

FACT SHEET 8

Unreasonable complainant conduct

January 2010

People who complain to a government agency can be distressed, angry or upset. This may be because of the problem they are complaining about, or it may be related to other issues such as their health, family or financial circumstances. Dealing with distressed, angry and upset people is a normal part of complaint handling, and staff should be trained to deal fairly, objectively and empathetically with all complainants.

In some cases, however, a complainant's conduct can go beyond what is acceptable. They may contact the agency repeatedly, provide false information, demand outcomes that are not practicable, be unwilling to accept the complaint handler's decision, threaten harm to themselves or others, or be violent.

This fact sheet sets out the principles for dealing with unreasonable complainant conduct. The principles are based on the *Better practice guide to managing unreasonable complainant conduct*, which was developed from a joint project of the Australian Parliamentary Ombudsmen, led by the office of the NSW Ombudsman. The guide contains more detailed information and advice and is available at www.ombudsman.gov.au.

The importance of managing unreasonable conduct

Failure to manage unreasonable complainant conduct can be damaging to an agency, the complainant and the agency's other clients, for several reasons.

- Agency resources are limited and must be used efficiently in dealing with other complaints and other agency functions. All clients are entitled to a fair share of the agency's time and resources and a consistent approach by the agency to dealing with their issues.

- Agencies are responsible for ensuring the health and safety of their staff. Ensuring that all staff are properly trained, supervised and supported in dealing with unreasonable conduct will minimise staff stress.
- Unreasonable conduct can make it harder for an agency to resolve a complaint. It can lead to the complaint issue being blurred, the investigation sidetracked, and the process needlessly prolonged.
- A complaint investigation that is drawn out is less likely to end satisfactorily. The person may change the focus of their grievance to the way their complaint was handled. The ongoing relationship between the person and the agency can be damaged.

Guiding principles

One of the keys to handling difficult complainant conduct is to manage all complaints well from the beginning, so as to minimise delays, misunderstandings and unrealistic expectations. Certain guiding principles for effective complaint handling should be kept in mind.

- People have a right to complain to an agency about its decisions and actions. It is to be expected that they may be forceful in expressing their complaint, particularly if they have suffered harm or loss. Some will be embittered and mistrust the agency's response. Others will be confused about the nature of their grievance and disorganised in presenting their complaint. All complainants will expect their grievance to be treated seriously and promptly by the agency.
- An agency has a right to decide how to deal with a complaint. This includes making decisions on the issues that will be investigated, who will conduct the investigation, the time and resources that

will be allocated to the complaint, the assistance the complainant needs to provide, and how the complaint will be resolved.

- An agency's responsibility is to treat all clients fairly and with respect. Agency staff need to show impartiality and professionalism when faced with challenging behaviour. This does not mean that staff should tolerate conduct that is violent, threatening, aggressive or abusive.
- Labelling a complainant as a 'difficult' person can blur an agency's responsibility to deal professionally with every complaint. A complaint may reveal a genuine problem even if the person's conduct is unreasonable or they have made other unfounded complaints in the past.
- An agency should develop clear written procedures to help staff deal effectively and consistently with unreasonable conduct. The procedures should take account of the agency's functions, common complaint issues and special difficulties (such as age, language or mental health) that its clients are likely to present. The procedures should provide guidance on early identification of unreasonable conduct, strategies for managing unacceptable behaviour, escalation of difficult cases, and effective supervision of complaint handling.

Good communication

The key to effective complaint management is good communication with complainants. This is doubly important where a complainant is behaving unreasonably or where there are early warning signs that their behaviour could become difficult.

- It is particularly important to manage the complainant's expectations from the outset. When a complaint is received, the agency should identify the complaint issue and explain its role, how the complaint will be handled, the anticipated timeframe and the possible outcomes. If the complainant has an unrealistic view of how their complaint will be

resolved or the priority their complaint will receive, this should be discussed.

- Agency staff should communicate in a polite, respectful and firm manner. It should be made clear to the complainant that they are also expected to be courteous and to cooperate with agency staff.
- An acknowledgement letter is an opportunity to explain the role of the agency, its processes and timeframes, its contact protocols, the issue that is being investigated, and further action required of the complainant. Letters to a complainant can later be relied upon to explain, either to the complainant or another person or agency, the steps that were taken.
- Talking with a complainant, although more challenging where the person has been rude, aggressive or manipulative, can be very beneficial. Telephone calls and face-to-face interviews can help in clarifying issues, reassuring a complainant that a skilled case officer is dealing with their complaint and that progress is being made, and establishing the rules for communication. Scripts can help staff deal with common problems, such as dismissive or abusive language or insistent requests to speak to a senior manager. Some script ideas are set out in the *Better practice guide to managing unreasonable complainant conduct*.
- In special circumstances a senior officer or agency head should be prepared to write or speak directly to a complainant.
- A complainant should be kept informed of the progress of their complaint. When an investigation is completed, the complainant should be told the particulars of the investigation, including any findings or decision reached and the reasons for the decision.
- It is good practice to offer complainants the opportunity to seek review of how their complaint was handled and resolved. This not only gives the complainant procedural fairness but brings finality to the complaint process. It is common for agencies to limit the period for seeking internal review, require the

complainant to explain in writing the issue to be reviewed and the reason, and enforce a 'one review only' policy.

- If a mistake has been made, an appropriate apology can help restore dignity to the affected person, restore their confidence in the agency, and prevent a grievance from intensifying.

Unreasonable conduct and strategies for managing it

It is important to identify specifically why particular conduct is unreasonable, so that the agency's response can be tailored to the nature of the conduct. Doing so will also shift the focus away from the complainant and their personality and on to the conduct that is problematic.

- *unreasonable persistence*—refusing to accept that a complaint is closed, re-framing an old complaint, persevering obstinately with an argument, continuing to phone or contact an agency after a matter is closed.

If a person is unreasonably persistent, the agency should be ready to say 'no'—for example, to advise that a complaint issue will not be investigated further, an unproductive telephone call will be terminated, only one internal review will be undertaken, or no further correspondence on the complaint will be answered. The complainant may need to be told that they have reached the end of the line.

- *unreasonable demands*—raising issues beyond an agency's responsibility, asking for a remedy that is impractical or disproportionate, insisting that more time be spent on a complaint than is warranted, insisting on speaking to the head of an agency, directing an agency on how to handle the complaint.

If a person makes unreasonable demands, limits should be set on what the agency will do—for example, which issues will be investigated, who will investigate the complaint, how it will be investigated, the possible outcomes, and how communication should occur between the complainant and the agency.

- *unreasonable lack of cooperation*—poor or confused definition of a complaint, unnecessary presentation of a large quantity of material, failing to provide key documents, constantly re-defining a complaint, dishonestly presenting the facts.

If there is an unreasonable lack of cooperation from a complainant, the agency should set conditions—for example, the complainant should be required to define the complaint issue, identify the supporting evidence, provide key correspondence or documents, be truthful in dealing with the agency, or explore some other avenue before the complaint will be investigated.

- *unreasonable arguments*—exaggerating issues, holding irrational beliefs, being obsessed with irrelevancies or trivialities, refusing to consider counter-arguments, being guided by conspiracy theories.

Unreasonable arguments should be identified and set aside. Limits should be placed on what the agency will examine and the style of communication that is expected. If it becomes clear the complaint is groundless, it should be declined.

- *unreasonable behaviour*—threatening violence, abusing investigation staff, being rude or aggressive, threatening self-harm.

Unreasonable behaviour should not be tolerated: a complainant can be told that a telephone call will be terminated unless more moderate language is used, that threats are unacceptable and may be reported to the police, that rude and intemperate correspondence may not be answered or may be returned, or that special contact arrangements with the complainant will be implemented.

Controlling access to the agency

It can sometimes be necessary to limit a complainant's access to the agency. Restrictions may be placed on when a person can make contact, who they can contact, or how to make contact (for example, only in writing if the person is abusive). Such decisions should be made at

a senior level, following an established written procedure for taking this step. A complainant should be advised in writing of the decision and the options for reviewing its appropriateness.

As an ultimate step it may be necessary to refuse access to a person or withdraw services from them—for example, where the person has made serious threats or been violent to staff or other clients. If possible, alternative contact arrangements should be put into place, such as contact via an advocate or nominee for the complainant. The option of referring the person for professional support from a psychiatrist or social worker can also be considered.

All agencies that deal directly with the public should assess the nature and levels of risk faced by staff and clients. Appropriate risk management strategies should be put in place, including critical incident, debriefing and stress management procedures.

FURTHER INFORMATION

Commonwealth Ombudsman *Better practice guide to managing unreasonable complainant conduct*, August 2009

More information?

If you would like copies of other Commonwealth Ombudsman fact sheets, more information about the work of the Ombudsman's office, or a more detailed briefing for agency staff, please contact the Director Public Affairs.

Phone: 1300 362 072 (local call fee only—higher rate from mobile phones)

Fax: 02 6249 7829

Email: ombudsman@ombudsman.gov.au

Web: www.ombudsman.gov.au

Postal: GPO Box 442, Canberra ACT 2601

The Ombudsman has offices in:

- Adelaide
- Brisbane
- Canberra
- Darwin
- Hobart
- Melbourne
- Perth
- Sydney

The Ombudsman has taken reasonable action to ensure that the information contained in this publication is accurate and adequately comprehensive for the purpose for which it was created. The Ombudsman is not responsible for any damage or loss claimed to arise from any error or omission in this information.