

## COMMONWEALTH OMBUDSMAN INSIGHTS

# Managing Unreasonable Persistence

This is the second edition of *Commonwealth Ombudsman Insights*, where we share examples of best practice and learnings from the range of work we conduct.

The focus of this edition is on managing unreasonable persistence in the context of complaints. This is one of the five categories of unreasonable complainant conduct defined by the NSW Ombudsman<sup>1</sup>.

Agencies have raised this as a challenging area of complaints handling and we have listened! This edition outlines advice, strategies and case studies for managing unreasonable persistence. While the focus of this edition is on complaints settings, the strategies are relevant to other areas of agencies, such as freedom of information and general enquiry lines.

It is crucial for agencies to spot issues of unreasonable persistence quickly, take control, and remain consistent in their responses to the complainant, including not responding where appropriate.

### What is unreasonable persistence?

Someone displaying unreasonable persistence may raise the same issue multiple times, often in circumstances where an agency has already dealt with the matter to finality, according to the relevant law and the agency's procedures.

This perseverance can be attributed to an *unwillingness* to accept a decision or explanation, but it can also be because of an *inability* by the complainant to understand their situation, for reasons of intellectual capacity or lack of resilience.

### Characteristics of unreasonable persistence

- sending excessive amounts of correspondence through different channels (letters, emails or phone calls)
- speaking over case officers during phone calls
- correspondence and contact directed to multiple levels of an agency, from frontline staff through to the head of the agency
- refusing to accept final decisions even after all relevant appeal and review options have been exhausted
- refusing to accept any position other than what they view to be right.

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**Unreasonable persistence includes refusing to accept decisions and sending large amounts of information.**

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<sup>1</sup> [Managing Unreasonable Complainant Conduct Practice Manual 2nd Edition](#)

Care should be taken to separate unreasonably persistent complainant conduct from *people making multiple complaints or unreasonable complainant behaviour*.

- People can have valid reasons for bringing different or new issues to an agency, as opposed to repeatedly bringing the same matter to the agency. Multiple complaints on their own do not necessarily indicate unreasonable persistence.
- Unreasonable complainant behaviour includes behaviour that is rude, abusive or aggressive. People displaying unreasonable persistence may be otherwise polite and professional, while people displaying unreasonable complainant behaviour may have new and valid issues that need to be examined.

**Someone complaining to an agency multiple times about different issues is not necessarily an example of an unreasonable persistence**

It is always important to distinguish someone's conduct from the issues they are complaining about. Complaint handlers may need separate plans to handle the conduct and to examine the issues.

## Managing unreasonable persistence

Early identification and management of unreasonable persistence is critical to running an effective and efficient complaints handling system.

If not identified or managed, unreasonable persistence can lead to an agency:

- using a disproportionate amount of the time and resources addressing this persistence, impacting on the resources available for other work
- inadvertently dealing with the same matter multiple times, possibly resulting in contradictory advice or outcomes.

**Not managing unreasonable persistence can affect an agency's ability to do its core work.**

The following strategies can be used to manage unreasonable persistence.

### Adopt standard procedures

A clear and consistent approach to managing complaints and interactions with complainants allows certainty for both agency staff and complainants. When a process is documented and easy to follow it will empower staff to take steps to limit the impact of unreasonable persistence at an early stage.

A procedure for dealing with unreasonable persistence should include steps that:

- deal with the substantive matter of a complaint properly and comprehensively
- allow for an internal review of a matter, if appropriate
- following a review, make it clear when there are no further steps that can be taken and say 'no' to further engagement
- provide mechanisms for staff to limit or actively manage the complainants' contact with the agency.

**Be thorough, offer a review and then say 'no'. Be polite but firm and stick to your position.**

The procedure should be clear and easy to access, and staff should be trained in its application.

### Case study – The importance of clear procedures

The Office of the Commonwealth Ombudsman (the Office) was approached by a persistent complainer. The complainant had many complaints investigated by the Office and had been told in writing that we have provided all the assistance that we were able to. Despite this, the complainant continued to contact the Office by phone, wanting to lodge another complaint about the same issue.

The complainant's behaviour became difficult when they were told we had considered their complaint and would not reconsider our decision. The complainant adopted a strategy of calling the Office multiple times in a short timeframe seeking to speak to different people to obtain a different answer. They became aggressive and threatening towards staff.

Staff were able to follow our internal procedures to manage this behaviour. The behaviour was noted in our records system and a decision made to block the complainant's calls for a short period of time as a cooling-off mechanism.

Due to ongoing unreasonable persistence, we adopted a process where two complaint resolution officers were assigned as the complainant's primary contacts within the Office. The complainant is directed to one of these officers when they call the Office. This procedure allowed the complainant to maintain access to the Office, while ensuring messaging and decisions were consistent.

The restriction on the complainant's engagement with the Office is reviewed at regular times to ensure it remains appropriate.

### Maintain a good records system

Agencies should have a record management system that allows records to be kept in one place and accessed by all relevant staff. Maintaining accurate and timely records of all contact with complainants can help to identify unreasonable persistence and reduce the chance that the same matter will be re-assessed by the agency.

The system should record:

- the complainant's name
- a list of all complaints made by the person
- a summary of each complaint and the outcome of past complaints
- if possible, contacts with other areas of the agency, such as FOI requests.

Accurate and accessible records allow an agency to assess whether a new complaint raises new issues, or the issues have been examined previously. Good complaint records also provide a means of supporting decisions not to take further action, particularly when the decision is made because all reasonable and appropriate action has already been taken. Decisions to implement service restrictions, where necessary, can also be supported by good record systems.

**Keep timely and accurate records to better manage unreasonable persistence.**

### Case study—Good records help avoid duplication

A complainant made many complaints to the Office about a decision they disagreed with. We investigated the complaint and advised the complainant that we would not take further action, as we considered the agency’s actions to be reasonable.

The complainant continued to press the complaint and regularly wrote to our Office. We reviewed our decision and advised the complainant that we would not take further action on matters that had already been considered. Unfortunately, when the complainant wrote to us after this, their letters and emails were often recorded as a new complaint. This created multiple complaint records, multiple assessments of the same issue and multiple times the complainant was told there was nothing further we could do. This was not a good use of our records management system, was not consistent with our policy of ‘one review’ and was not good customer service for the complainant.

We have since adopted a new process to make better use of our record management system where new correspondence is considered for new material and placed on a central file without any further action being taken, unless new issues are raised.

### Be firm

Unreasonable persistence most commonly involves a complainant continuing to raise the same issue.

When an agency has dealt with an issue thoroughly, it is reasonable for the agency to advise a complainant they are not able to assist further and that the agency will not enter into further communication about this issue.

- Be clear about the decision, leave no room for doubt.
- Record the decision so that it is clear to all staff, which will allow consistent messaging if the complainant contacts the agency in the future.
- Invite the complainant to return if they have new evidence that could affect the decision, or if a new matter, unrelated to the issue already considered, arises.

If the complainant comes back to the agency again, staff should always consider whether a person’s circumstances have changed or whether new and substantial information has been provided that could change the original decision. In such circumstances it may be appropriate to reconsider the complaint. Additionally, unrelated issues should be handled as a new complaint

Agencies should advise complainants of their right to complain to the Office of the Commonwealth Ombudsman (the Office), or other oversight bodies, about how the agency handled a matter, if relevant.

**When assessing a new complaint, consider if any new information has been given that may change the original decision.**

## In Practice

### When unreasonable persistence does not stop

If a complainant continues to contact an agency about a complaint that has been finalised it may be necessary to take steps to limit the agency's engagement on the issue.

An early step can be to advise the complainant that correspondence will be reviewed but filed without response unless it raises new issues. This allows the complainant to still provide information to the agency, however it reduces the potential impact on the agency.

Service restrictions may be required in cases of more extreme unreasonable persistence. These can involve asking a person to write instead of call, or agreeing to contact a complainant periodically to check in on their circumstances. When the conduct warrants it, this could mean stopping all contact for a period, although this should be a last resort.

Any decision to implement a service restriction should be approved by an appropriately senior staff member and documented noting past contact or conduct that justifies the decision. The decision should take into account any barriers the complainant may have to engage with the agency and be appropriate to their circumstances. The complainant should be notified of the decision and be told of how they can have it reviewed in future.

### Take a holistic approach

Sometimes a complainant may demonstrate unreasonable persistence because they feel like part of their complaint has not been addressed. For some complainants, it can be more efficient to conduct a holistic review of that complainant's complaint records, so any outstanding issues can be dealt with appropriately.

This process can provide assurance to the agency and the complainant. The findings of this holistic review should be communicated to the complainant and recorded in an accessible location in the records management system. It can then be used as the basis for recording and responding to all future contact from the person and is much more efficient than reviewing decisions made across individual complaints.

Additionally, it may be appropriate for the holistic review to look at issues beyond what the complainant has raised. This can help reduce complaints in the future.

**In some cases, it may be appropriate to place limits on how a complainant can engage with an agency.**

### Case study—Take a holistic approach

A complainant made many complaints about the same issue to the Office. Part of the complaint was out of our jurisdiction, so we were not able to take any action in response to it. We investigated and finalised the remaining issues in the complaint however, the complainant was not happy with the outcome. We also conducted an internal review of the complaint and decided to maintain our original decision.

The complainant continued to write and call the Office with the same issues, repeatedly requesting that we intervene to achieve the outcome they considered right. The Office told the complainant multiple times, both in writing and by phone, that we could not take further action on the issues that they raised.

When it became clear that the complainant would not accept our advice about their complaints, a senior officer carried out an audit of the complaint records. A new complaint file was created to carry out the audit and an alert system notified staff of its findings. Each past complaint was briefly summarised, noting the issue raised, outcome sought, evidence relied on and the decision reached. This reduced the risk that new complaints about the same issue would be opened.

A detailed letter was sent to the complainant, following the audit, explaining the outcome, and reiterating our advice, that we had thoroughly considered the complaint. The complainant was advised that we will consider future correspondence but would not respond unless it raises new issues or provides new evidence to support the complaint.

More information is available at [ombudsman.gov.au](https://ombudsman.gov.au).

Please note: This document is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Commonwealth Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document.

## Resources and reports

Our [website](#) is a good place to access resources relating to better practice complaint handling.

Our [Unreasonable Complainant Conduct Fact Sheet](#) is a quick reference guide for handling all aspects of unreasonable complainant conduct

The NSW Ombudsman's [Unreasonable Complainant Conduct Manual](#) provides detailed guidance on all aspects of unreasonably complainant conduct.

Our [Better Practice Guide to Complaint Handling](#) provides advice on establishing or improving complaints handling systems, including the strategies noted in this edition.