed without it being clouded by behavioural problems.
- Transparency in interactions between complaint handlers and complainants. If the complaint handler is targeting individual instances of observable conduct, then this conduct can be cited as a reason for taking particular action.
- The possibility that a complainant's challenging behaviour is not always driven by mental health issues, but often other reasons.

The reasons complainants engage in certain behaviours to an unreasonable degree may, for complaint handling purposes, be summarised as including:

- Emotional or psychological – anger and frustration (for example, as a result of unmet expectations), unreasonably refusing to accept an unfavourable outcome, seeking vindication, retribution or revenge, holding an exaggerated sense of entitlement, needing to blame others.
- Attitudinal – dissatisfaction with a person, an agency, the government or 'life' in general.
- Aspirational – seeking 'justice' or a 'moral outcome' in general terms, focusing rigidly on 'a matter of principle'.
- Recreational – an all-consuming hobby, deriving pleasure from the activities associated with the complaint process, social contact.

Complainants might also have ulterior motives, for example a complaint or series of complaints might be initiated to harass, intimidate, embarrass, annoy etc. or the complainant might be using the complaint system as an information gathering process for some other purpose.

Challenging behaviours can also be referable to mental health issues.

5. Use of appropriate terminology

Because the approach advocated here relies on a focus on conduct, it is important that the terminology used refers specifically to the conduct of complainants not the person.

A range of terms are used to describe complainants who pose a problem for complaint handling agencies. The most frequently used term is 'difficult complainants'. Other terms used are 'people who monopolise resources', 'resource-intensive complainants', 'high maintenance complainants', 'vexatious complainants', 'unusually persistent complainants', 'high conflict people' and 'querulous complainants'. These terms focus on the person who is being difficult or challenging and – if used by complaint handlers rather than psychiatrists or psychologists – can be seen to judge and label the person and negatively influence how they are perceived and responded to within a complaint handling system.

The term used in this manual is 'unreasonable complainant conduct', meaning the unreasonable conduct by complainants. It is derived from Ombudsman legislation which allows a finding to be made that an agency's conduct is or was unreasonable. It seems logical to apply the same reasoning to complainants. It allows us to more precisely define and then manage the problem.

For conduct to be unreasonable, it must clearly go beyond the usual situational stress commonly experienced by complainants when they bring a grievance to an agency.

See also 3.3 When is complainant conduct unreasonable?

6. Recognise that the problem is part of the core work of the agency

Agencies need to recognise that dealing with unreasonable complainant conduct is part of their core work.

Dealing with complainants whose conduct is challenging has a tendency to be pushed to the periphery of an agency's daily work. The 'difficult' person is frequently avoided, assigned to someone who is 'naturally' good at dealing with this problem, or to a senior staff member who is seen as more experienced. Complainants who are dealt with in this way can easily either feel that they are being given short shrift or that their complaint is so important that they are given preferential treatment.

As a result, they are highly likely to escalate the behaviour that others find difficult. There is a very real danger that complaint handling organisations can sometimes create a 'difficult' person, or at the very least exacerbate unreasonable conduct. The approach outlined here has the potential to facilitate the opposite – that is, with skilful action routinely and consistently applied by individual case officers, the response to a complainant's unreasonable conduct can be managed to everyone's advantage.

To appropriately and systematically deal with unreasonable complainant conduct, the conduct needs to be shifted to centre stage by recognising that:

- dealing with unreasonable complainant conduct is an unavoidable and integral part of core complaint handling work
- as an integral part of core work, it needs to be given proper priority and adequate resources
- all frontline and complaint handling staff have to be able to deal with it so they need ongoing training, guidance and support to overcome the natural tendency of most people to avoid difficult interactions.

7. Ensure ownership and control

Agencies and their staff need to exercise ownership and control over complaints. This is a crucial issue that all parties to a complaint need to recognise. No matter what may be the underlying reason for unreasonable conduct (be it psychiatric, experiential, environmental, situational or whatever), experience shows that the primary 'trigger' for most unreasonable complainant conduct is likely to be a struggle for control over how a complaint is dealt with.

This struggle for control is primarily due to ignorance, a misunderstanding, a failure to recognise, or a refusal to accept who effectively 'owns' the complaint and who decides such matters as:

- whether the complaint will be acted on or declined
- the staff who will be responsible for dealing with the matter
- the priority and resources that will be given to it
- the methodology to be used to deal with it
- the final assessment and outcome of the matter.

It needs to be made clear to complainants that:

- The agency and their staff 'own' the complaint – they decide whether it will be dealt with, and if so who by, how quickly, with what priority, what resources will be given to it, what the outcome will be, and so on.
- Complainants 'own' their issue – they are free to raise it through other available avenues such as courts and tribunals, the media and politicians. Of course if a complaint includes a broader or public interest component, it could be said that it is effectively jointly 'owned' by both the complainant and the organisation concerned.

The management strategies set out in this manual are about exercising ownership and control over the handling of complaints – about pursuing an approach or reaching an outcome that a competent case officer believes to be reasonable in the circumstances, whether or not the complainant agrees and no matter how the complainant reacts. In other words, a case must be conducted and concluded to the agency's satisfaction – not the complainant's.

See also 4.1 'Ownership' of complaints

8. Implement the management strategies

Central to the approach outlined in this manual is a framework of management strategies to deal with individual instances of observable conduct that a case officer has assessed as unreasonable. It aims to provide a 'thinking tool' for case officers once they are confronted by complainant conduct they find challenging and a systemised series of appropriate actions.

See also 3.4 Framework of strategies for managing unreasonable complainant conduct.

9. Consistent implementation

Agencies and their staff need to respond with consistency to complaints and consistently implement the management strategies suggested in this manual.

10. Good communication

Agencies and their staff need to provide clear, timely and firm communication with complainants. If complainants are not kept informed about what is happening, they are likely to make negative assumptions.

Prevent unreasonable conduct

11. Manage complainant expectations

It is vitally important that agencies and case officers manage complainant expectations from the beginning.

Complainants are often not aware of an agency's role in dealing with their complaint and can hold unrealistic expectations about what will happen. They may believe that they have the right to dictate how the agency will handle their complaint, including how the agency's inquiries should proceed and what the outcome should be. Some complainants have an unrealistic expectation that significant action will be taken as a result of their complaint – for example, that they will receive monetary compensation or that a particular staff member will be dismissed. Complainants sometimes think that their complaint is more important than any other complaint the agency is handling and they therefore expect such things as 'on demand' attention from staff, urgent consideration of their matter, the provision of significant amounts or particular types of information and so on.

Unrealistic expectations can lead to unreasonable conduct. It is essential for the good management of all complaints, and unreasonable complainant conduct in particular, to manage complainant expectations from the very beginning of the complaint handling process.

Complainants need to be made aware of:

- the agency's role
- the complaint handling process
- the timeframe of the complaint handling process
- what is expected of the complainant
- what the responsibilities of the agency are in relation to the complainant
- what the responsibilities of the complainant are in relation to the agency.

There are a number of ways complainant expectations can be managed:

- Clear information about the agency's role and complaint handling process should be generally available in the public domain.
- The letter acknowledging receipt of the complaint can provide detailed information about the complaint handling process, as well as the respective rights and responsibilities of the agency and the complainant. See also Appendix 1: Example acknowledgement letter.
- Some basic ground rules can be established. These can either be in a stand alone document, such as a handout to complainants, or they can be included in the acknowledgement letter. See also Appendix 2: Model ground rules.
- Complainant expectations can be tested and managed at the beginning and during the course of handling their complaints. Suggestions about how this might be done can be found in the script ideas listed in Chapter 4: Communicating with complainants.

12. Insist on respect and cooperation

Agencies and their staff should insist that complainants show respect for and cooperate with case officers as a prerequisite to further contact and communication.

Organisational responsibilities

13. Commitment to the approach

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

Senior managers need to:

- actively show commitment to this approach on an ongoing basis
- support their staff with the necessary policies, directives and authorisation to allow strategies to be put in place confidently and consistently
- provide staff with adequate and ongoing training, supervision and guidance in their dealings with unreasonable complainant conduct.

The framework of management strategies is designed to encourage case officers to respond confidently, appropriately and firmly to complainants whose conduct they have assessed as being unreasonable. Properly applied, the strategies also support consistency in dealing with unreasonable conduct as a whole within an agency and, in time, across agencies. Case officers need to clearly understand that they are not only specifically authorised, but also directed, to put in place strategies for managing unreasonable complainant conduct and that, when they do, their actions will be supported. This approach needs to be endorsed at the highest level of the agency.

14. Role of supervision

The complainant must know that the case officer has the authority, as well as the skill and knowledge, to handle the case. Agencies need to ensure that case officers are given adequate support in their handling of unreasonable conduct. Supervision, as far as the complainant is concerned, is behind the scene. The supervisor only becomes visibly involved where the case officer's handling of the matter is complained about. A case should not be escalated solely because the complainant demands it.

See also 3.6 Supervision.

15. Adequate time and resources

Case officers need adequate time and resources to deal with unreasonable complaint conduct. Although this may require extra resources to be put into training and supervisory support, over time the benefits flowing from this approach should result in significant overall savings.

16. Adequate training and guidance

Agencies need to provide their case officers with adequate, training and guidance in how to deal with unreasonable complaint conduct.

Comprehensive training on an ongoing basis is fundamental to staff developing and maintaining the confidence to appropriately deal with unreasonable conduct in their daily work.

The training workshops delivered by the NSW Ombudsman's office include two parts:

- an introduction to the framework of strategies for managing unreasonable complainant conduct. The trainers work with participants' own individual experiences of unreasonable complainant conduct, giving them the opportunity to workshop their own cases
- an introduction to a non-confrontational, non-resistant communication approach.

Staff responsibilities

17. Calm demeanour

Remain calm in the face of unreasonable conduct.

18. Show respect

Show respect for all complainants, no matter what the provocation.

19. Demonstrate impartiality

It is important to always demonstrate impartiality. The case officer is not an advocate for the complainant, a social worker or a saviour.

20. Professionalism

Professionalism is necessary in all dealings with people, even when they are acting unreasonably. This includes ensuring that the strategies outlined in this manual are implemented consistently.

3.1. Managing all complaints well from the beginning

All complaints need to be managed as well as they possibly can be from the beginning to minimise the chances of unnecessary delays, misunderstandings and unrealistic expectations. In actual fact, this management process starts before a complaint is ever made – with the accuracy and relevance of the information available in the public domain about the agency's role, powers and complaint handling processes.

In general terms, managing a complaint well from the beginning may include:

- managing complainant expectations to ensure they are realistic from the beginning
- communicating clearly and firmly both verbally and in writing
- communicating in a style that is appropriate to the specific complainant
- ensuring that complainants understand what the agency can and cannot do, and will and will not do
- making complainants aware of their responsibility to treat staff with respect, to provide information and to cooperate with their case officer
- defining the key issues that the agency is going to address and keeping the focus on them
- providing clear reasons for the agency's decisions
- avoiding unnecessary delays.

Specifically, managing a complaint well from the beginning may include:

- Declining, at the start, complaints that contain unreasonable arguments.
- Declining 'trivial' complaints – for example, on the basis of limited resources, lack of utility or no good purpose being served in taking the matter further.
- Sending out an acknowledgement letter that spells out in general terms what the agency can and cannot do, will and will not do, and what the agency's complaint handling processes are.
- Making and maintaining telephone contact where possible and appropriate.
- Where possible and appropriate, ringing complainants before taking up a complaint to clarify or confirm the issues of their complaint. 'As I understand it, you are complaining about ... is this correct?'
- Reality testing the complainant's expectations. 'What do you hope to get from this process?' 'What do you expect the outcome to be?' 'What did you hope to achieve when you decided to contact us?' – and then addressing and correcting any unrealistic expectations.
- Informing the complainant in specific terms what the agency can and cannot do, will and will not do, in relation to the particular issues raised in the complaint.
- Where appropriate, clarifying the limitations of the agency's complaint handling system rather than challenging the complainant's demands.
- Keeping complainants informed of progress on their complaint – if there is going to be a delay, ringing them and explaining why.
- If it is likely that the complainant is going to be very disappointed with the final decision, ringing and explaining the decision and the reasons for it – before sending a final letter.
- In the final letter, providing the reasons for the decision before stating the decision – rather than the other way around. This will maximise the likelihood of the complainant focusing on the argument underpinning the agency's decision.
- Showing empathy when telling the complainant that their complaint will not be taken up or has not been found sustained.
- Identifying complaints that are likely to, or do, involve unreasonable conduct as soon as possible and ensure that their case is strategically managed with appropriate supervision.

3.2. Warning signs of unreasonable complainant conduct

Data gathered during the course of the project points towards some generally warning signs of unreasonable complainant conduct. Some of these can be identified early on. Others may only become apparent some way into the process – when complainants who are reasonable and cooperative at the beginning, discover that the outcome will not be as they anticipated.

It must be emphasised that none of these signs by themselves necessarily mean the case will involve unreasonable conduct. Whatever the circumstances, if the complainant is able to accept explanations designed to manage their manifestly unrealistic expectations, if they are able to moderate inappropriate behaviour once this is drawn to their attention and if, in the end, they are able to cooperate with the process, then unreasonable complainant conduct is most likely not involved.

The warning signs of unreasonable conduct may include one, but more likely a number, of the following.

Complainant history – the complainant may have:

- made a number of previous complaints about this issue or related issues
- made a number of review requests, especially second review requests about the same issue
- made contact with other government agencies, MPs, Ministers or other oversight bodies about the current complaint
- sought legal advice about the current complaint or the agency's handling of the complaint
- made freedom of information requests about or related to the issue of complaint
- raised issues about the case officer's integrity or competence in handling the case.

They may also have expanded the subject matter of their complaint to include other people or agencies – particularly those that have been involved in dealing with the complaint – or conspiracy theories.

Outcomes sought – the complainant may want:

- a manifestly inappropriate provision of services
- manifestly inappropriate compensation
- a manifestly illogical or irrational solution
- an apology where this is clearly not warranted or where the terms of the apology sought are clearly unreasonable
- what amounts to revenge or retribution.

They may also have unrealistic expectations about what the agency can achieve or keep stating and restating their desired outcomes in terms of morals, justice, principles or the public interest.

Written complaint – the complaint may:

- display excessive and idiosyncratic emphasis
- show punctuation, font changes and bolding excessively
- show coloured highlighting excessively
- use legal or medical terminology inappropriately
- imitate an official reporting style, such as a police operational format
- use excessively dramatic language
- include excessive and/or irrelevant information that may also be annotated.

Interacting with the agency – the complainant may:

- make excessive written and telephone contact with the complaint handling agency
- give forceful instructions about how the complaint must be handled
- refuse to define issues of complaint
- be resistant to the case officer's explanation if this runs counter to their own views
- refuse to accept the case officer's advice, even if it is clearly valid and reasonable
- provide information in dribs and drabs, despite requests to provide all relevant information

- withhold information
- provide false information
- at the end of the process, provide previously withheld information in an attempt to have the case reopened
- make excessive demands on resources – copies, expert opinion etc
- be rude, confronting, angry or aggressive
- be overly ingratiating, manipulative or make threats.

Reacting to the news that their complaint will not be taken up or will be discontinued – the complainant may:

- refuse to accept the case officer's or agency's decision
- reframe their complaint in an attempt to have it taken up again
- raise a range of minor or technical issues, arguing that these call into question the merits of the agency's decision
- expect a review of the decision based merely on an expression of dissatisfaction, unsupported by any arguments or new evidence
- demand a second review after the first review
- take the complaint to other forums and go on to allege bias or corruption on the part of the agency, simply because the decision went against them.

3.3. When is complainant conduct unreasonable?

Many complainants are distressed for very good reasons. They are caught up in what they see as a terrible wrong. Their challenging conduct may not be unreasonable given the circumstances. For conduct to be unreasonable, it must clearly go beyond the norm of situational stress.

What can be termed 'unreasonable' will vary depending on a number of factors. The same conduct may be unreasonable in one set of circumstances, but may not be unreasonable in another. When deciding whether a complainant's conduct is unreasonable, the following objective and subjective factors need to be considered.

- **The merits of the case**

Is there an inherent right or wrong in the matter?

- **The circumstances of the complainant**

Does the complainant have the health, intellectual, educational, language, financial and social resources required to cooperate and meet the requirements of the complaint process? If they do, then more can be expected of them in terms of their conduct than if some or all of these resources are absent.

- **Jurisdictional issues**

Specific legislation may limit how strategies can be applied to manage agency responses to a complainant's unreasonable conduct.

- **Proportionality**

Is the complainant's distress in reasonable proportion to the loss or wrong suffered?

- **The complainant's responsiveness**

Do calming measures and explanation help to settle the complainant down?

- **The case officer's personal boundaries**

If it feels threatening, stressful or otherwise wrong to the case officer dealing with the matter, then it is.

- **Conduct that is unreasonable and unacceptable under all circumstances**

This is conduct that involves overt anger, aggression, violence and assault – this should never be tolerated.

See also Chapter 5: Managing serious anger, aggression and threats.

In this manual, we have assumed that staff assessing the reasonableness or otherwise of a complainant's conduct have the skill, ability and attitude expected of a professional complaint handler. In other words, they have the competencies required by the job they do.

3.4. Framework of strategies for managing unreasonable complainant conduct

The unreasonable complainant conduct commonly seen by many agencies can, in most cases, be grouped into five categories:

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

Table 1 sets out these conduct categories, the associated trigger conduct and the corresponding strategy for managing that conduct. This framework is a guide – it should be applied flexibly, bearing in mind that more than one category of conduct may need to be managed at one time.

The use of these strategies must also be based on the clear understanding that:

- every complainant deserves to be treated with fairness and respect
- in the absence of very good reasons to the contrary, members of the public have a right to access the agency
- no complainant, regardless of how much time and effort is taken up in responding to their complaint, should be unconditionally deprived of having their complaint properly and appropriately considered
- a complainant whose conduct is unreasonable may have a legitimate complaint
- the substance of the complaint dictates the level of resources allocated to it, not the complainant's wishes, demands or behaviour.

See also Chapter 4: Communicating with complainants.

Table 1. Management strategies

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable persistence	<p>Unreasonable persistence includes:</p> <ul style="list-style-type: none"> • persisting with a complaint even though it has been comprehensively considered by an agency, and all avenues of review have been exhausted • reframing a complaint in an attempt to get it taken up again • showing an inability to accept the final decision • insisting that a particular solution is the correct one in the face of valid contrary or alternative arguments • persisting in interpreting the law or policy in a way that is not in accordance with generally accepted or expert views on the issue and insisting that action be taken accordingly 	<p>Strategies for dealing with unreasonable persistence are about saying 'no'. They include:</p> <ul style="list-style-type: none"> • communicating clearly and transparently – eg telling complainants firmly that something is 'not going to happen' • to the 'where-do-I-go-to-now' question, telling complainants that not all problems have an institutional solution and they may have reached the end of the line, unless a realistic referral can be made • requiring complainants who want a review to provide an argument for one – eg to tell the agency how it has erred or provide new information – and, if they don't, their file will remain closed

Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable persistence cont'd	<ul style="list-style-type: none"> • persisting in wanting to know where to go next, when it has been explained that there is nowhere else to go • demanding a review because it is available, but not arguing a case for a review • making an issue out of anything • getting gratification from the process of regular contact with the case officer, possibly including inventing unnecessary reasons for having such contact. 	<ul style="list-style-type: none"> • providing one review only • maintaining a 'no means no' stance following review • adopting, when appropriate, a firm no-further-correspondence or contact stance and requiring any variation from this to be authorised at a high level • not allowing complainants to reframe the complaint to re-enter the process, unless they raise new and important issues • ending telephone calls that are unproductive • asserting the agency's position – eg 'I acknowledge that your view is ..., we see it differently', or 'I acknowledge that your view differs from ours, however, our job is to make a decision about ... and this is what we have decided' • making it clear that our decision is final and, for better or worse, we have made our decision. <p>Managing unreasonable persistence also includes:</p> <ul style="list-style-type: none"> • managing expectations from the beginning, including ensuring initial expectations are realistic • adopting a firm and authoritative communication style both in writing and verbally • defining key issues and keeping the focus on them.
Unreasonable demands	<p>Unreasonable demands include:</p> <ul style="list-style-type: none"> • insisting on outcomes that are unattainable • insisting on a 'moral' outcome – eg justice in the community interest, when really a personal interest is at stake • demanding an apology or compensation when no reasonable basis for expecting such outcomes exists 	<p>Strategies for dealing with unreasonable demands are about setting limits. They include:</p> <ul style="list-style-type: none"> • letting complainants know in advance how the agency intends to deal with the complaint – having a plan and sticking to it • making sure the complainant is clear that the agency decide how the complaint should be handled

Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
<p>Unreasonable demands cont'd</p>	<ul style="list-style-type: none"> • wanting revenge, retribution • wanting what is not possible or appropriate – eg copies of sensitive documents, names and contact details of staff, other complainants or whistleblowers • issuing instructions and making demands about how a complaint should be handled • providing supporting details that are extraordinarily detailed when such detail is not relevant to the complaint • making unreasonable resource demands, out of proportion to the seriousness of the issue • wanting regular and lengthy phone contact where this is not warranted • showing reactions or demand for action that are out of proportion to the significance of the issue • moving the goal posts – changing the desired outcome • shopping for a sympathetic ear in the agency – demanding to talk to a supervisor or the manager personally • placing the agency on an extensive email copy list and expecting responses to these emails • consistently creating complexity where there is none • presenting as overly needy or dependent – eg wanting to transfer responsibility for their wellbeing to the complaint handler or agency. 	<ul style="list-style-type: none"> • clarifying the limitations of the particular complaint handling system • avoiding being drawn into hypothesising, catastrophising, conspiracy theories, unproductive argument and personal attacks more generally • restricting contact to defined times and staff members where necessary • responding only to emails and mail addressed to the agency directly – not responding to mail where the agency is copied in • ending telephone calls that are unproductive • limiting contact to writing only • not doing for unreasonably demanding complainants something the agency would not normally do for any other complainant, just to appease them • as a last resort, informing the complainant that the agency finds their interactions unreasonably demanding and setting defined limits for further contact. <p>Managing unreasonable demands also includes:</p> <ul style="list-style-type: none"> • managing expectations from the beginning, including ensuring initial expectations are realistic • adopting a firm and authoritative communication style both in writing and verbally • defining key issues and keeping the focus on them.

Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
<p>Unreasonable lack of cooperation</p>	<p>Unreasonable lack of cooperation includes:</p> <ul style="list-style-type: none"> • presenting a large quantity of information which is not organised, sorted, classified, summarised, where the complainant is clearly capable of doing this • presenting information in dribs and drabs – refusing to present all information at the outset • refusing to define issues of complaint – ‘the attached (usually a large amount of information) speaks for itself’ – where the complainant is clearly capable of doing this • focusing on principles rather than substantive issues • changing the complaint and raising new issues while the complaint is in the process of being considered • displaying unhelpful behaviour – eg withholding information, being dishonest, misquoting others, swamping the agency with documents. 	<p>Strategies for dealing with unreasonable lack of cooperation are about setting conditions. They include:</p> <ul style="list-style-type: none"> • requiring complainants to organise or summarise the information they have provided before the agency will look at the complaint (where they are capable of doing this) • requiring complainants to define what their issues are or to pursue further inquiries before the agency will look at the complaint • telling complainants that the agency will not look at their complaint until all the information has been presented • ending the agency’s involvement in the complaint if it is discovered that the complainant has been wilfully misleading or untruthful in a significant way. <p>Managing unreasonable lack of cooperation also includes:</p> <ul style="list-style-type: none"> • managing expectations from the beginning, including ensuring initial expectations are realistic • adopting a firm and authoritative communication style both in writing and verbally • defining key issues and keeping the focus on them.

Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
<p>Unreasonable arguments</p>	<p>Unreasonable arguments include:</p> <ul style="list-style-type: none"> • holding irrational beliefs – eg seeing cause and effect links where there are clearly none • holding what is clearly a conspiracy theory unsupported by any evidence • interpreting facts in a clearly irrational/unreasonable way and insisting this interpretation is the correct one. • arguing the clearly bizarre • insisting on the importance of an issue that is clearly trivial. 	<p>The strategy for dealing with unreasonable arguments in complaints is primarily about declining or discontinuing the agency's involvement.</p> <p>These complaints need to be declined at the beginning, or discontinued as soon as it becomes clear that the complaint is groundless.</p> <p>Alternatively, if unreasonable arguments are mixed with reasonable arguments, the strategy should be to refuse to deal with the unreasonable portion.</p> <p>This category of conduct is often associated with mental illness.</p> <p>See also 4.4 Script ideas for dealing with unreasonable demands and persistence.</p>
<p>Unreasonable behaviour</p>	<p>Unreasonable behaviour includes:</p> <ul style="list-style-type: none"> • displaying confronting behaviour – eg rudeness, aggression, threats or harassment • sending rude, confronting or threatening letters • making threats of self harm • making threats of harm to others • displaying manipulative behaviour – overly ingratiating, tears or veiled threats. 	<p>The strategies for dealing with unreasonable behaviour are primarily about 'saying no' to unacceptable behaviours, and setting limits and conditions for future interactions.</p> <p>Overt anger, aggression and threats in person, on the phone or in writing are never acceptable. Dealing with these includes having risk management protocols in place.</p> <p>Also:</p> <ul style="list-style-type: none"> • Return letters framed in rude and intemperate language and request that the complainant reframe their concerns in more moderate language. • Point out that more moderate language is clearer and therefore more likely to achieve better outcomes. • End telephone calls and interviews if the complainant becomes abusive and confronting. <p>See also 4.4 Script ideas for dealing with unreasonable demands and persistence.</p>

3.5. Resistance to explanation

Project results show that the unwillingness of complainants to listen or to accept advice or decisions – resulting in unreasonable persistence – was the conduct most frequently reported as troubling to case officers. It therefore warrants separate mention.

Most case officers do not feel they have done their job properly until they have explained – to the complainant's satisfaction – their decision, their referral, or whatever other information they are trying to convey. If the complainant refuses to accept what the case officer is saying, and the case officer does not feel they have done their job until the complainant accepts what they are being told, the case officer will invariably become embroiled in an unproductive interaction which also runs the risk of ending in a heated debate.

The fact is that complainants sometimes form a view based on something other than logical reasoning or they argue logically, but start from a false premise. In these circumstances it is not possible to convince complainants of the correctness of the decisions or advice using logical reasoning.

In the case of unreasonable persistence – unreasonably not accepting the case officer's explanation – no amount of explaining and arguing is going to convince the complainant. Therefore, any discussion or debate you engage in is going to lead nowhere.

Provided that the case officer has done their job properly and is confident that the decision or advice is correct, it is not the case officer's responsibility or problem if the complainant is unable to accept the decision or advice. In these circumstances, a case officer does not have to persist in the hope that they may be able to convince a complainant of the correctness of their thinking. Once they have outlined their reasoning once or twice – and it is clear that the interaction with the complainant is becoming unproductive – it can be ended at this point, perhaps with the acknowledgement that the complainant has a different view to the one the case officer or the agency has come to.

Staff need to be secure in the knowledge that their job is well done when they have properly considered all issues, made sound decisions, and conveyed their decisions with adequate reasons to the complainant. In the end, the agency has to be satisfied that the job was done properly, not the complainant.

Based on these considerations, a complainant's inability to agree with – or at the very least to accept the validity of advice or a decision – should be one of the more straightforward unreasonable conduct types to handle rather than one of the more difficult.

3.6. Supervision

When it becomes apparent that unreasonable complainant conduct is involved, and it seems that it will be ongoing, it is essential for the matter to be discussed between the relevant case officers and immediate supervisors. At this point it is important to:

- make a plan about how the case will be managed
- stick to the plan as closely as possible without being inflexible.

When deciding on a plan, it is important to look at both the complainant's and the case officer's/ agency's conduct. The case officer and supervisor have to critically and honestly ask themselves, 'Is there anything we have done to create or exacerbate the unreasonable conduct?' If there is, steps need to be taken immediately to rectify this. See also Chapter 7: Apologies.

Supervisors need to make it clear to their case officers that they have their support. This support enables the case officer to make confident, clear decisions and to act firmly in the face of unreasonable complainant conduct.

As far as the complainant is concerned, the case officer should be seen as having the authority to handle the case. It is not appropriate to allow a complaint to be escalated to a supervisor just because the complainant demands this, unless the complaint is about the case officer's handling of the matter. If this occurs, the supervisor needs to deal with the complaint against the case officer and, if there is no substance to it, leave the responsibility for handling the complaint with the case officer.

Supporting and protecting case officers should be a key priority for supervisors and management.

3.7. Limiting access

Where unreasonable complainant conduct is involved, limiting the complainant's contact with the agency may need to be considered.

This contact can be limited in terms of:

- the times a complainant may make contact
- the staff the complainant may have contact with
- the form in which the contact may take place – eg contact may only be in writing, with a direction not to enter the agency's premises and not to contact agency staff by telephone.

Steps to limit access to an agency should only be taken with the greatest reluctance. They are only justified if there are safety concerns for staff or to ensure that other meritorious cases are not robbed of the resources to which they are entitled.

If limitations require complainants to only contact a specific officer, it is important that this role is spread among two or three people. Limiting contact by all complainants exhibiting unreasonable conduct to one member of staff can place an unacceptable burden on that person.

Decisions to place limitations on contact need to be approved by the CEO or a senior delegate, and they should sign any letters informing the complainant of those limitations.

Steps to be taken before limiting access to an agency.

In the few circumstances where limits are justified, the appropriate steps to take before limiting access to an agency will depend on the circumstances of each case. For example, an individual complainant or complainant group sends a constant stream of letters to an agency on a wide range of issues. If the demands placed on the agency by this correspondence are excessive, it may be appropriate to notify the complainant or complainant group either that only significant and serious issues or complaints will be addressed by the agency – or only a certain number of issues will be addressed in any given period – so they should focus their requests accordingly.

If a complainant rings constantly, makes repeated visits to the agency or raises the same issues with different staff, it may be appropriate to notify the complainant that calls will only be taken at specific times of specific days, only a nominated staff member will deal with the calls in future, and any appointments must be made with that staff member.

In the small number of cases where it is clear that a complainant will not accept the agency's decision on a matter and all appropriate avenues of internal review or appeal have been exhausted – and the complainant continues to contact the agency – it may be appropriate to notify them that in future:

- no phone calls will be accepted or interviews granted concerning the specific matter already reviewed
- correspondence will be received, read and filed but only acknowledged or responded to if they provide significant, new information about their complaint or concern or raise new issues which, in the agency's opinion, warrant fresh action.

In these cases, it is important that adequate documentary records are made and maintained.

Withdrawing services or refusing access

The only circumstances where an agency should contemplate withdrawing services or refusing access would be where the complainant concerned:

- is consistently abusive, or makes threats to staff or other members of the public using the services or at the agency's premises
- causes damage to the property of the agency, or intimidates or threatens physical harm to staff or third parties
- is physically violent
- produces a weapon.

See also Chapter 5: Managing serious anger, aggression and threats.

Depending on the importance of the service to the physical or mental wellbeing of the complainant concerned – even if they exhibit one or more of the first three behaviours – it may be preferable to modify the way a service is provided, rather than withdraw or withhold it completely. Possible strategies might include constructing special security accommodation at the agency's premises, using specially trained staff for interviewing such complainants, or delivering material to their home rather than having them collect it from the agency.

If a complainant is physically violent or produces a weapon, the matter should be immediately reported to the police.

Recording service and access restrictions

A senior officer of the agency needs to be responsible for maintaining a list of complainants whose access to the agency has been restricted, including the specific directions for each individual. They should also have copies of all the relevant correspondence advising the complainant of the limits imposed.

When complainants who are on the 'no personal contact list' contact the agency by telephone or in person, they should be reminded of the agency's decision outlined in correspondence to them and the conversation or contact should be politely brought to an end. No debate or discussion should be entered into.

If complainants have been informed that they must not contact the agency except in writing, they should also be warned that they may be escorted from the agency's premises if they do approach and that telephone calls will be ended.

Public interest considerations governing access restrictions

It is important that decisions about limiting access to an agency are made within the wider framework of public access rights and responsibilities.

These decisions must be based on a clear understanding that:

- In the absence of very good reasons to the contrary, members of the public have a right to access agencies to seek advice, help or the services the agency provides.
- In a democracy, people have a right to complain. Criticism and complaints are a legitimate and necessary part of the relationship between agencies and their customers or communities, and may be dynamic forces for improvement within agencies.
- Nobody, no matter how much time and effort is taken up in responding to their complaints or concerns, should be unconditionally deprived of the right to raise those concerns and have them addressed.

Agencies also have an obligation to use resources efficiently and effectively so, at some point, it may be necessary and reasonable for an agency to decide to limit the nature or scope of their responses to complainants whose conduct is unreasonable. However these situations should be the exception rather than the rule.

Each agency dealing with the public should develop a comprehensive policy on public access which outlines their commitment to:

- respond to correspondence, answer telephone enquiries and deal with face-to-face enquiries from the public at the agency's offices
- provide services to the public, including their guarantee of service and circumstances where the provision of services may be withheld or withdrawn
- provide the public with rights of review or appeal.

The policy should also outline the circumstances when the agency:

- will not answer correspondence, such as correspondence that is abusive towards staff and does not raise any substantive issues
- may restrict telephone contact, such as ending calls if the caller has become abusive.

It should be noted that agencies cannot develop policies that attempt to avoid or limit statutory access and service rights.

Chapter 4. Communicating with complainants

4.1. 'Ownership' of complaints

A key consideration when communicating with a complainant is ownership. Complaint handling organisations often talk about 'our complainants'. In fact, complaint handling organisations are mostly impartial and neutral. If they 'owned' complainants, they would be acting for them. All the agency can ever 'own' is the complaint.

It is helpful to think about the agency's relationship to a complaint in terms of ownership because it is the agency, not the complainant that has all the prerogatives, discretions and responsibilities that ownership effectively entails. It is the agency that will make the key decisions about the complaint, for example whether it will be dealt with and if so how, who by, how quickly, what the outcome will be of any investigation and what will be recommended.

Complainants come to agencies with complaints about issues. The complaint is subject to the scrutiny of the agency within the context of the agency's legislation, policies and practices. At the end of the process, the complainant is given a considered decision supported by reasons. This is usually the end of the process, unless an avenue of review is also available. The decision provided by the agency, even if the finding is in favour of the complainant, may or may not resolve the complainant's issue. At the end of the complaint handling process, the issue is still the complainant's issue – not the agency's.

By keeping the principle of 'ownership' in mind, communication with the complainant can clearly delineate from the beginning what the agency can and cannot do, and what they will and will not deal with.

All the good practices that apply to communication generally apply doubly to dealing with unreasonable complainant conduct – timeliness, correctness, clarity, succinctness, minimising jargon, courtesy, respect and so on. There are also some additional considerations to do with both writing and talking to complainants.

4.2. Writing to complainants

An acknowledgement letter is an opportunity to manage complainant expectations. It can inform the complainant about the role of the agency, its processes and timeframes. It can also spell out respective responsibilities – the agency's as well as the complainant's.

See also Appendix 1: Example acknowledgement letter and Appendix 2: Model ground rules.

Complainants often attempt to start the complaint cycle up again in another agency at the end of a process they have been dissatisfied with. They may either try to take their issue to another agency or agencies, or they may shift ground and start complaining about how their complaint was handled. Sometimes they may do both. They may also try to involve a number of agencies at the same time or take their matter to their local MP, a Minister or the media. Given all these possibilities, it is important to write the final letter giving decisions and reasons not just for the complainant – but also for the broader audience of the agencies the complainant may go to next. This letter needs to give a full history of the complaint and its consideration and comprehensive details about how decisions were reached.

It is also important that – when receiving a complaint from a complainant who appears to have a history of complaining about the same issue in other agencies – the new agency asks the complainant for copies of any final correspondence from other agencies.

When writing the final letter, consider giving the decision at the end rather than the beginning of the document. This encourages the complainant to read the reasoning underpinning decisions first. The decision is then more likely to be understood. Some complainants, when faced by an adverse decision at the beginning of the letter, do not bother to read the rest of the letter before getting on the phone to the agency to express their dissatisfaction or demand a review. This, unnecessarily, takes up more of the agency's time.

Complainants sometimes present agencies with a long (often numbered) list of issues of complaint. When making decisions and giving reasons, agencies do not have to address each and every issue raised by the complainant. Case law supports this:

- ... *it is not necessary for a decision-maker, whether judicial or administrative, to address specifically and in detail, each and every issue raised by the applicant* (Mentink v Albietz [1999] QSC 9).
- *It is not necessary that reasons address every issue raised in proceedings; it is enough that they deal with the substantial issues upon which the decision turns* (Total Marine Services Pty. Limited v Kiely [1998] 51 ALD 635 at 640).
- ... *it is clear law that the reasons need not ... descend to a point-by-point account of the evidence, and all the conflicts, nor a point-by-point recitation and then analysis of every point made in submissions'* (KO and KP v Commissioner of Police, NSW Police (GD) [2005] NSW ADTAP 56).

Agencies also do not have to respond to correspondence to which they have been added by cc. However if the cc information contains a significant issue of interest to the agency, they may be able to pursue it themselves without involving the person who has sent the information – if this is the more productive course.

Letters giving review decisions are best short and concise. Long and detailed review decisions sometimes encourage a complainant to argue about specific details while ignoring the substance of the decision.

Agencies can refuse to correspond further with complainants if they persist in their complaint after the agency's complaint process has been exhausted. In this case, a letter needs to be written to the complainant advising that any further correspondence from them will be filed without acknowledgement, unless a substantially new issue is raised which the CEO of the agency considers warrants attention. This letter needs to be signed by the CEO. See also 3.7 Limiting access.

It is advisable not to accept angry and abusive letters from complainants, as accepting them only condones anger and abuse. Such a letter needs to be returned to the complainant (after putting a copy on file) with a request for it to be reformulated in more moderate language. The exception is if a significant and perhaps urgent issue is raised in an angry and abusive letter. The complainant's conduct should then be managed in some other way.

Letters to complainants restricting access in some way always need to be signed by the CEO.

4.3. Talking with complainants

Most staff members would prefer not to speak face-to-face or on the telephone with complainants whose conduct is challenging. When anger, aggression, threats and rudeness are involved, it is often advisable for case officers to confine their interactions to writing. However personal contact with complainants by telephone or where appropriate in interview, even if their conduct is manifestly unreasonable, can have a beneficial effect in a number of ways.

- It may be possible to establish a firm but courteous and respectful communication style with the complainant at the very beginning.
- The complainant's expectations about process and possible outcomes can be managed at an early point in the process.
- Complaint issues can be clarified.
- The possibility of unreasonable conduct that flows from misunderstanding and suspicion can be reduced by keeping the complainant up-to-date with progress or advising any delays.
- The complainant's disappointment at a negative outcome can be managed ahead of the letter advising of the outcome.

In cases of unreasonable complainant conduct, in-person communication with complainants needs to be carefully managed. The approach developed by the project is based on George Thompson's *Verbal Judo*.⁴ *It is not spelled out in any detail here, but it is included as part of the NSW Ombudsman's Managing Unreasonable Complainant Conduct training workshop.*⁵

It is a non-confrontational, non-resistant communication approach which advocates:

- **Attentive listening** – focusing carefully on what the complainant is saying.
- **Expressing empathy** – giving the complainant some indication that their distress, disappointment and frustration is understood.
- **Acknowledging the complainant's point of view** – acknowledging that they have a certain view or belief without necessarily agreeing with it.
- Apologising appropriately, where necessary.
- Stating clearly what can and cannot be done.

This communication approach avoids:

- **Argument and debate** – it is not necessary to enter into dispute with the complainant. Only factual information needs to be considered and a well reasoned decision given.
- **Defensiveness** – case officers do not need to react to attacks from complainants. This is essentially about keeping ego out of it.
- **Unnecessary justification** – justification needs to be limited to the facts of the case, excuses are not necessary.

A tear-out sheet containing ten ground rules for talking to complainants is at Appendix 8. This sheet is intended as an easy reference to be kept near the telephone.

See also Chapter 5: Managing serious anger, aggression and threats.

4.4. Script ideas

Project experience indicates that case officers routinely struggle with certain issues when talking to complainants, or they routinely meet common challenges from complainants. What follows is a series of scripts developed during the course of the project for dealing with these challenges.

These scripts are suggestions only and need to be used flexibly within the context of the agency's policies and practices and the circumstances of the individual complainant.

Again, the basic principles need to be kept in mind when interacting with complainants. These are that:

- complainants are treated with respect at all times
- the public has a right to access the agency
- unreasonable conduct does not preclude there being a valid issue
- the substance of the complaint dictates resources allocated to it, not the behaviour of the complainant
- the complaint handler 'owns' the complaint and the complainant 'owns' the issue.

The script ideas cover:

- managing expectations (table 2)
- dealing with unreasonable demands and persistence (table 3)
- dealing with threats and abuse (table 4)
- responding to dissatisfaction and disappointment (table 5)
- testing a complainant's preparedness to consider the validity of a view other than their own (table 6).

⁴ Thompson George J, *Verbal Judo, The Gentle Art of Persuasion*, Harper Collins New York, 2004.

⁵ For workshop details, refer to www.ombo.nsw.gov.au – Training and Workshops – Training for Public Sector Staff and others.

Table 2. Script ideas for managing expectations

Action	Script ideas
Testing complainant's expectations	<ul style="list-style-type: none"> • What is it you were hoping to achieve by bringing the matter to us? • What did you hope to achieve when you decided to contact us? • What do you think our agency might be able to do about this? • What is it that you think we should do that will solve your problem and be fair to both of us? • What outcome are you hoping for? • Let's have a look at your goals for this issue.
Ringling the complainant to define the issue/s of complaint before taking up a complaint	<ul style="list-style-type: none"> • I'm calling you because I'm the case officer responsible for dealing with your complaint. • As I understand it, you are complaining about xxx, xxx and xxx. Is this correct? (allow for clarification) • You appear to be complaining about xxx, xxx and xxx. Is this correct? (allow for clarification) xxx is an issue we can look at, but xxx and xxx are not things we can take up because ... <p>Note: At this point, make sure the complainant's expectations are realistic and get an indication from them that they understand precisely what will be taken up.</p> <p>If the complainant wants to give their life story:</p> <ul style="list-style-type: none"> • I don't need that level of detail to be able to do something about your complaint. Tell me about ... • So I don't waste your time, you could perhaps just tell me about ... • Tell me what's the key thing you're complaining about.
Testing and reframing a complainant's expectations when they are unrealistic	<ul style="list-style-type: none"> • Thank you for going to the trouble of explaining this to me. As I understand it you are saying ... I should make it clear right at the beginning that it is very unlikely/not possible that we will be able to do ... • Are you aware of what our agency can do? (often the answer is 'not really') Perhaps I could tell you a bit about how this agency works and what we can and can't do. • It seems to me you are hoping we can do ... I have to tell you right at the beginning that this will not be possible because ...
Ringling a complainant ahead of a letter giving a decision that will disappoint them	<ul style="list-style-type: none"> • I wanted to call you and tell you about my decision before I send out my letter, because I know the outcome is not what you had hoped for (allow for discussion and clarification). • I wanted to call you and tell you in person that we will be unable to take up your complaint, before I send you a letter saying this. • I will, of course, send you my decision in writing, but speaking with you means I can also answer any questions you might have about my decision.

Table 3. Script ideas for dealing with unreasonable demands and persistence

Complainant conduct	Possible responses
I want to speak/meet with the director/CEO (where this is clearly inappropriate)	<ul style="list-style-type: none"> • I have delegation to deal with your matter – you can speak with me about your complaint. • For practical reasons, the director does not generally meet or speak directly with complainants, but s/he has given me a delegation to deal with complaints such as yours. • I am authorised to act on the director's behalf. You can speak to me now and we can see how we go. • I'm sure you can appreciate that the CEO, as head of the organisation, is a very busy person. That is why s/he has delegated authority to his/her staff to deal with matters like yours.
I want to meet with the director/CEO in person (where this is clearly inappropriate)	<ul style="list-style-type: none"> • The usual procedure in this office is for complaints to be submitted in writing, as this is the only way to lodge a formal complaint. • If it is necessary, we can arrange a meeting with the officer handling your complaint. • I have already spoken with you at length. A face-to-face meeting will not change the advice I have given you. You can send us additional information in writing and we will then decide if another meeting is necessary.
I want to speak to your supervisor	<ul style="list-style-type: none"> • I am happy to put you through if you wish to complain about me. But if it is to dispute my decision, you should put your concerns in writing. My supervisor does not have the time or detailed knowledge of your case to discuss it with you now. • My supervisor has reviewed your file and agrees with my decision (if this is indeed the case). • You may. Can I take your telephone number and I will arrange for her/him to call you.
I want to come in and meet with you/show you documents (when this is not appropriate/ necessary)	<ul style="list-style-type: none"> • As a first step, acknowledge the complainants wishes – I can see that you really want to come in and show us these documents – and then go on to explain why it is not possible/ appropriate. • I don't believe a meeting would help. If you have additional documents, you can send them to me with a covering letter outlining how they are relevant. If I need to, I will call you to discuss them with you. I believe this is a much better use of our time. • Could you please send me the documents for assessment. I am not in a position to discuss the matter or to decide whether a meeting with you would be useful until I have done this. • If I need more information, I will contact you. Otherwise, the summary of issues you have provided is adequate. • It is generally better if we can have a look at the documents before we decide whether a meeting with you is useful. In the end, we have to rely on documentary evidence anyway. Say-so evidence is not enough.

Table 3. Script ideas for dealing with unreasonable demands and persistence cont'd

Complainant conduct	Possible responses
Demands an urgent response to their complaint when this is not warranted	<ul style="list-style-type: none"> • I appreciate that what you are complaining about is distressing/causing you concern. I will not be able to look at it/ call council/do my review immediately. There are other matters that I have to deal with ahead of yours because they came in before yours. • What I can tell you is that I will most likely be able to assess your complaint/call the department on ... You can call me after that date if you would like an update. • I know you feel your complaint is urgent. I have assessed the matter and I have decided I should call the officer concerned/ department/council. I will be able to do this some time this week. • I'm sure you know we have competing priorities, most people feel their complaint is the most important one. • We have processes to ensure everyone's complaint gets dealt with fairly. I will be assessing the matter/contacting the agency within the next two weeks.
Does not accept the case officer's advice	<ul style="list-style-type: none"> • I feel I have explained to the best of my ability what your options are. You might want to choose a different path and that is absolutely your decision. • It's my role to explain your options to you, but any decision on what you do is clearly yours. • Perhaps you would like to think about what I have just explained to you. We can discuss it again next week if you would like any matter clarified. • Sometimes people have a different view on the same matter. You and I clearly have a different view on your complaint and, as I have explained, I have decided what action this office will be taking and we will not be taking this matter any further. • I accept that ... is your view. I have taken a different view. My view is ... For this reason I will be taking no further action on your complaint. • I understand that ... is your view. However, in this case the matter is quite clear. This agency is not able to deal with your matter. • I'm feeling that you want me to give you the answers. I don't have the answers to this.

Table 3. Script ideas for dealing with unreasonable demands and persistence cont'd

Complainant conduct	Possible responses
Unproductive/stressful phone call or interview	<ul style="list-style-type: none"> • I feel that I have given you as much information as I possibly can about ... I can see you are expecting me to say something I cannot. This conversation is now becoming unproductive/circular. I have other matters to attend to, so I must now end this conversation/ interview. • I do understand that you are dissatisfied. I have tried to explain to you how I came to make my decision and I'm not able to spend any more time on this. • I don't think this conversation is productive for either of us now and I will have to end our call/interview. You have my full reasons in the letter I sent you.
Interrupts case officer/does not allow case officer to speak	<p>Do not speak at all. Eventually complainant might say, 'hello, are you there?' at which point the response might be 'I am, and could I now have the opportunity to speak?'</p> <p>To break into a complainant monologue, repeat their name or repeat a key word or the last word they said.</p> <ul style="list-style-type: none"> • You have been speaking for ... minutes now. I wonder whether I might have the opportunity to respond to what you have been saying.
Hypothesising, catastrophising, conspiracy theories and unproductive arguments	<ul style="list-style-type: none"> • I can't do anything about an event that hasn't yet happened. • Some of the things you are asking about are hypothetical. I can only respond in detail to an actual event. • If ... happens in the future, you can ring me then. • People often feel that a certain person/agency has caused a problem for them. We need clear evidence to support what you are saying before we can follow it up. • I accept that you have that view. This office takes a different one. We cannot do what you are asking because ... • I can see that you think this is the worst thing that could happen. Perhaps we could have a closer look at how it is. <p>Ask a series of questions: What would make the situation better? What are you hoping to achieve by contacting us? What did you hope we could do for you? Then manage expectations.</p>
Raises global conspiracy theories but refuses to provide specific evidence	<ul style="list-style-type: none"> • There are sometimes complaints where people believe something wrong has happened, but there isn't any evidence. I can only suggest that if you do get some evidence, you send it to me. • I know you will understand that we cannot act on a complaint without evidence. • You are explaining your concerns well, but without any clear evidence, I can't follow this matter up.

Table 3. Script ideas for dealing with unreasonable demands and persistence cont'd

Complainant conduct	Possible responses
Raises bizarre or incomprehensible issues	<p>These complaints are often by people with mental illness, though it is unlikely that you will know for a fact that the person has a mental illness unless they tell you.</p> <ul style="list-style-type: none"> • Some general principles are: • Speak to them in the same tone as you would to anyone else. • Treat them with respect. • Listen carefully to what they are saying. • Avoid arguments. • Ask questions about what they are saying and check for evidence. Sometimes a person might be delusional, but may still have a legitimate complaint. The ability to provide evidence or point to factual information will be the key. 'To take this further, we would need clear evidence, like photos, documents or medical certificates ... ' • Reflect back to them what they are saying without agreeing 'So, aliens are following you'. • Acknowledge emotions, both their and yours. 'I am feeling frustrated listening to you, so I can only imagine how frustrated you must be feeling about ... ' • Empathise with both lows and highs. 'I can see you are feeling really bad about this/you are feeling really happy about this'. • There is unlikely to be an issue the agency can take up in these cases but see whether the person may be able to come up with a solution of their own. 'Is there any other way you may be able achieve this/make sure this doesn't happen again ... ?' • In these cases it is important to recognise one's own personal and professional limitations.
Wants to be told where to go next when the end of the line has been reached	<ul style="list-style-type: none"> • I'm not aware of another avenue of redress now available to you. • This is for you to decide. • It seems you've exhausted all avenues I can think of. • I don't want to waste your time by sending you on a wild goose chase. • I can't conjure up another body that can fix it for you. • Sometimes there are problems that can't be sorted out by any government agency. • I have no opinion about whether you should go to the media about this. This is really for you to decide.

Table 4. Script ideas for dealing with threats and abuse

See also Chapter 5: Managing serious anger, aggression and threats.

Complainant conduct	Possible responses
<p>Abusive language that is not specifically directed at the officer. This may be just their normal communication style or an expression of distress, but it makes the case officer feel uncomfortable.</p>	<ul style="list-style-type: none"> • I can hear/see that you are upset/angry, and I feel uncomfortable when you speak in that way. Could you please stop using swear words. • (after a warning) I will have to end this conversation if you do not stop using swear words. • (after a warning) Using swear words when you speak to me is making me feel uncomfortable. I will end this conversation now and you can call me back in ... hours when you feel able to talk to me without swearing. • I want to hear your side of the story. Please stick to the facts to help me understand what happened.
<p>Use of abusive language that is specifically directed at the case officer</p>	<ul style="list-style-type: none"> • I feel uncomfortable when you speak to me like that/it is inappropriate to speak to me like that. Please stop it. • (after a warning) If you don't stop talking to me like that, I will end this call and report your conduct to my supervisor. • Did you call me a #\$\$%? ... I can't talk to you while you call me names. I will end this call now and when you feel you are able to speak to me politely/ in more moderate language, you can call me back. • I am feeling uncomfortable with the way you are speaking to me. I will have to end this call/interview if you continue to speak to me like this. (do end it if the abuse continues) • I can see that you are upset and while you are upset we can't concentrate on the issues in your complaint. Let's have a breather. I will call you back/come back in ... minutes. • I did give you a warning that I would end this call/interview if you continued to speak to me in this way. I am now ending the call/interview. (take this action decisively) • If you do not leave the office now, I will call security and they will escort you from the building. (take this action decisively) • Did you call me a '#\$\$%'? – 'no'. Good, I would have found that very abusive and would have had to end this call/interview. – 'yes'. That's unacceptable name calling and I will end this call/interview. (take decisive action) • I'm happy to talk to you about this issue, but not while you are yelling at me. I will hang up now and I invite you to call me back in ... minutes.
<p>An alternative to 'I' statements for managing anger, abuse and threats</p>	<ul style="list-style-type: none"> • My organisation does not allow me to speak to people who yell/make threats. I have to ask you to stop or I will have to hang up/end this interview. • My organisation expects complainants to treat us with courtesy and respect. I have to ask you to stop yelling ...

Table 4. Script ideas for dealing with threats and abuse cont'd

Complainant conduct	Possible responses
Covert threats of harm to the office (property threats)	<p>General principle – make the threat overt by naming it.</p> <ul style="list-style-type: none"> • It seems to me that you are saying you will do something to damage our offices. Is this correct? • If this is correct, I will have to report your threat to my supervisor. It may also have to be reported to the police.
Overt threats of harm to the office (property threats)	<ul style="list-style-type: none"> • Did you just say you were going to throw a brick through our door? • If this is what you said, I will have to end this call/interview right now and report your threat to my supervisor. We will also have to call the police (or whatever your risk management protocol directs). Go on to report the threat immediately.
Covert threats of harm to the case officer	<p>General principle – make the threat overt by naming it.</p> <ul style="list-style-type: none"> • It seems to me you are saying that you are going to do something to hurt me. Is this correct? • If this is correct, I will have to report your threat to my supervisor. I may also have to report it to the emergency health team. Go on to report it immediately.
Overt threats of harm to the case officer	<ul style="list-style-type: none"> • Did you just say you were going to follow me home and hurt me and my family? • If this is what you said, I will have to end this call/interview right now and report your threat to my supervisor. We will also have to call the police (or whatever your risk management protocol directs). Go on to report it immediately.
Covert or overt threats of suicide	<ul style="list-style-type: none"> • Staff need suicide intervention training if this is a regularly encountered threat. <p>An organisation that provides such training is LivingWorks – www.livingworks.org.au</p>
<p>‘If you do not ... then ... ’ threats</p> <p>Emotional manipulation to make the case officer feel sympathy or guilt or be defensive.</p> <p>‘I’ve had such a hard time. I’ve just lost all my money and my wife has left me ... ’</p> <p>‘You’re my last hope, if you don’t help me I don’t know what I’ll do’</p> <p>‘I just knew you wouldn’t want to help me, you bureaucrats are useless ... ’</p>	<p>General principle – you are a professional officer, not a saviour or counsellor. It is important to separate out the emotional and deal with the factual.</p> <ul style="list-style-type: none"> • I do understand that you really want our agency to solve this problem for you. As I have already explained to you, we can’t. • I am aware that this problem has cost you a lot of money/ caused a lot of stress for you and your family and in your position I would feel upset too. I have looked at your complaint from the point of view of this agency’s powers and, as I have already explained to you, we are not able to do anything to help you. • I appreciate that you are disappointed that we won’t be able to take your matter up. The ... Act governs what we can and cannot do. Your matter is one the ... Act specifically says we cannot deal with. • I appreciate that you want us to continue to deal with your complaint. In the end it is the ... Act that governs what we can and cannot do and the director of our agency who makes the decision about how a complaint will be dealt with.

Table 5. Script ideas for responding to dissatisfaction and disappointment

Complainant conduct	Possible responses
So you think my complaint isn't important enough	<ul style="list-style-type: none"> • We take action on complaints where there is evidence that something went wrong. Unless you can provide us with evidence to support your complaint, we can't take any action. • All complaints are carefully assessed according to our policies and procedures. Sometimes we receive complaints we cannot/ do not have the powers to take up. • It may well seem that way ... (followed by an appropriate explanation).
Well, I didn't really expect you to do anything about my complaint	<ul style="list-style-type: none"> • I am sorry you feel that way. If you would like, I can take a few minutes to discuss our role. • I am sorry you are disappointed with the outcome of my assessment. I have set out the reasons for my decision in my letter. You may care to read through it again. • It appears in this case you were right (explain reasons for not doing anything). • I have considered your complaint and made enquiries. I appreciate my actions did not result in the outcome you were hoping for. • We have fully assessed your complaint and we do not consider there is evidence that ... acted wrongly/unlawfully/ corruptly.
They (the agency/their staff) are lying to you/ manipulating you/pulling the wool over your eyes and you can't see through them	<ul style="list-style-type: none"> • You may believe this. I am satisfied, though, with the agency's response. Unless you can prove they have deliberately misled or misinformed me, my decision stands. • I am very aware of the way responses are made to me. I can assure you I get copies of reports and documents to substantiate what I'm being told. • I appreciate that is your view. The evidence in this case is ... • Do you have any evidence that can support this allegation? • So far I have no reason to believe this. I certainly welcome any evidence you can give me that supports your assertion. • I have considered your evidence as well as the evidence provided to us by the agency/their staff and I can't agree with your assertion, though I do acknowledge that this is your view.
So they (the agency/their staff) are a law unto themselves	<ul style="list-style-type: none"> • They are required to abide by the law and policies that are relevant to them. They have had to explain their actions to us. I consider that they have reasonably explained their conduct. • Well no, they are not. The issue here is about a complaint you have brought to our agency. Our role is to see whether there may be any evidence that something went wrong. Having looked at your complaint, I have formed the opinion that there simply is not the evidence here. • The agency has to conduct its business and has legitimate authority to make its decisions. We haven't found evidence that it is acting unreasonably in doing this.

Table 5. Script ideas for responding to dissatisfaction and disappointment cont'd

Complainant conduct	Possible responses
You have made enquiries from the very person I am having trouble with	<ul style="list-style-type: none"> • I am aware of your views of this person. I find it helpful to contact the person most involved in the matter first, unless I consider it inappropriate. If I am not satisfied with their response, I will go further up the line until I am satisfied. • You have given us your side of the story. We have also given the agency/staff member involved the opportunity to put their side of the story. If we have any concerns, we take the matter up with the agency's senior management/staff member's supervisor. • In the interest of fairness, I need to hear how the other party sees the issue. I'm sure you can appreciate that I need to get both sides of the story if the matter is to be resolved. • I can understand that you are concerned about that. It is usually the case that it is fair and relevant to get the versions from both sides of a complaint. You have presented your side and we need to get their side too. • If the complaint is about the conduct of a member of staff, we would make enquiries at a higher level.
He/she (the person the subject of the complaint) is incompetent/corrupt/lies	<ul style="list-style-type: none"> • Do you have evidence that can support this allegation? • We rely on good documentary evidence to make our decisions. Any lies, shortcomings or other discrepancies usually become apparent during the course of our enquiries. • I need to give them a chance to explain their side of the story. If I am not satisfied, I will take it further. • The staff member has made a professional judgment and we have seen documentation in which they have given reasons for the decision. • I understand you are annoyed/sceptical/ angry about ... The evidence we have gathered suggests the conduct is not unreasonable/so unreasonable as to warrant action on our part.
You are colluding with the department	<ul style="list-style-type: none"> • You may think that. I have to make my own assessment of the matter. After looking at your concerns/checking out the relevant policies/seeking information from the department, I consider there is nothing for us to take up. • The fact that you disagree with their decision does not mean they have been unreasonable. • What do you base this claim on? • I do not take sides. I consider the evidence available to me and make my decision impartially. • I understand you are disappointed with my decision/view and I must say I am sorry you see it this way. My role is to be impartial and, based on the evidence available to me, I cannot see that the agency has acted wrongly.

Table 5. Script ideas for responding to dissatisfaction and disappointment cont'd

Complainant conduct	Possible responses
You are taking their word for it	<ul style="list-style-type: none"> • No, that is not correct. I have sought documentation (reports, file notes, correspondence) to assess the decision making process and reasons for the agency's/staff member's conclusions. • I am independent of both parties and I am not here to take sides. • It seems you think that, because I haven't agreed with your complaint, I am simply accepting their word. In actual fact, my job is to hear and consider both sides of a story and then to decide whether there is any/sufficient evidence that something has gone wrong. • That's not the case. I have looked at the documentation and I can't see any evidence to contradict the agency's/staff member's position. • I have asked them to explain the situation and I am satisfied with their explanation.
But you've made a decision without interviewing/getting back to me	<ul style="list-style-type: none"> • I considered that the agency's reply adequately addressed your concerns. If you are dissatisfied with it, we can talk about it now. (Point out any review option if still dissatisfied) • I have carefully considered the information you sent us with your complaint and I have made my decision based on that. If you have any further information that is relevant to this case, then you should write to us and let us know that information. • Yes, that's correct. The information you provided in your written complaint was enough for me to consider the matter and make a decision. • I have assessed all the material – your submission as well as the documents I requested from the department. If I had concluded that an investigation was required, I would have contacted you. In the end, my decision is that there appears to be no evidence that something went wrong.
I thought your agency was interested in fairness	<ul style="list-style-type: none"> • You are correct. We are very interested in what is fair and reasonable. • We have carefully looked at your complaint and we have decided that there does not appear to have been any unfairness in your case.
What are you good for then?	<ul style="list-style-type: none"> • I appreciate your disappointment/frustration at my decision and why you may ask this question. You may wish to read our annual reports which explain what we have achieved over the years. • I'm sorry we were not able to do what you wanted us to do/had hoped we could do. The fact is ... (explain the case details). • I appreciate that you would have liked us to take up your case. The fact is we are impartial investigators, not advocates for complainants. In this case we have decided ...
I am going to take this to the media	<ul style="list-style-type: none"> • That is for you to decide. • You are free to take your matter to any forum you choose. • That option is certainly open to you.

Table 6. Script ideas for testing a complainant's preparedness to consider the validity of a view other than their own

Complainant conduct	Possible responses
<p>Complainants who have formed a view that is illogical or inconsistent with the facts may never move from their position.</p> <p>The complainant's answers to test questions like these will give some indication whether it is possible to shift their perception towards another view, or whether no amount of explaining and reasoning will work so further engagement will be unproductive.</p>	<ul style="list-style-type: none"> • Your view is ... Is there any possibility that there could be another/different view? • You say ... is the case. Is this necessarily so? • You seem to be saying ... is the case. How is this true? • To manifestly illogical conspiracy allegations – Is it possible there might be an innocent explanation for ... ?

Chapter 5. Managing serious anger, aggression and threats

5.1. Assessing risks to frontline staff and complainants

Every organisation that deals with members of the public, and particularly organisations that deal with members of the public who have a grievance, need to regularly assess the nature and levels of risk faced by their staff. They need to be clear what, in their context, is acceptable and unacceptable in terms of risk and communicate this clearly to their staff and complainants.

The nature and levels of risk will vary depending on a range of factors, including:

- the characteristics of people likely to be complainants
- the nature of the grievances that complainants are likely to have
- whether contact with the public is primarily face-to-face, over the phone or a combination of the two
- the history of previous incidents
- the design of the premises to which the public has access.

See also Appendix 3: Risk assessment matrix for frontline staff.

As part of these regular risk assessments:

- The types of risks likely to be faced by complaint handlers need to be identified.

See also Appendix 4: Types of risks faced by frontline staff.

- The options for treating those risks need to be considered.

See also Appendix 5: Options for treating risks.

After the nature and levels of risk faced by complaint handlers in the particular organisation have been assessed, a plan to manage these risks can be prepared.

See also Appendix 6: Planning for risk mitigation, preparedness, response and recovery.

Agencies can then establish guidelines for their complaint handling staff, setting out the response options for various identified risks. These could be based on the model in 5.2.

See also 4.4 Script ideas.

5.2. Response options for risks to frontline staff

Table 7. Response options for risks to front line staff

Risks	Response options/strategies
General considerations	<p>Recognising danger signals and reviewing risk.</p> <p>Recognise the signs of client anger – whether or not the anger is directed at you – and, if so, whether this is causing you anxiety, distress or fear. Always start by asking ‘Am I in danger?’ If the answer is ‘yes’, then remove yourself from harms way as quickly as possible. Walk through the nearest door into a more secure area, and then turn and say something like:</p> <p><i>‘My organisation’s policy does not allow me to continue the interview while you are behaving in an angry way or making threats’.</i></p> <p>If the threat abates – that is, the client’s behaviour improves – then you can re-start the interview based on clear behavioural ground rules.</p>

Table 7. Response options for risks to front line staff cont'd

Risks	Response options/strategies
General considerations cont'd	<ul style="list-style-type: none"> <li data-bbox="544 271 711 300"> <p>• Repeating</p> <p>Make sure threats are clarified (made overt) and the person takes ownership of the threat by repeating the statement as close to verbatim as possible – eg ‘You have just said to me that ... ’ Ask if this is what the person meant to say and whether it is in fact a threat to cause harm – eg ‘Is that what you meant? Are you threatening me?’</p> <li data-bbox="544 539 695 568"> <p>• Reacting</p> <p>React to all threats by explicitly acknowledging them – whether they are overt or covert threats to you, themselves or to others. Always show some reaction to a threat, even if minimal – eg take a 5 minute break. However, don’t over-react or mirror the threatening language or the threatening behaviour.</p> <p>Continue to show respect even when the person is being rude or threatening.</p> <li data-bbox="544 846 735 875"> <p>• Responding</p> <p>Ask the person to stop the behaviour – ‘Mr ... stop shouting at me’ – while informing them of the organisation’s protocols for responding to threats. Communicate clearly and consistently what the consequences will be if the behaviour continues.</p> <li data-bbox="544 1041 727 1070"> <p>• Redirecting</p> <p>Redirect or distract the attention of the person with actions or comments that do not reward the behaviour. For example – ask questions about the substantive issue to try to move the person from the ‘emotional’ state back into a ‘cognitive’ or thinking state, take a 5 minute break or offer a cold drink.</p> <li data-bbox="544 1272 727 1301"> <p>• Refocusing</p> <p>If you are able to help the person bring their emotions under control, refocus their attention on their issue. A question about the facts can change a person’s focus from their feelings to thinking about the substance of their issue.</p> <li data-bbox="544 1467 799 1496"> <p>• Raising concerns</p> <p>If you feel threatened, activate a silent alarm (if available) or leave the room and call for assistance from other staff.</p> <li data-bbox="544 1592 687 1621"> <p>• Running</p> <p>If all else fails and you feel an imminent risk of harm – run (or at least move quickly) to a safe location.</p> <li data-bbox="544 1720 711 1749"> <p>• Recording</p> <p>Always make a ‘verbatim’ record of all threats and put a copy on the relevant file.</p> <li data-bbox="544 1848 1023 1877"> <p>• Reporting and reviewing responses</p> <p>Report the matter to a supervisor/manager so that both of you can review your responses to the threatening behaviour and identify strategies to manage or control any future interactions with the person. You may want a formal or informal debrief after the incident.</p>

Table 7. Response options for risks to front line staff cont'd

Risks	Response options/strategies
Extreme risk	
<p>Violence – actual or reasonably apprehended.</p> <p>For example – any form of body contact, clenching a fist, verbal threats.</p>	<p>The staff member should direct the complainant to stop the behaviour and leave the premises.</p> <p>Inquiries staff should exit the public area.</p> <p>The receptionist should:</p> <ul style="list-style-type: none"> • activate any airphone or duress alarm • call building security and the police.
<p>Bomb threats</p> <p>For example – any implied or actual threat.</p>	<p>The staff member should:</p> <ul style="list-style-type: none"> • refer to the bomb threat checklist • take comprehensive notes and complete the checklist afterwards • let the caller finish their sentences without interruption • try to keep the caller talking and obtain as much information as possible, including: <ul style="list-style-type: none"> – When will the bomb explode? – What does the bomb look like? – Where is the bomb located? – What kind of bomb is it? – Why was the bomb placed there? – Details of the caller (person/organisation responsible) – Exact time of call and its duration • not replace the handset even if the caller hangs up • report the threat to a supervisor and the office security officer immediately. <p>The supervisor should:</p> <ul style="list-style-type: none"> • if they believe the bomb threat is genuine, inform a designated person, any security committee and the head of building security so appropriate action can be taken – for example, contacting the police or an evacuation • monitor the staff member, especially if no support options have been used • liaise with a person designated for this task about the need for an operational debrief • make sure the staff member has completed a bomb threat checklist as close as possible to within 24 hours of receiving the phone call.

Table 7. Response options for risks to front line staff cont'd

Risks	Response options/strategies
Extreme risk cont'd	
<p>Threat with a weapon</p> <p>For example – producing a weapon or statements that the person is in possession of a weapon.</p>	<p>Staff members should:</p> <ul style="list-style-type: none"> • remain calm and try to assess the situation • activate the duress alarm or call for help, if it is safe to do so • obey the aggressor's instructions, but only do what you are told and nothing more – don't volunteer any information • move slowly and avoid eye contact • advise the aggressor of any movements they may have to make which could appear sudden or unexpected, such as opening a drawer • not invade the aggressor's space • keep their hands in view • if required, contact a first aid officer to provide first aid to staff or customers as soon as safely possible • once the threat is over, complete a security incident report form and email it to the security committee. <p>Senior staff responding to the duress alarm should try to isolate the incident by evacuating the area and preventing others from entering it – for example, stand by the lifts or ask building management to close off the lifts to the floor.</p> <p>The most senior staff member present, or the office security adviser, should:</p> <ul style="list-style-type: none"> • override the duress alarm, if it has been activated • ring 000 for urgent assistance or check that the police have been called • if it is safe to do so, ensure communication is maintained with the aggressor until the police arrive. <p>The relevant supervisor should – after an incident of aggression – consult with a person designated for this task and any security committee about the need for advice, counselling or an operational debrief.</p>
High risk	
<p>Aggressive or intimidating behaviour</p> <p>For example – leaning towards interviewer, moving around the room, invading interviewer's body space.</p>	<p>The staff member should:</p> <ul style="list-style-type: none"> • continually assess the possibility of the situation becoming violent – are the signs abating or becoming worse? • ask another staff member to be present • take a step back to create space if there are signs of physical aggression • maintain normal eye contact – deliberate eyeballing can seem very aggressive • provide alternatives to the aggression by making it clear to the complainant that aggression will not achieve their goal • be careful not to get into a fight • share their expert knowledge with the complainant, while not using these things to make the person feel inferior

Table 7. Response options for risks to front line staff cont'd

Risks	Response options/strategies
High risk cont'd	
Aggressive or intimidating behaviour cont'd	<ul style="list-style-type: none"> • maintain non-confrontational body language – nodding and turning an ear towards the speaker are appropriate signs of listening and not playing for power – and keep hands in front at waist level • get something in between them and the complainant – a desk, a document, a list of proposed actions, something that both have agreed on previously • withdraw earlier rather than later and offer another time when the conversation can be resumed • not attempt to physically restrain anyone or physically intervene between other people who are behaving aggressively towards each other • not try to be a hero.
	<p>If it is appropriate to continue the interview with a warning, the staff member should:</p>
	<ul style="list-style-type: none"> • Warn the complainant that if they do not stop the behaviour, the interview will end. For example: 'I will have to end this interview if we can't keep to the issues' or 'I find the language and manner you are using unacceptable. If you continue to talk to me like this, I will end this interview'. • Choose one of the following options if the complainant continues the behaviour: <ul style="list-style-type: none"> – end the interview, possibly with an offer to reschedule it to a later date – ask another staff member to assist or take over – seek backup from a more senior officer. • Complete an incident report (after the complainant has left), and email it to the person designated for this task, with a copy to any security committee and appropriate manager.
	<p>If it is appropriate to end an interview without using the duress alarm, the staff member should:</p>
	<ul style="list-style-type: none"> • warn the complainant that if they do not stop the behaviour, the interview will end. For example: 'I will have to end this interview if we can't keep to the issues' or 'I find the language and manner you are using unacceptable. If you continue to talk to me like this, I will end this interview' • if the complainant continues the behaviour, seek backup from a more senior officer • end the interview • complete an incident report (after the complainant has left), and email it to the person designated for this task, with a copy to any security committee and appropriate manager.

Table 7. Response options for risks to front line staff cont'd

Risks	Response options/strategies
High risk cont'd	
Aggressive or intimidating behaviour cont'd	<p>If it is appropriate to end an interview using the duress alarm, the staff member should:</p> <ul style="list-style-type: none"> • if time permits, warn the complainant that if they do not stop the behaviour, the interview will end. For example: 'I will have to end this interview if we can't keep to the issues' or 'I find the language and manner you are using unacceptable. If you continue to talk to me like this, I will end this interview' • press any duress alarm • retreat from the interview room or public counter into a secure office area • if retreat is not possible, use 'reasonable force' – that is, the amount of force necessary to stop an attack or prevent personal injury – nothing more • seek support from a more senior officer • complete an incident report (after the incident), and email it to the person designated for this task, with a copy to any security committee and appropriate manager.
Medium risk	
Seriously abusive or aggressive language in phone calls	<p>The staff member should:</p> <ul style="list-style-type: none"> • try to calm the complainant • if this fails, inform the complainant that assistance cannot be given while they are being aggressive. For example: 'I will have to terminate this call if we can't keep to the issues' or 'I find the language and manner you are using unacceptable. If you continue to talk to me like this, I will end this call' or 'I gave you the information you need and if you have no new questions, I'll have to end this call to deal with other people who are waiting' • if the caller has been previously told only to contact the office in writing, they should be reminded of this and the call terminated • if the aggression continues, warn the complainant again that the call will be ended, mute the phone and seek assistance – do not hang up • if the abuse continues: <ul style="list-style-type: none"> – warn the complainant that the call will be ended – end the call, unless it should be traced – in which case the phone should not be hung up – fill out a security incident report form and email it to the security committee – report the incident immediately by email to the receptionist and inquiries staff in case they ring back.

Table 7. Response options for risks to front line staff cont'd

Risks	Response options/strategies
Medium risk cont'd	
Seriously abusive or aggressive language in phone calls cont'd	<ul style="list-style-type: none"> • Discuss with a supervisor the options for dealing with further calls from the caller. For example: <ul style="list-style-type: none"> – whether to take other calls from the caller and, if so, who should take them – have further calls automatically put through to voicemail. • Inform reception what to do with any further calls. • Make a note of the conversation. • Draft a memo and/or incident report for the appropriate supervisor recommending appropriate action, such as no further contact or other. <p>If asked, the receptionist should put the caller through to a supervisor – but only after explaining the situation to the supervisor.</p>
Anger (face-to-face)	<p>The staff member should:</p> <ul style="list-style-type: none"> • Remain calm and respectful (or at least appear calm and show respect), greet the person and preferably get them to sit down. • Use a low, calm tone of voice and a slow pace. • Listen – without intervening too quickly and allow them a chance to ‘blow off steam’. • Show that you are open to their point of view and use active listening skills – eye contact, nodding of the head, open body position. • Acknowledge the complainant’s anger without diagnosis, encouragement or criticism – feelings are real even if they appear to be inappropriate or unreasonable. • Paraphrase and summarise what the complainant is saying by picking out the key points and saying them aloud. • Apologise or at least sympathise, without accepting blame – unless an apology is deserved for some act or omission that is our responsibility. Generally, a complainant will be talking about another authority and it would be inappropriate to give an apology on their behalf. Complainants however will still hear apologies that are given that do not apportion blame. For example: ‘I’m sorry to see that you are so upset about what has happened’. • Agree with the person without assuming any blame, and listen for things you can agree with and express this. For example: ‘You’re right, the Act does give you a right of objection’ or ‘I agree it would be frustrating not to receive the information in time’ or ‘I accept that you are really disappointed with the service you received’. • Make sure the person understands what is being said – in particular, avoiding jargon and legal language.

Table 7. Response options for risks to front line staff cont'd

Risks	Response options/strategies
Medium risk cont'd	
<p>Threatening phone calls</p> <p>For example – any implied or actual threat.</p>	<p>The staff member should:</p> <ul style="list-style-type: none"> • Try to calm the complainant. • Take comprehensive notes. • Immediately after the phone call finishes, inform their supervisor, the team manager or relevant statutory officer of the call. Seek advice about any further action needed, such as whether to call the police. • With the approval of a [statutory officer/team manager/customer services manager], disclose information about the call to a relevant agency – such as the police or mental health professionals – if this will lessen or prevent harm. • Complete a security incident report form and email it to the [security committee] with a copy to the [customer services manager and/or office security manager]. <p>The supervisor should:</p> <ul style="list-style-type: none"> • Make sure that the team manager/statutory officer has been informed and a security incident report form completed. • Inform the staff member of the various options available for support, such as debriefing and counselling through the Employee Assistance Program. • Monitor the staff member, especially if no support options have been provided. • Liaise with the [team manager/security committee] about the need for an operational debrief.
Low risk	
<p>Refusal to leave premises</p> <p>For example – refusing to move when asked to leave, or moving away from the person escorting them to other parts of the building.</p>	<p>The staff member should:</p> <ul style="list-style-type: none"> • Inform a supervisor if a complainant refuses or fails to leave the premises when directed. • Make a detailed record of the time and wording of the instruction to leave – including the reasons why the direction was issued – and the complainant's response.

5.3. Response options for risks to complainants

Table 8. Response options for risks to complainants

Risks	Response options/strategies
Threats of suicide – overt For example – saying something direct like ‘I’m going to kill myself’.	If this is a regularly encountered threat, staff need to receive training in suicide intervention. One organisation that provides this is LivingWorks www.livingworks.org.au Refer to police and appropriate welfare agency.
Threats of suicide – covert For example – saying something indirect like ‘It’s all getting too much for me’ or ‘I feel I can’t go on any longer’.	Get complainant to clarify. If necessary, refer to police and appropriate welfare agency.
Complainant initiates an altercation in which they are injured.	See above: High Risk – Aggressive or intimidating behaviour.

5.4. Testing commonly made verbal attacks on complaint handlers

Verbal attacks on complaint handlers cannot be dismissed out of hand. It is possible that the complainant could have a point, no matter how confronting their formulation of this point is.

Table 9 is designed to help sort through the issues involved in commonly made verbal attacks.

Table 9. Common attacks complainants make on agencies and complaint handlers

Focus of attack	Basis of claim	
	Reasonable (examples)	Unreasonable (examples)
On the messenger:		
<ul style="list-style-type: none"> • ‘You are corrupt’ 	<ul style="list-style-type: none"> • If based on some evidence of breach of trust. 	<ul style="list-style-type: none"> • If based solely on an adverse decision or on conjecture, speculation, or a vague assertion of suspicion.
<ul style="list-style-type: none"> • ‘You are biased’ 	<ul style="list-style-type: none"> • If based on some evidence of actual or perceived bias – eg conflict of interests, prejudice etc. 	<ul style="list-style-type: none"> • If based solely on an adverse decision or on conjecture, speculation or a vague assertion of suspicion.
<ul style="list-style-type: none"> • ‘You are incompetent’ 	<ul style="list-style-type: none"> • If based on some evidence of incompetence, error, misjudgement etc. 	<ul style="list-style-type: none"> • If based solely on an adverse decision or disagreement about priorities, resources or approach taken etc.
<ul style="list-style-type: none"> • ‘You were rude, abusive’ etc 	<ul style="list-style-type: none"> • If supported by some independent evidence or there is a history of such conduct by the particular complaint handler. 	<ul style="list-style-type: none"> • If there is corroborating evidence to the contrary, or such conduct by the particular complaint handler would be totally out of character.

Table 9. Common attacks complainants make on agencies and complaint handlers cont'd

Focus of attack	Basis of claim	
	Reasonable (examples)	Unreasonable (examples)
<p>On the content:</p> <ul style="list-style-type: none"> • 'Your reasoning/letter is full of errors, so your decision is wrong' • 'Your reasoning/letter is full of errors so your investigation has no credibility' • 'You misunderstood what I was saying' 	<ul style="list-style-type: none"> • If there is some substantiation for the claim and the errors had an impact on the decision/outcome. • If there is some substantiation for the claim and the errors had an impact on the decision/outcome. • If there is a plausible/ reasonable alternative explanation or interpretation of what the complainant alleged/stated. 	<ul style="list-style-type: none"> • If pointing only to minor/ insignificant/technical details with little impact on the outcome/decision. • If pointing only to minor/ insignificant/technical details with little impact on the outcome/decision. • If no factual basis articulated or the substance of the complaint has been reframed.
<p>On the process:</p> <ul style="list-style-type: none"> • 'You didn't properly consult me before making your decision' or 'You didn't interview me directly' • 'You denied me procedural fairness' • 'You didn't give me a full copy of the agency's response' • 'You believed them not me' • 'You interviewed the very person I am having trouble with' • 'You didn't properly investigate my complaint' 	<ul style="list-style-type: none"> • If this was required by law or good practice or the complainant was likely to have relevant information/ more detailed information than disclosed to date. • If alleged by the subject of the investigation, or there is some substantiation for the claim. • If this was required by law or good practice, or an undertaking was given to complainant. • If there was independent or otherwise substantiating evidence. • If there was a reasonable likelihood of detrimental action being taken in reprisal for the complaint. • If there is some substantiation for the claim. 	<ul style="list-style-type: none"> • If no further relevant information is provided or all relevant information was available on file. • If alleged by a complainant – although entitled to have views taken into account, has no right to be given information other than as dictated by statute and good practice. • If the substance/relevant part of the response was provided or there was good reason to withhold the full response to protect confidentiality etc. • If there are conflicting versions of events and no independent or otherwise substantiating evidence is provided. • If this was clearly required for the matter to be properly investigated, particularly if there is little or no independent or otherwise substantiating evidence available. • If based solely on an adverse decision/outcome, or a failure to substantiate the complaint.

Table 9. Common attacks complainants make on agencies and complaint handlers cont'd

Focus of attack	Basis of claim	
	Reasonable (examples)	Unreasonable (examples)
<p>On the outcome:</p> <ul style="list-style-type: none"> • 'You did nothing – you are useless' • 'You don't understand the problem' • 'You are wrong' • 'You were conned by the agency and you fell for it' • 'You are on the side of the agency' 	<ul style="list-style-type: none"> • If no or insufficient action was taken within a reasonable period of time. • If there was an incorrect assessment as to jurisdiction, seriousness, nature of issue etc. • If based on reasonable arguments. • If the agency's word was taken in circumstances where this was illogical, internally contradictory, contrary to other available evidence etc. • If there is a reasonably perceived conflict of interests. 	<ul style="list-style-type: none"> • If the complainant wants action taken that is out of proportion to the seriousness of the issue, is unaware of the actions taken etc. • If no factual basis is articulated or what is perceived to be a problem is in fact reasonable. • If no factual basis for disagreement is articulated. • If no factual basis is articulated. • If based solely on an adverse decision/outcome or a failure to find any or sufficient evidence to substantiate the complaint.

6.1. Critical incidents

A critical incident is an event that disrupts an office's normal functions and is perceived by staff to be of significant personal or professional danger or risk. Critical incidents place demands on staff outside of their normal professional routines and they are generally not prepared for them. Staff do not necessarily have to experience a critical incident first hand to be affected by it.

Some examples of major critical incidents are:

- threats of harm to self or others
- serious injury
- actual or threatened death
- deprivation of liberty
- severe verbal aggression
- bomb or hostage threats.

Staff members in a complaint handling context are more likely to experience minor critical incidents, such as the incidents of unreasonable behaviour described in this manual. Nevertheless, anyone can experience critical incident stress if they interpret a specific event as being critical for them.

6.2. Signs of critical incident stress

Exposure to single or repeated critical incident events, whether major or minor, can have a negative effect on a staff member's physical, emotional, professional and social wellbeing. It is important to understand that a stress response to a critical incident is a normal response to an abnormal situation.

Signs of stress responses in an individual might include:

- chest pains
- headaches
- gastrointestinal problems
- elevated heart rate
- elevated blood pressure
- muscular soreness
- fatigue
- feelings of isolation
- social withdrawal
- interpersonal problems
- substance abuse.

Staff who are experiencing stress responses may not necessarily be aware of this themselves. It is important that supervisors are alert to any stress signs in their staff.

Some common myths about critical incident stress are:

- If staff members are experiencing critical incident stress, they are not competent or not suited for the job.
- Experiencing critical incident stress is a sign of psychological weakness.
- Talking about the incident will only make the stress worse.

⁶ This chapter is adapted from an unpublished paper by the WA Ombudsman. The paper includes references to material used here from Queensland Health, *Complaints Coordinator's Handbook*, 2002, University of Western Australia, *Critical Incident Counselling Procedure*, 2005 [on-line], Victorian Government Department of Human Services, *Resource Guide for Critical Incident Stress and Debriefing in Human Service Agencies*, 1997.

6.3. Effects of critical incident stress on the agency

Critical incidents may impact on the wider work environment and affect team dynamics and functioning. Work effectiveness and productivity can become impaired and there may be a higher than usual rate of absenteeism or a sudden rise in staff turnover. Levels of morale may fall and group problem solving ability may become compromised. Mistrust towards complainants may also take hold.

6.4. Dealing with critical incident stress

Agencies have duty of care and occupational health and safety obligations towards their staff, so every agency needs to have mechanisms in place to systematically deal with critical incident stress. The approach advocated in this manual, when systematically applied, goes a long way towards reducing the stress experienced by staff in their day-to-day interaction with complainants whose conduct can be challenging. However, management also needs to have specific debriefing mechanisms in place.

6.5. Providing debriefing

There needs to be a clear commitment from management to a debriefing process with clear, formal procedures in place.

Debriefing can be provided in a number of ways:

- An external professional service can be retained to provide the service on a needs basis.
- Internal debriefing can be provided by managers and supervisors. If this is the case, it is critical that the people providing the debriefing are professionally trained in debriefing techniques.
- Informal debriefing after a minor incident can be provided by peers. If this is the case, management needs to make it clear that it is a legitimate component of the work of each staff member to assist a colleague to debrief if they are asked for this assistance. Ideally, all staff likely to be called on to assist in debriefing a colleague will receive some training in debriefing techniques.

The feelings and wishes of the individual involved should dictate what form a debriefing takes.

6.6. Debriefing components

Staff likely to be involved in debriefing need to be professionally trained. It is beyond the scope of this manual to present specific debriefing techniques, but the following is a short list of some key components.

- Debriefing aims to assist recovery from critical incident stress and avoid future problems such as post traumatic stress syndrome.
- Debriefing generally needs to occur 24 to 72 hours after an incident, depending on the readiness of the individual.
- Some people may display a delayed reaction, in which case debriefing may occur weeks or even months after the event.
- Debriefing sessions are always private and discussions are confidential.
- Participation is voluntary, though staff should be encouraged to attend.
- Debriefing can involve an individual or a group.
- Follow-up sessions may be necessary.
- Debriefing should also include an educational component about stress-related symptoms that may be experienced and how to manage them.
- The individual affected may need support for a period beyond debriefing – such as a lighter workload for a while, changed duties, part-time work or leave.

A debriefing report may be prepared. This is a confidential document. It relates to the agency's operation and would be kept separate from the affected staff member's personnel file.

6.7. Dealing with perpetrators

Decisive action needs to be taken in relation to the actions of perpetrators. A very clear message must be sent that the agency views threats against their staff very seriously. This may take the form of strongly worded limits on the perpetrator's contact with the office in the case of minor incidents or criminal charges in more extreme cases.

7.1. Why apologies should be made

One of the most effective ways to diffuse a situation, or to prevent a situation from escalating to a point where a complainant's conduct becomes unreasonable, is to offer a full apology where this is warranted.

Agencies sometimes get it wrong. Mistakes, delays, omissions and misunderstandings happen, even in the most efficiently run organisations. If this occurs, action should be taken immediately to remediate the problem. Remediation on its own is generally not enough. An apology needs to be made as well.

When things go wrong, complainants generally want no more than to be listened to, understood, respected and – if appropriate – given an explanation and apology. A prompt and sincere apology for any misunderstanding is likely to stop ongoing problems from developing.

A full apology given at the right time can:

- restore dignity, face and reputation
- provide an acknowledgement that the recipient was indeed right
- assure the recipient that they are not at fault
- prevent escalation of the matter and the associated costs in terms of time, resources and stress.

When things go wrong, the problem often is not the event that caused the damage – it is the way the person was treated afterwards. If the response to the person's concerns is respectful, positive and constructive (which can include an apology if appropriate), those concerns can often be resolved satisfactorily, enabling the person to 'move on'. If the response is rude, dismissive, negative, defensive or misleading, this is likely to result in an escalation of the problem with detrimental consequences for all the parties concerned. Unreasonable complainant conduct could well become the result.

7.2. The content of an apology

The most appropriate form and method of communicating an apology will depend on the circumstances of the particular case. In general terms, the most effective apologies incorporate the following key elements:

- **Recognition**
 - Description of the wrong – the problem, act or omission to which the apology applies.
 - Recognition of the wrong – an explicit recognition that the action or inaction was incorrect, wrong, inappropriate, unreasonable or harmful.
 - Acknowledgement of the harm – an acknowledgement that the affected person has suffered embarrassment, hurt, pain, damage or loss.
- **Responsibility**
 - Acceptance of responsibility – taking responsibility for the wrong and harm caused.
- **Reasons**
 - Explanation of the cause – a simple, plain English explanation of the reasons for or cause of the problem.
- **Regret**
 - Apology statement – an expression of sincere sympathy, sorrow or remorse, and a statement that the action or inaction was wrong or, at the very least, an expression of regret.
 - Sincerity of communication – an important indicator of the level of regret of the person doing the apologising.

- **Redress**
 - Action taken or proposed – a statement of what has been or will be done to address the problem.
 - Promise not to repeat – an indication that the action or inaction will not happen again.
- **Release**
 - Request for forgiveness – a request to be released from blame (an optional extra to a full and complete apology).

7.3. Giving an apology

Apologies generally need to be given at the earliest practical opportunity. Although it is best to apologise as soon as a wrong is identified, it may be important to delay a full apology to allow time for inquiries or an investigation to establish the nature and cause of the problem – and to allow one or both parties time for cool reflection.

Apologies must be given by the right person, the one who is responsible for the wrong, or a person who is clearly perceived as speaking on behalf of the agency responsible for the wrong. Apologies must also be given to the right person, the one who was harmed. Apologising to a third party is generally not appropriate.

7.4. Legal implications of apologising

There are three different approaches to the statutory protection of apologies in Australia.

- NSW and the ACT have legislated to protect 'full' apologies from incurring civil liability – that is, apologies that include an admission of fault or responsibility.
- The other states and territories have legislated to protect 'partial' apologies from incurring civil liability – that is, apologies that do not include such an admission.
- All states and territories in Australia have legislated to protect 'full' apologies from incurring liability in defamation.

Case law indicates that, even if a person makes an apology that includes an acceptance or admission of fault or responsibility, this will not necessarily be regarded by the courts as an admission that creates legal liability in civil proceedings (*Dovuro Pty Ltd v Wilkins* [2003] HCA 51 (11 September 2003)).

For more details, see *Apologies – A practical guide*, published by the NSW Ombudsman, downloadable from www.ombo.nsw.gov.au

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Dear

We received your complaint about the ...
The person handling your complaint is ...

What we do first

We are assessing your complaint and will decide whether we need to speak with the agency about your concerns. Often, the agency gives us a solution or an explanation that satisfies us. If this happens, we will contact you within four weeks to let you know the results.

When a complaint takes longer to deal with

If the agency is not able to provide us with a satisfactory solution or explanation, we can:

- inspect their files and documents
- conduct interviews
- visit the site
- ask them for a written report.

These actions take time, but our aim is to complete them and let you know the results within four months.

Formal investigation

Sometimes, when the problem is not solved or we think the problem is very serious, we can start a formal investigation. This is a long and complex process that usually takes at least nine months. In these cases, we will keep you informed of our progress.

Important information

On the back of this letter, we have outlined what the Ombudsman's office does and does not do. We have also explained what our responsibilities are and what your responsibilities are as a complainant. Please read this information carefully.

We will work through the complaint you have made and the facts you have given us, and will contact you again shortly.

Yours sincerely

for the Ombudsman

What the Ombudsman's office does	What the Ombudsman's office does not do
<ul style="list-style-type: none"> In most cases, we can investigate the administration of NSW government departments, agencies and councils when that administration appears to be wrong or bad. 	<ul style="list-style-type: none"> We do not have to investigate every complaint we get. We are more likely to investigate ongoing problems or serious abuses of power.
<ul style="list-style-type: none"> We are not controlled by any government body and act independently. 	<ul style="list-style-type: none"> We do not act for particular parties or agencies.
<ul style="list-style-type: none"> Our aim is to be fair and find out the truth. 	<ul style="list-style-type: none"> We cannot force an agency to take action in the way a court can.
<ul style="list-style-type: none"> Our aim is to work out reasonable solutions that are in the public interest. 	<ul style="list-style-type: none"> We do not give legal advice.

The responsibilities of the Ombudsman's office	Your responsibilities when you make a complaint
<p>We are responsible for:</p> <ul style="list-style-type: none"> handling your complaint professionally, efficiently and fairly keeping you informed of our progress giving you reasons for our decisions treating you with respect. 	<p>You are responsible for:</p> <ul style="list-style-type: none"> providing us with a clear idea of the problem and the solution you want giving us all the relevant information you have (or know about) at the beginning telling us new facts or letting us know you no longer want our help cooperating with us treating us with respect.

For more information about who we are and what we do, please go to our website at www.ombo.nsw.gov.au.

Appendix 2. Model ground rules*

To enable (this agency) to ensure a high standard of service to complainants and meet our occupational health and safety and duty of care obligations to our staff, the following ground rules apply to (the agency's) staff and complainants.

It is the responsibility of (the agency) to:

- deal with complaints professionally, efficiently and impartially
- keep complainants informed of the progress and outcome of enquiries
- provide clear reasons for our decisions
- treat complainants with courtesy and respect.

If (the agency) does not meet its responsibilities, the complainant can make a complaint to the ...

It is the responsibility of the complainant to:

- clearly identify the issues of complaint, or ask for help from (the agency's) staff to do this
- give (the agency) all the available information about the complaint in an organised format at the time of making the complaint
- cooperate with (the agency's) enquiries or investigations
- treat the (the agency's) staff with courtesy and respect.

If complainants do not meet their responsibilities, (the agency) may set limits or conditions on the handling of their complaint. Any abuse, harassment or threats to the safety or welfare of staff at (the agency) will result in the immediate discontinuation of the complaint and all contact with the complainant will stop.

* The ground rules are a basis for the interaction between the agency and complainants. Agencies may choose to make these explicit through letters, printed materials and information on their website.

Appendix 3. Risk assessment matrix for frontline staff

Likelihood	Consequence			
	Minor	Moderate	Serious	Very serious
Almost certain	Medium risk	Medium risk	High risk	Extreme risk
Likely	Medium risk	Medium risk	High risk	Extreme risk
Possible	Low risk	Medium risk	High risk	Extreme risk
Unlikely	Low risk	Low risk	Medium risk	High risk

Definitions

Likelihood	Probability	Description (from AS/NZS 4360)
Almost certain	90%>	The event can be expected to occur in most conditions.
Likely	50% – 89%	The event will probably occur in most conditions.
Possible	6% – 49%	The event should happen at some time.
Unlikely	<5%	The event could happen at some time.

Consequence	Impact
Very serious	Death or serious injury
Serious	Minor injury
Moderate	Intimidation, threats or abuse (face-to-face) – resulting in stress/fear experienced by staff or damage to premises.
Minor	Verbal threats or abuse (over the phone), resulting in some degree of stress experienced by staff.

Level of risk	Meaning
Extreme risk	Urgent and extraordinary action required.
High risk	Urgent and direct senior management attention required.
Moderate risk	Management action required.
Low risk	Manage by routine procedures.

Appendix 4. Types of risks faced by frontline staff

Threats

- Specific threats are made:
 - against staff generally
 - against specific staff
 - against self
 - to damage premises.
- The threatened action is:
 - a bomb
 - death
 - serious injury
 - assault.
- The complainant has a history of:
 - inappropriate behaviour
 - threats of violence – not implemented
 - aggressive behaviour
 - violent behaviour.

Actions

- The complainant has been abusive or threatening:
 - over the phone
 - face-to-face.
- The complainant has a history of abusive or threatening behaviour.
- The complainant has acted violently:
 - damaging property
 - injuring staff or visitors
 - injuring self.
- The complainant has a history of violent behaviour.
- The complainant has refused to leave the premises.
- The complainant is stalking a member of staff.

Appendix 5. Options for treating risks

Actions

- Staff only interview in pairs.
- Interviews only held in rooms with the door open or where visible to the receptionist.
- Staff have a panic button with them when interviewing.
- Appropriate training for staff in how to respond to security incidents.
- Activation of:
 - airphone
 - duress alarm [appropriate staff to respond].
- Calls for help to:
 - other staff
 - building security
 - police.
- Staff to exit public area and seek protection within the secure office perimeter.
- Verbal directions to complainants to:
 - stop the behaviour or language
 - leave the premises
 - leave the premises and not return.
- Written directions to complainants to:
 - not enter premises
 - only communicate in writing
 - only communicate with a named officer during identified times.

Design of public areas

- Public areas to be assessed for risks.
- Public areas to be secure.
- 'Bolt holes' for staff to quickly exit public areas.
- CCTV coverage of public areas.

Appendix 6. Planning for risk mitigation, preparedness, response and recovery

Steps that need to be considered in preparing for risk are:

Mitigation

Policies, procedures and guidelines to deal with risk.
Design of public areas assessed to identify security risks.
Security of non-public office areas assessed to identify security risks.
Training of staff in risk avoidance/management techniques.
CCTV coverage of public areas.
Posters in public areas setting out behaviours that are unacceptable.

Preparedness

Emergency procedures developed.
Airphone installed.
Duress alarms provided to frontline staff.
Training for staff in appropriate responses/emergency procedures.

Response

In accordance with risk management protocol.

Recovery

Restoring normal conditions/operations.
Recognising emotional damage.
Debriefing.
Refining preparations.



Appendix 7. The 20 key elements for managing unreasonable complainant conduct

Objectives

- 1 Ensure equity and fairness.
- 2 Improve efficiency in the use of resources.
- 3 Ensure staff safety and comply with OH&S and duty of care obligations.

Managing unreasonable conduct

- 4 Recognise that dealing with unreasonable complainant conduct is part of the agency's core work.
- 5 Exercise ownership and control over the complaint. The agency decides how the complaint will be dealt with, by whom, how quickly, with what priority, what resources will be given to it and what will be the outcome – not the complainant.
- 6 Focus on specific, observable conduct – the problem not the person.
- 7 Use clear terminology that focuses on the conduct of the complainant, not the person – 'unreasonable conduct' not 'difficult complainant'.
- 8 Apply the relevant management strategies:
 - unreasonable persistence
 - unreasonable demands
 - unreasonable lack of cooperation
 - unreasonable arguments and unreasonable behaviour
 - saying 'no'
 - setting limits
 - setting conditions
 - saying 'no', setting limits/conditions, invoking risk management protocols.
- 9 Respond with consistency to individual complainants and across complaints.
- 10 Respond to the complainant with clear, timely and firm communication.

Preventing unreasonable conduct

- 11 Manage complainant expectations from the beginning.
- 12 Insist that the complainant shows respect. Set boundaries by not tolerating rudeness, anger or aggression.

Organisational responsibilities

- 13 Maintain commitment to this approach for dealing with unreasonable conduct.
- 14 Provide staff with adequate supervision and support in their dealings with unreasonable conduct.
- 15 Give staff sufficient time and resources to deal with unreasonable conduct.
- 16 Provide staff with adequate training and guidance in how to deal with unreasonable conduct.

Staff responsibilities

- 17 Remain calm in the face of unreasonable conduct.
- 18 Show respect for all complainants, those acting reasonably and those not.
- 19 Act impartially in all matters.
- 20 Demonstrate professionalism in dealing with all complainants, those acting reasonably and those not.

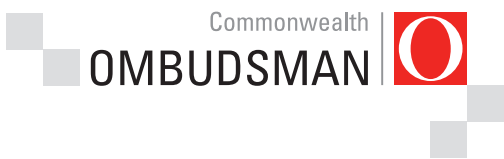


Appendix 8. Ten ground rules for talking to complainants

Use a non-confronting, non-resistant communication style.

-
- 1 Find something to agree with, without necessarily agreeing with the complainant's point of view:
 - 'I agree that \$2,000 is a lot of money to lose'.
 - 'I agree that not hearing back from the department would be very annoying'.
 - 'I agree that having your pension reinstated would be a great help'.
-
- 2 Acknowledge the complainants feelings and actions:
 - 'I can hear that you are very upset about this'.
 - 'In your position I would be pretty angry too about losing all that money'.
 - 'I can see that you've gone to a lot of trouble to get all this material together'.
-
- 3 Be careful about saying 'I understand'. Saying 'I understand' about the information conveyed by the complainant is ok. Saying 'I understand' about the complainant's situation or experience is probably not ok.
-
- 4 Listen with interest. Engage. Repeat the complainant's key words back to them. If face-to-face, make eye contact.
-
- 5 Clarify. Get more information. Do not interpret and do not assume.
-
- 6 Check understanding:
 - 'As I understand it, the situation is ... Is this correct?'
 - 'From what you tell me it seems ... Is this the case?'
-
- 7 Do not argue or debate. Acknowledge the complainant's position or understanding and state that your or your agency's position or understanding is different.
 - 'I can see that you believe ... We have come to a different conclusion'.
 - 'I do understand that your position is ... Our position is a little different'.
-
- 8 Be careful about justifying or denying. Only do this if it is necessary to clarify the agency's position or action. Do not do this simply in defence of the agency or yourself.
-
- 9 Apologise if there has been a mistake, omission or delay and tell the complainant how the situation will be rectified.
-
- 10 Remain calm, no matter how the complainant behaves. Set limits when rudeness, anger and aggression transgress your personal boundaries.
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