



INTERNATIONAL  
OMBUDSMAN  
INSTITUTE

# DEALING WITH CHALLENGING BEHAVIOUR

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## INTRODUCTION

Ombudsman worldwide share a lot in common; from similarities in jurisdiction and functions through to funding and resource challenges. Perhaps most common is the experience of dealing with challenging behaviour from people who use their services. Equally, people who handle complaints in government often say the hardest part of their job is handling the behaviour of some people who complain.

People may be angry or frustrated when they approach the Ombudsman, sometimes with good reason. They might be vulnerable or distressed. People might not listen to the advice they are provided, and occasionally, people may demonstrate abusive or threatening behaviour. Although this kind of behaviour is hard to deal with, there can be a legitimate grievance at the heart of related complaints.

This paper is based on the Victorian Ombudsman's [Managing Complex Complainant Behaviour Guide](https://www.ombudsman.vic.gov.au/learn-from-us/practice-guides/managing-complex-complainant-behaviour/)<sup>1</sup>, which builds on guidance first developed by the New South Wales Ombudsman for [Managing Unreasonable Complainant Conduct](https://www.ombo.nsw.gov.au/guidance-for-agencies/managing-unreasonable-conduct-by-a-complainant)<sup>2</sup>, as well as the expertise of psychologists and others with experience of dealing with challenging behaviour. It has been modified to reflect an international audience.

Some Ombudsman offices worldwide have developed their own guidance and use different terminology and it must be acknowledged there is no universal agreement as to either the terminology or the best approach to dealing with challenging behaviour. This paper is intended to provide guidance to those who have not developed their own. It is intended for Ombudsman offices and other complaint handling institutions, including those within an Ombudsman's jurisdiction, both to help complaint handlers improve their service and to reduce complaints.

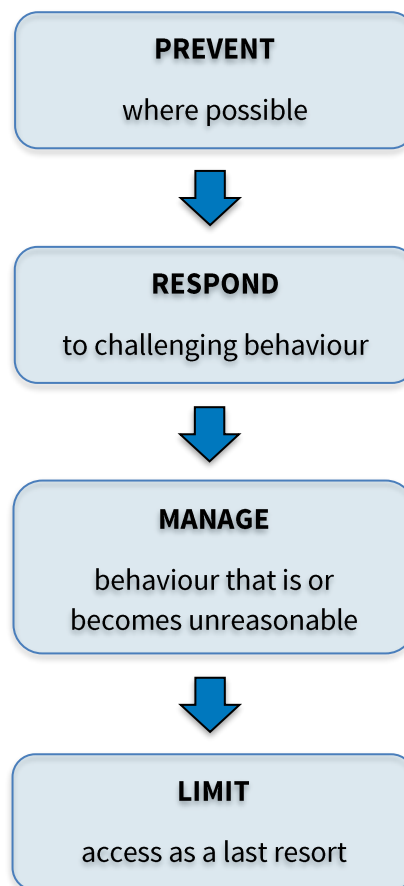
This paper recognises that complaint handlers working for Ombudsmen have a range of skills and levels of experience. Even experienced complaint handlers, and those with the best intentions, may find some people's behaviour challenging.

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<sup>1</sup> <https://www.ombudsman.vic.gov.au/learn-from-us/practice-guides/managing-complex-complainant-behaviour/>

<sup>2</sup> <https://www.ombo.nsw.gov.au/guidance-for-agencies/managing-unreasonable-conduct-by-a-complainant>

Ultimately, this paper concludes that best practice for complaint handlers dealing with challenging behaviour involves a staged approach:



These stages recognise that complaint handlers encounter a spectrum of behaviour, from slightly confronting to clearly unreasonable, and that responses to such behaviour should be equally graduated.

## **Human rights and decency**

Many jurisdictions adopt aspects of the United Nations' International Covenant on Civil and Political Rights into domestic law, including:

- a right to equality before the law
- a right to privacy and reputation
- freedom of movement
- freedom of expression, and
- a right to take part in public life.

Domestic human rights laws often have one thing in common: an overarching emphasis on the need to treat people with dignity. Indeed, public authorities, and private companies performing functions on behalf of government, are often judged by whether they have treated people with dignity when making decisions that affect them. Best practice, also adopted in this paper, advocates a position consistent with human rights standards.

A sense of dignity, and most human rights laws, are not absolute. These laws can be subject to 'reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom' and considering factors such as:

- the nature of the right
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose, and
- any less restrictive means reasonably available to achieve the purpose.

## WHAT IS CHALLENGING BEHAVIOUR?

‘Challenging behaviour’ is *any behaviour a person finds challenging*. Accordingly, understanding of ‘challenging behaviour’ varies from person to person.

Rather than classify a person’s behaviour as ‘unreasonable’, the approach presented in this paper adopts the perspective of the person experiencing the behaviour. Not all challenging behaviour is unreasonable. By reflecting on the types of behaviour a complaint handler finds challenging, they will be in a better position to:

- control their reaction to the behaviour so they can respond more effectively,
- choose the best strategy for dealing with the behaviour, and
- look after themselves.

People have a natural tendency to prejudge people and behaviour they find unpleasant or confronting. If complaint handlers do this, they risk making the situation worse. For example, if a complaint handler ends a call as soon as the caller starts shouting, the caller is likely to get angrier and escalate a complaint, limiting the prospect of resolving the problem.

### **Understanding yourself**

Different people find different behaviours challenging. Some people might find it challenging to deal with a person who seems emotional, is from a different cultural background, uses a different language, or has a disability. Other complaint handlers might find it challenging to respond to a person who ignores advice, questions their competence or insists on speaking with a manager.

To handle complaints well, the complaint handler needs to understand what they personally find challenging.

### **Don’t make assumptions about motives**

People can engage in complex or challenging behaviour for different reasons. Such behaviour can also arise from:

- the person's frustration, anxiety or distress about their complaint;
- previous bad experiences dealing with your organisation or government;
- resentment about having to deal with your organisation in the first place, if this is not the person's choice. This might be an issue, for example, if your organisation is involved in enforcing the law, or collecting fees and taxes;
- stressful personal situations such as significant caring responsibilities or chronic pain;
- drug or alcohol use;
- cultural differences; different cultures can have different ways of communicating problems or showing honesty and respect;
- general difficulties in explaining themselves clearly and communicating their problems with officialdom;
- some types of disability or mental illness.

## Challenging behaviour and unreasonable behaviour

Different types of challenging behaviour warrant a different level of response. Most challenging behaviour can be dealt with through good complaint handling and defusing strategies (see stages 1 and 2). It is only when behaviour is truly unreasonable that it is necessary to consider management strategies or limiting access to services (see stages 3 and 4).

For the purposes of this paper, behaviour becomes unreasonable when, because of its nature or frequency, it raises health, safety, resource or equity issues for the parties to the complaint<sup>3</sup>. Health impacts include mental health. Some types of behaviour clearly meet this test and are never acceptable, such as verbal abuse, threats to harm people and violence. However, unreasonable behaviour can also be subtle. For example, a person may start reframing a complaint that has already been dealt with, so it appears to be raising new issues. Or they may say things to manipulate emotions: *'You're not helping me. If I lose my house, it will be your fault.'*

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<sup>3</sup> Other resources, including the *Managing Unreasonable Conduct by Complainants* manual developed by parliamentary Ombudsman in Australia and New Zealand in 2007, also address what is "unreasonable behaviour" and how it can be approached.

To decide whether behaviour is unreasonable, consider:

- The merits of the person's case
  - Does the complaint have substance?
  - Has the person suffered a substantial loss?
- The person's circumstances
  - Are they capable of cooperating with you or are they prevented by health, social or other circumstances?
  - Are any cultural factors at play?
  - Are the person's behaviour and requirements proportionate to the harm / injustice they have suffered?
- The person's responsiveness
  - Is this the first time they have behaved this way?
  - Have they responded well to defusing techniques in the past?
  - Has your organisation previously warned the person about their conduct?

## STAGE 1: PREVENT

A person's first contact with an organisation sets the tone for the whole interaction. If they had to speak to three different people to find out how to complain, they are likely to be frustrated. If they do not get an accurate understanding at the beginning of their contact of what the organisation can and cannot do to help them, they will be even more frustrated if they are told in three months' time you cannot assist them.

Organisations can avoid fuelling challenging behaviour by building a strong foundation of good service delivery and complaint handling. Key things an organisation can do to prevent complaints unnecessarily escalating or unreasonable behaviour arising include:

### (A) WELCOMING COMPLAINTS

Unhelpful, defensive responses undermine confidence, and encourage challenging behaviour. Leaders should establish a culture of welcoming complaints and seeing them as an opportunity for continuous improvement.

### (B) BEING ACCESSIBLE

Bureaucratic practices can provoke or aggravate challenging behaviour, and create barriers for various people, for example, those who have a disability, are elderly, speak a different language, struggle with literacy, or are homeless. Organisations can remove some of the barriers to complaints by:

- accepting complaints by telephone, email, letter, online and in person;
- offering access to translator and interpreter service;
- using aids to communicate with people with hearing or speech disabilities;
- providing information in accessible formats;
- providing support to members of the public to make complaints if needed;
- accepting complaints from authorised representatives if a person is unable to complain on their own.

It is best practice to consult with different communities about how to meet their access needs.



### (C) RESPONDING PROMPTLY

Delays and failures to communicate are one of the main reasons people become upset with organisations. People can interpret a lack of contact in unintended ways. They may assume the organisation does not care and is doing nothing. Or if the complaint handler takes a long time without explanation, they may assume the organisation is finding serious problems which will lead to a significant outcome for them.

It is best practice to have realistic and public targets for acknowledging and for responding substantively to complaints, while being clear these timescales may vary depending on the complexity of a complaint.

### (D) TREATING PEOPLE WITH RESPECT

When people complain, they want someone to listen and take them seriously. For many people, being treated respectfully during the complaint handling process is as important as the outcome of the complaint. Complaint handlers can demonstrate respect by:

- giving the person a fair opportunity to present their position;
- using active listening skills to show they are taking the complaint seriously;
- giving the person an opportunity to discuss or comment on preliminary findings before the complaint is closed, and
- taking the time to explain their decision, how they reached it, and their reasons.

### (E) TALKING LIKE A HUMAN BEING

People who work in the public sector get used to official language and ‘jargon’, and sometimes use that language when speaking with members of the public. However, people usually respond better if the complaint handler comes across as a real person rather than a ‘faceless bureaucrat’. For example:

- introducing themselves by name and offering their contact details;
- speaking or meeting with the person;
- showing empathy;
- explaining legal or bureaucratic terms in plain language, for example:  
*‘We ask people to do X because it helps Y’* instead of *‘It’s our policy’*.

The best communicators listen to the way people speak and adapt their own language accordingly. Whatever techniques are used, if more people can relate to the complaint handler as a human, they are more likely to be courteous.

#### (F) MANAGING EXPECTATIONS

People do not always understand what government agencies do and how they work. They may believe an organisation has unlimited resources or powers to fix a problem. They may expect an instant response or a more private sector-style ‘the customer is always right’ approach. They may have unrealistic views about possible remedies, such as compensation or getting someone fired. They may expect that an Ombudsman will be their advocate and ‘fight for them’.

When an outcome does not meet these expectations, a person may be disappointed and angry. It is thus important to explain organisational roles and complaint handling processes at the outset. At a minimum, it is best practice to communicate:

- your organisation’s role;
- how a complaint will be dealt with;
- what issues will and will not be considered;
- how the person will be involved in the process and to what extent;
- the expected timeframe for a response;
- the possible or likely outcomes of the complaint.

Communicating clear information in plain language about what your office does - and what it does not do – can contribute to a better understanding of your role and reduce frustration from unrealistic expectations. The Managing Unreasonable Conduct by Complainants<sup>4</sup> manual also includes script ideas for testing and managing expectations.

If a person demonstrates challenging behaviour during these early discussions, this is the opportunity to set ground rules. Service Delivery Charters can be helpful in communicating what is expected from those making a complaint, and what they can expect from the organisation, for example by stating ‘As we expect our staff to be courteous and respectful when dealing with you, we expect you to afford our staff the same in return.’<sup>5</sup>

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<sup>4</sup> <https://www.ombo.nsw.gov.au/guidance-for-agencies/managing-unreasonable-conduct-by-a-complainant>

<sup>5</sup> [Victorian Ombudsman Service Delivery Charter](#)

Where it appears that a complainant has not understood, or is resistant to advice, it can be useful to confirm it in writing. This will enable a complaint handler to refer to this in future discussions, particularly if it is taking some time to resolve the complaint.

#### **TIP: Active Listening**

‘Active Listening’ is a technique used in dispute resolution and counselling. It involves concentrating on what someone is telling you and showing that you are listening. Active listening techniques include:

- verbal affirmations, e.g. ‘uh-huh’ or ‘yes’;
- non-verbal affirmations, such as eye contact and nodding;
- asking questions, e.g. ‘You say you want justice. What would that look like?’;
- paraphrasing what the person has been telling you in your own words, e.g. ‘It sounds like you are saying...’, remember to keep your reflections tentative;
- checking your understanding, e.g. ‘I want to make sure I am clear about this. Do you mean....?’

#### **(G) DON’T AVOID DIFFICULT CONVERSATIONS**

Sometimes complaint handlers are tasked with giving complainants bad news. It may not be possible to resolve a problem as quickly as the person would like, or at all.

It is natural to feel anxious about giving bad news, particularly to someone who is already distressed. However, avoiding these conversations only makes the situation worse. Expectations may be increased, and a person may be led to expect a particular result. Bad news should be communicated at the earliest opportunity.

In their book *Difficult Conversations*, members of Harvard University Law School’s Negotiation Project say that, ‘Choosing not to deliver a difficult message is like hanging on to a hand grenade once you’ve pulled the pin.’<sup>6</sup> If it is clear you cannot help a person, explain this to them as soon as possible. Be respectful and acknowledge the person’s feelings and disappointment, but ultimately be honest.

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<sup>6</sup> Douglas Stone, Bruce Patton and Sheila Heen, *Difficult Conversations: How to Discuss What Matters Most* (Penguin Books, 10<sup>th</sup> anniversary edition, 2010)

### **TIP: Delivering Bad News**

Contacting someone to explain you cannot give them what they want is not easy, even when you have done what you can to manage their expectations. The following strategies can make it easier:

- Prepare. If you cannot provide a common sense explanation for your decision, the person is unlikely to accept it. Think about what they are likely to say or do and how you will respond.
- Consider what you know about the person. Are they likely to react badly as soon as you tell them your decision? Would it be better to explain what you did and your reasons first?
- Be respectful. If the issue is sensitive, they may appreciate you speaking with them in person before you write.
- Explain what you did to investigate the complaint and why you made your decision. This shows you took the matter seriously, even if the outcome is not what they wanted.
- Express empathy. The complaint might not have merit from your perspective, but this does not mean the person has no right to be upset. You can acknowledge the way they feel while disagreeing with what they say e.g. *'I know this is not what you were hoping for ...'*. Be careful about your language and tone. You do not want to look like you are taking sides or being patronising.
- Offer an opportunity to ask questions.
- Listen to the person. If they raise valid points, agree to consider them. If not, acknowledge that they do not agree with you and explain why you reached a different view. Use *'and'* rather than *'but'*, e.g. *'I can see your point, and I can also see evidence that ...'*
- List opportunities for review or other avenues for challenging the decision. Only suggest avenues that are realistic though. Otherwise, you are wasting the person's time.
- If the person cannot accept the decision, do not argue. Politely explain that you have done all you can, there is no further advice you can provide, and end the discussion.

### **(H) REFLECT AND LEARN**

It is good practice for supervisors and complaints handlers to make time to listen to recordings of challenging phone calls. They may conclude nothing could have been done to prevent the person's behaviour. Other times they may find things to do differently in future. You might not feel like revisiting a difficult conversation straight after a phone call or meeting, but it is worth making this a regular practice.

## STAGE 2: RESPOND

Emotion is expected when people complain. But if a person is so upset that they cannot talk properly about the issues, it becomes a problem. It is important to deal with emotions first, before speaking rationally about complaint issues.

In *Defusing Hostile Customers Workbook: A Self-Instructional Workbook for Public Sector Employees*<sup>7</sup>, Robert Bacal suggests the use of the CARP model:

- **Control** – control your response and the situation and do not get drawn into arguments;
- **Acknowledge** - allow the person to speak and acknowledging their feelings;
- **Refocus** - shift the focus from the way the person feels to the issues;
- **Problem solve** - move on to discussing and addressing the issues.

The CARP model is designed to deal with angry and hostile behaviour, but it is useful for addressing other types of emotional behaviour too.

### (A) CONTROL

Complaint handlers confronted by angry or distressed behaviour may also have an emotional response. They may feel their heart thumping, notice their thoughts racing or hear their voice change pitch.

Complaint handlers are more likely to think clearly and **respond** to the complainant, instead of **reacting** to the situation, if they can control their own emotional response. Common techniques people use to control their own response include:

- breathing deeply or counting to 10;
- positive self-talk, for example telling yourself the person is upset about the situation and not you, that you can handle the situation etc.;
- taking a break by putting the caller on a short hold to get some information or leave the room to get some water;
- arranging to speak with the person again at another time, if a complaint handler cannot continue productively and the matter is not urgent.

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<sup>7</sup> Robert Bacal, *Defusing Hostile Customers Workbook: A Self-Instructional Workbook for Public Sector Employees* (3<sup>rd</sup> edition, 2010).

People who are upset sometimes do or say things that draw others into their emotional state. For example, an angry person may be provocative and insulting. It is important to remain neutral and in control. A response that sounds defensive or argumentative is likely to escalate the situation. This can lead to the complaint handler losing control and being unable to steer the conversation towards the issues. The goal at this point is **defusing the situation**, not winning a contest.

While it is important to gain and maintain control over the interaction, it is equally important to give a person a reasonable amount of time to talk about the way they feel. If a person feels heard and that their concerns have been understood, they are more likely to:

- perceive the process as fair;
- respond positively to an outcome;
- accept a decision;
- view a complaint handling body as legitimate, and
- use related services again<sup>8</sup>.

### Dealing with emotions

Sometimes people are so angry or upset it is hard to move the conversation forward. The following strategies can help defuse these situations:

- Silence. Not responding may eventually prompt the person to pause and confirm that the complaint handler is listening.
- Using the person's name to get their attention.
- Drawing the person's attention to how long they have been taking. For example:  
*'I've been listening to you for 20 minutes and it sounds like a lot has happened.  
I need to ask some questions now so I can work out if I can help you.'*
- Repeating a simple, helpful message, until the person hears you. For example:  
*'Ok, let me explain what we can do.'*
- Make another time to talk. For example: *'I can hear you're upset at the moment.  
I can call you tomorrow to talk about your complaint. What time would suit you?'*
- Use a firmer voice. Your tone needs to be firm, not aggressive.

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<sup>8</sup> Kee Kees van den Bos, Lynn van der Velden, E Allan Lind, *On the Role of Procedural Justice in Citizens' Reactions to Government Decisions and the Handling of Conflicts* (2014), Utrecht Law Review, Vol 10 Iss 4 (7)  
<http://www.utrechtlawreview.org>

If someone cries and is unable to speak, it is important to demonstrate patience. The person may be crying with relief because someone is finally listening to them. They may be dealing with personal hardship or worry for someone close to them. However, if a person is working themselves into an ever more emotional state, it may be time to intervene.

#### (B) ACKNOWLEDGE (AND EMPATHISE)

Before moving on to discuss the issues under consideration, it is important to acknowledge the expression of strong feelings. Empathising with someone is not the same as agreeing with them. Acknowledging and empathising means reflecting what the person has said and demonstrating understanding for why they are upset.

When someone is dealing with intense emotions, it is important to be wary of the potential impacts of words. People are likely to react negatively if you tell them how they feel, or that you know how they feel. Instead, it is often better to reflect your understanding of what the person has told you. Possible acknowledgements could include:

- *'I see, that does sound frustrating.'*
- *'OK, I've heard what you're saying.'*
- *'I know you said you wanted X, and this isn't what you were expecting.'*

Sometimes people will ask the complaint handler to agree with them by saying things like *'Don't you think that's unfair?'* It is not necessary to agree. It is possible to respond by saying *'My job is to look into that. This is what I'm going to do next ...'*

#### (C) REFOCUS

Once a person's feelings have been acknowledged, the conversation can be refocused on the complaint. The complaint handler can then explain they need to ask some questions to see how, or if, they can help. If a person becomes upset again, the CARP model can be applied again. If a person keeps repeating a point over and over, it may be a sign that they do not feel understood. Acknowledging what they are saying is important to being able to progress the conversation.

#### (D) PROBLEM SOLVING

Ordinary complaint handling practices can be resumed once the situation has been defused and the person is ready to talk about the issue.

## Tone and language

The way people deliver their message is as important as the message itself. Language, body language, and tone should be consistent with what you are trying to achieve. If the aim is to defuse the situation, it is often better to use softer, cooperative language, an open and relaxed posture, and a gentler tone. If the intention is to be clear that certain behaviours, such as racist or sexist insults, are not acceptable, a firmer tone and more direct language will be more effective.

## Review and adjust as needed

Not every strategy will work with every person and every time. It is important to observe a person's response and adjust strategies until something works. The best complaint handlers adapt their communication to the situation.

### **TIP: Cooperative Language\***

Cooperative language is words or phrases that show you want to work with the other person, rather than control or argue with them. Examples are:

- Show openness to considering other points of view: *'We don't usually do X because ...'*, or *'Is there any reason we should do that here'*
- Replace statements with questions: *'Were you aware that you needed to do X to qualify?'* instead of *'You didn't do X so you don't qualify'*, or *'I wonder if you've thought about?'* instead of *'You're wrong.'*
- Offer choices, even if they are limited: *'What time would it be best to call you back?'*

Avoid words and phrases that:

- Imply blame: *'You didn't complete the form properly.'*
- Judge the person: *'You're rude.'* or *'I can't understand what you're saying.'* or *'This complaint is vexatious.'*
- Suggest disinterest: *'I don't want to hear about ...'*
- Suggest helplessness: *'There's nothing I can do.'*  
(If there really is nothing you can do, explain why)

\*Robert Bacal, above n 5, 64.



- Threaten the person: *'If you don't stop talking to me like that, I will have you removed.'*
- Bait the person: *'Go ahead and complain about me.'*\*
- Are absolute: *'We never do Y.'* (Unless the restrictions are imposed by law).

### **TIP: Disarming Attacks**

Many complaint handlers have been told at some point that they are useless or that the caller's taxes pay their salary. The following techniques can be useful to get a person to stop so you can move the conversation on:

- Provide a neutral response: *'That's interesting. Some people do think public servants are lazy.'*
- Find something (non-controversial) to agree with and redirect the discussion: *'That is a long time to wait. Let me check what the problem is.'*
- If your organisation has said or done something wrong, like leaving the person waiting for a long time, admit it, apologise and move on.
- Draw the person's attention to their behaviour and offer them a choice: *'Mr Potter, I'm trying to help you and you're yelling at me. We can talk about your complaint or leave it here. What would you prefer?'*
- Agree to revisit the issues at another time: *'Mrs Popov, I don't think we can take this any further today. I'm going to end the call now. I'll write to you/call you again tomorrow.'*

### **TIP: Face to Face Meetings**

When meeting someone in person who starts to demonstrate challenging behaviour, body language is as important as what you say. Consider the following techniques:

- If the person is standing over you or too close, moving to their side rather than backwards can be less confrontational.
- If the person is glaring, try to break the eye contact by directing their attention to something else, such as a document.
- If you need a break, or the other person needs one, suspend the discussion.
- If you need to end the meeting, pack up your papers or stand up slowly to show you are ready to go.
- If you feel threatened in any way, excuse yourself and leave the room. Always sit close to the exit. Your safety comes first. Trust your instincts.

Always meet members of the public in a safe place. Consider the availability of:

- a clear path to the exit that cannot be blocked by the other person
- a way for the other person to leave if they want to
- access to a duress alarm, or other people around who can see and hear you.

If you have grounds for concern about your safety or the safety of your staff before a meeting, consider alternative ways to communicate with the person.

## **Responding to behaviours arising out of disability**

In 2011, the World Health Organisation estimated that approximately 15 per cent of the global population live with disability<sup>9</sup>. For the purposes of this paper, the term ‘disability’ includes people experiencing mental illness. Many human rights laws create additional rights and obligations where challenging behaviours are related to a disability. Complaint handlers should be aware of the obligations that apply to their jurisdiction.

It is best practice to facilitate access for all people to ensure complaint handling processes are effective.

Sometimes, disabilities manifest in behaviours that complaint handlers may find challenging, particularly if they have not encountered them before or are unsure about how to respond. It is important to emphasise the term ‘sometimes’ and to understand behaviours can be situational and/or unique to the person. Just because one person with a particular disability acts in a certain way does not mean everyone with that disability acts the same way.

It is good practice for complaint handlers to have an understanding of different types of disabilities and the way they might affect people’s communication and behaviour, and to make reasonable adjustments to accommodate particular needs.

### **Making reasonable adjustments**

The person living with the disability is the best person to explain what adjustments they need to use services (or their family or guardian if they lack capacity). It is necessary to remember that people

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<sup>9</sup> World Health Organisation, *World report on disability*, 2011 (7).

with disabilities have widely different skills and needs. If assumptions are made about what the person needs, there is a risk that the steps taken may be inappropriate. Some disabilities are transient or variable – for example, a person may be able to communicate easily some days but not others.

It is possible to find out sensitively by asking *‘How do you prefer to communicate?’*, *‘Is there anything we can do that would help you speak with us about your complaint?’* or *‘What has worked for you in situations like this before?’* Asking the person if they have someone they would like to support them with the complaint can also be useful.

Where people with disabilities face challenges with communication, simple adjustments to service delivery can be made to facilitate their involvement. These might be:

- agreeing to meet the person at or near their home, if your organisation’s resources and work practices allow;
- adapting communication style, for example using simpler language;
- giving the person more time to explain their complaint or respond to questions.

Where the person’s behaviour involves aggression or disruption, more consideration should be given to what is reasonable in the circumstances. Organisations should consider all relevant facts and circumstances including:

- the nature of the disability;
- the nature of the adjustment required to accommodate the disability;
- the consequences (financial and other) of making the adjustment for the person;
- the consequences of not making the adjustment.

#### **CASE STUDY: Flexible Communication**

A man complained to the Ombudsman about the way an agency dealt with his complaint. He explained he had disabilities that meant he was unable to write. He had made a complaint to the agency over the telephone. He said it examined his complaint, but it failed to address all of his concerns. He was concerned it had not accurately recorded or investigated his complaint. The man became angry when his case officer called one morning to discuss the issues. He said he had difficulty sleeping so was only available to speak in the afternoon at certain times. He also wanted a copy of his file. The case officer:

- agreed to call the man in the afternoons;
- wrote to the man outlining her questions about his complaint, so he could consider them before they spoke;
- sent him summaries of her telephone conversations with him.

### **CASE STUDY: Needed More Time**

The family of a man with a disability wanted to speak to the Ombudsman about an investigation. The man's disabilities affected the way he communicated and his behaviour. Ombudsman officers spoke with the man's family about how best to communicate with him. The family advised them how to build trust before they asked questions and also said the man sometimes shouted or asked very personal questions and "rushed at people" if he got upset. They suggested what to do if this happened. The case officers:

- provided photographs of themselves so the man could become familiar with their faces before they met;
- visited the man's home to be introduced to him and talk about everyday things, like television, so he could get to know them;
- visited the man a second time to talk about the issues in the investigation;
- met the man with one of his parents, who understood his behaviour and could respond;
- sat near the door, so they could leave quickly if the man got upset.

The process took more time than a usual meeting, but officers were able to obtain valuable information for their investigation.

### **Deal with the complaint on its merits**

A person's complaint needs to be dealt with on its merits, regardless of their behaviour. The fact that a person has difficulty articulating their concerns does not mean that they are not credible or do not have a legitimate complaint. Listen to the person's concerns, identify and assess the evidence and reach a reasoned decision.

### **TIP: Respectful Communication**

Treat people with disabilities with the same respect as every other person. While using short sentences or simpler language may help to facilitate a person's understanding use the same tone you use when speaking with other adults. Do not raise your voice unless the person asks you to. If the person is speaking with you through or with the assistance of a carer, look at and address yourself to them, not the carer. Your language should:

- only mention the person's disability if it is relevant to the complaint;
- use person-first terms i.e. person with a disability, not disabled person;
- avoid negative terms for example '*X suffers from autism*', '*Y is wheelchair bound*', '*Z is a victim of stroke*'. Better terms are '*X is on the autism spectrum*', '*Y uses a wheelchair*', or '*Z had a stroke*'.
- not patronise the person by suggesting they are special or exceptional.

By doing the above, complaint handlers can ensure a person feels comfortable and is more likely to engage with them and provide valuable information.

## **What if the person does not tell you about their disability?**

Some people will advise upfront they have a disability, how it affects them and what they need. Other people are reluctant to disclose their disability because of what they have experienced or for fear of discrimination. Others may not know they have a disability because they have never been diagnosed. Or they may simply not think about their lives in these terms.

In some cases, the complaint handler may suspect a person has a disability, but they have not disclosed anything. The complaint handler may find it hard to understand them, or notice they have trouble understanding them. It is not recommended to ask people if they have a disability or attempt to diagnose them. Simply ask *‘Is there anything that would help you communicate with us about your complaint?’*

## **Don’t make assumptions**

The person living with a disability is the best person to tell you what adjustments they need to use your services (or their family or guardian if the person lacks legal capacity).

While it is important to educate yourself about the impact of disability, and how to deal with communication and behavioural challenges, remember that people with a disability have widely different skills and needs. If you make assumptions about what the person needs, you risk taking steps that are inappropriate. Some disabilities are also transient or variable – a person may be able to communicate easily some days but not others.

You can find out sensitively by asking *‘How do you prefer to communicate?’*, *‘Is there anything we can do that would help you speak with us about your complaint?’* or *‘What has worked for you in situations like this before?’* You can also ask if the person has someone they would like to support them with the complaint.

## **Educating yourself**

Information to help you understand different types of disability and the way they affect people’s communication and behaviour can build your awareness and help you communicate better. The [Victorian Ombudsman’s Managing Complex Complainant Behaviour Guide](#) contains further information that may be helpful. The [Ombudsman of British Columbia’s Complaint Handling Guide](#) also contains specific information about taking a trauma-informed approach.

## Responding to threats of suicide

Sometimes people talk about suicide overtly. Sometimes they make statements like *'I can't take this anymore. I'm scared about what I might do if this isn't fixed'* or *'I can't see any way out of this'* or *'I'd be better off dead.'* It is natural to be upset when a person starts talking this way, and to worry about saying or doing something that could make it worse.

Asking the person about their feelings will not make them more likely to act. Complaint handlers can show they are concerned, check if the threat is serious, and arrange help. They do not need to counsel the person or 'talk them out of it'. Complaint handlers are not employed, or usually trained, to provide counselling.

Organisations should provide clear guidance to staff about what to do if a person talks about suicide, and to train and support staff to deal with these situations. A good policy will reflect the following steps:

### (A) CHECK IF THE PERSON IS SERIOUS

Start by asking the person if they are serious, such as *'I'm concerned that you're saying ... Are you thinking of suicide?'* Sometimes people will tell you they are not intending to hurt themselves. If the person is serious, some professionals recommend asking the person if they have a plan and a timeframe and making plans to keep the person safe until they can get more help. It is important to give the person some context for this question – that you are concerned about them and want to make sure they are safe.

### (B) CONSULT A MANAGER

Depending on the situation, the manager might decide to:

- ask you to keep speaking with the person, or talk to the person themselves;
- encourage the person to speak with someone they trust or advise them how to contact a support service;
- offer to arrange help if they do not want to do this themselves. You can explain you take statements about suicide seriously, you are not able to provide clinical support, and you want to make sure they are safe;
- contact emergency services if the person's safety is at risk or they need immediate help. If in doubt, it is best to err on the side of the caution and get help.

## STAGE 3: MANAGE

Ombudsmen and other complaint handlers do not expect staff to tolerate behaviour that is offensive, abusive, threatening or consumes disproportionate resources. While some organisations may be obliged (and indeed it reflects best practice) to provide accessible services to members of the public, it is essential to provide a safe working environment and manage public resources soundly.

The Managing Unreasonable Conduct by Complainants manual lists five categories of what it calls ‘unreasonable conduct by complainants’:

- unreasonable persistence;
- unreasonable demands;
- unreasonable lack of cooperation;
- unreasonable arguments;
- unreasonable behaviours.

Different types of unreasonable conduct require different strategies. The best complaint handlers identify and deal with behaviour without labelling or demonising people. It is important to stay respectful to the person throughout the process. Approach, tone and language will depend on the situation.

### **TIP: Strategies for Managing ‘Unreasonable Conduct by Complainants’**

#### **UNREASONABLE PERSISTENCE**

*For example:*

- bombarding with calls, visits or information when not warranted
- contacting different officers seeking a different answer
- reframing an old complaint so it looks like there are new issues
- refusing to accept a decision after you have reasonably concluded the complaint
- unreasonably questioning the skills or competence of the complaint handler

*Strategies:* Say no, for example:

- ask the person to stop calling or visiting
- set time limits for telephone calls and visits
- transfer the person back to the original complaint handler or the complaint handler’s manager
- refuse to consider new issues that are not supported by substantial information and evidence

**TIP: Strategies for Managing 'Unreasonable Conduct by Complainants'**

UNREASONABLE DEMANDS

*For example:*

- insisting on an immediate response or priority that is not warranted
- insisting you respond to every point, no matter how minor
- demanding information they are not entitled to, for example staff contact details
- insisting that the head of your organisation handle the complaint when that is not warranted
- instructing you how to investigate a complaint

*Strategies:* Set limits, for example

- explain how you will be dealing with the complaint
- tell the person that you will not meet the demand and why
- reality check i.e. explain that your organisation deals with many complaints and you need to decide when and how they are handled

**TIP: Strategies for Managing 'Unreasonable Conduct by Complainants'**

UNREASONABLE ARGUMENTS

*For example:*

- insisting on the importance of minor issues
- making unsubstantiated allegations, for example of bias or corruption
- insisting on "cause and effect" without evidence

*Strategies:*

- decline or discontinue involvement, e.g. do not investigate issues with no practical outcome
- require evidence before taking the complaint further

**TIP: Strategies for Managing 'Unreasonable Conduct by Complainants'**

UNREASONABLE LACK OF COOPERATION

*For example*

- sending voluminous amounts of information
- providing little or no information about the complaint
- presenting information in "drips and drabs"
- refusing to comply with reasonable requests for information

*Strategies:*

- set conditions to motivate action, for example ask the person to take action to summarise their complaint as a precondition for you to consider the complaint further



### **TIP: Strategies for Managing ‘Unreasonable Conduct by Complainants’**

#### **UNREASONABLE BEHAVIOUR**

*For example:*

- verbal abuse
- aggressive behaviour
- harassment or threats

*Strategies:*

- set limits and conditions, name the behavior and ask the person to stop
- provide warning; offer a choice if possible

Unreasonable behaviour does not mean an issue is illegitimate. Regardless of a person’s behaviour, the merits of a complaint should still be dealt with.

### **CASE STUDY: Managing Multiple Calls**

The Ombudsman was contacted by a woman, who had been living in social housing. She returned after an extended absence to find she had lost her place and her belongings were gone. We were aware the woman had health problems and limited social support. The woman called our office every couple of days and became upset if her case officer was not available. She often refused to tell staff her name and the calls sometimes ended with the woman telling officers to ‘go to hell’. Her calls with the case officer were also challenging.

We transferred the case to a very experienced officer. The officer offered to call the woman at a certain time each week to discuss her case, and she kept that promise. During the calls, she set aside time to discuss the woman’s concerns.

The woman stopped making multiple calls to our office, and we proceeded with our enquiries into her complaint.

### **CASE STUDY: Keeping an Open Mind**

The Ombudsman received a complaint from a man about officers at the agency where he once worked. The man’s written complaint contained many ‘early warning signs’ of unreasonable conduct. It was many pages long, contained text in UPPERCASE, bold and different fonts, and repeated information multiple times.

The agency told us that the man had been the subject of misconduct proceedings and was no longer working there. The man’s complaint was serious, so the Ombudsman began looking into it.

This led to a further investigation that substantiated the man’s complaint and resulted in recommendations to improve the agency’s policies and practices.

### **TIP: Ending Calls and Meetings**

You may be tempted to deal with unreasonable conduct by hanging up or walking away. However, this will probably result in further resources being spent dealing with a complaint about you or your organisation.

Unless safety is at risk, a person should be given a warning and an opportunity to change their behaviour:

- Name the behaviour and explain why it is a problem. Be as specific as possible. If you simply tell the person they are being unreasonable, how will they know what the problem is? A good example is *'Mr Jones, you've been calling me every day about your complaint. I know you want this fixed, but I can't find out what happened if I spend all my time on the telephone.'*
- Give the person a chance to stop.
- Explain the consequences if the person does not stop. *'Mr Jones, you're yelling at me. I can't speak to you like this. Please lower your voice or I will need to end this call.'*
- If there is no change, back up your words with action. Empty threats undermine your credibility and achieve nothing.

Remember to stay polite and respectful. Consider words like *'Mr Jones, I'm going to end this call now. You're welcome to call back another day.'*

### **TIP: Responding to Threats to Harm You or Other People**

Threats should always be taken seriously. If an organisation does not have a policy on responding to threats, the following steps can be followed:

- Make the threat overt: *'You said that ...'*
- Check if the person is serious: *'You've said that you're planning to come in and sort the officer out. Are you saying that you're going to hurt the officer if they don't change their mind?'*
- If the person is serious, try to get more information. Ask about what the person plans to do, how and when.
- Explain the consequences: *'We take those sorts of comments seriously. I'll need to report this to my manager, and we may have to inform the police.'*

## STAGE 4: LIMIT

Most people who work in complaint handling have come across people whose sense of grievance is so deep, or whose behaviour is so entrenched, that no strategies make a difference. If management strategies have not worked and the person continues to behave unreasonably, organisations can consider limiting access. Limiting access to services should always be a last resort.

### **Assess the risk**

Before an organisation limits access to its services, it should consider all the risks and interests involved. They include:

- The history of the person's conduct.
- The nature of the conduct. Limiting access should only ever be used where conduct is a risk to health, safety, equity or resources of the parties, not to deal with behaviour that is just difficult or annoying.
- A person's circumstances, such as health, disability or homelessness.
- The impact of limiting access on a person or their dependants' welfare.
- What strategies have been tried or considered to reduce the impact of the behaviour.
- The organisation's legal obligations.

It is best practice to document a person's behaviour, evidence of that behaviour, and its impact, so decisions to restrict access can be defended if necessary and to reflect a graduated response that accommodates having reasonably warned a person of and providing them an opportunity to address their behaviour.

### **TIP: Options for Limiting Access**

Depending on the behaviour, organisations can consider limiting:

- Who the person can contact, for example, restricting a person's contact to one staff member who knows the history of their complaints. This can be particularly effective where a person continues to raise issues that have already considered and dealt with.
- What issues will be responded to in future. This is also helpful where a person continues to raise issues that have already been dealt with. Organisations should still assess each new contact on its merits, but do not have to use resources repeatedly responding to the same issues.
- How the person can contact the organisation. This strategy is useful if the person behaves aggressively. Organisations may wish to limit face-to-face contact to locations where there are adequate security measures, such as duress alarms. If the person is abusive or threatening, you might consider advising them that you will only communicate in writing, or through a representative.
- When the person can contact the organisation.

There might be cases where taking legal measures is justified to protect staff.

## **Best practice: Human rights and equal opportunity**

Principles of human rights can also guide best practice in a complaint handling system. Where they exist, equal opportunity laws often allow organisations to discriminate '*where it is reasonably necessary... to protect the health or safety or any person... or the public generally*'. If restricting access of a person with a disability, an organisation should consider its own legal obligations and whether a health and safety exception, or any other exception, applies.

### **(A) MAKE THE DECISION AT A SENIOR LEVEL**

Deciding to limit someone's access to public services is a serious matter. Decisions to limit access should be made at a senior level, to ensure organisational and legal risks and obligations are considered.

It is best practice to document the reasons for decisions and the evidence that informed them. This is particularly relevant in contexts where a decision to restrict a person's access can be subject to review. An organisation is more likely to be able to justify a decision if it:

- has documented evidence of the person's behaviour and its impact on staff and resources;
- can demonstrate it considered alternative options and any legal obligations, and reached a decision based on evidence;
- can demonstrate that there are no less restrictive means reasonably available.

#### (B) INFORM THE PERSON

A person should be informed of any restrictions to access placed on them. If the person is not informed, it is likely that the restrictions will increase their frustration and escalate the matter.

#### (C) DEAL WITH COMPLAINTS ON THEIR MERITS

Even after a person's access has been limited, any future complaints still need to be assessed. There may be a legitimate grievance at the heart of these complaints. This principle continues to apply even when a person might be told that future complaints about a given matter will not be responded to unless they raise new issues that warrant investigation. This means an organisation still needs to read the person's correspondence, to know if they are writing about the closed matter or something else.

#### (D) REVIEWING STRATEGIES REGULARLY

Organisations should conduct their own review of any restriction strategies regularly to consider whether they remain relevant and effective. In doing so, an organisation should consider subsequent contact from the person, whether the restrictions reduced the impact of their behaviour on staff and resources, and whether the limits are still justified.

Sometimes, organisations may decide a restriction strategy is having more of an impact than the original behaviour. The below is an example of where, on review, an organisation decided to remove a restriction with good results.

### **CASE STUDY: Reviewing Limits**

A man contacted the Ombudsman to complain that he had been stopped from telephoning an organisation that provided support services for him. The organisation told the Ombudsman the man had been calling 20 to 30 times a day so it had limited his contact to one call on Tuesdays and one call on Fridays.

The organisation decided to review the arrangements. It concluded the restrictions had made the problem worse and the man was still calling multiple times a day. It decided to lift the restrictions so the man could telephone his case officer at any time. It said this appeared to have helped and the man was now calling less often.

## CONCLUDING REMARKS AND ADVICE

### **A message to complaint handlers**

Feeling upset after dealing with someone who is distressed or aggressive is a normal response. It is important to be aware of and deal with these feelings, so they do not become a long-term problem.

Good practice for dealing with the challenging behaviour of complainants includes:

- Monitoring yourself; being mindful of how you feel following incidents that are upsetting or stressful and managing your stress as necessary.
- Drawing on support from colleagues, manager or an employee assistance program, if your workplace provides it.
- Talking about it. Debriefing is one option, providing a structured, voluntary process, which aims to provide clarity about incidents and help people recover.

### **Advice for leaders**

Challenging behaviour is a risk to your employees' health and safety if it is not managed properly. Leaders need to balance the organisation's values with the right of employees to a safe workplace. Leaders can do this by providing clear guidance to staff about how the organisation expects them to deal with challenging behaviour.

Examples of a "model" policy / procedure, behaviour warning letter and restriction letter are available in the Appendices of the Victorian Ombudsman's [Managing Complex Complainant Behaviour Guide](#), as are strategies for looking after your staff. The [Managing Unreasonable Conduct by Complainants Manual](#) includes additional strategies.

Best practice strategies reflect a graduated and nuanced approach. The best approaches are flexible, considering organisational objectives, resources, staff welfare and the need to facilitate reasonable access to a purposeful complaint handling process. They are based on advocating human decency and limiting a person's access only where it is reasonably justified to conserve staff safety and organisational resources, while regularly revisiting the basis of such decisions.

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