

Dealing Fairly with Unreasonable Conduct by Complainants

Complaints have value. Complaints help organizations identify problems and improve their operations, standards, and service delivery. Complaints stem from dissatisfaction, and when channeled effectively by complainants and responded to appropriately by decision-makers, they help organizations do better.

Any organization that deals with complaints from the public is sure to encounter unreasonable conduct from time to time. Although unreasonable conduct by complainants typically only presents in a small fraction of cases, these cases consume a vast and disproportionate amount of time and resources. Managing these cases effectively is key to maintaining efficient operations, ensuring safety and wellbeing of staff, and ensuring an equitable and fair allocation of resources for all service users.

This guide is not meant to be prescriptive, but instead suggests considerations to assist in the development of a fair and reasonable policy.

WHAT IS UNREASONABLE CONDUCT?

Unreasonable conduct includes behaviour that, because of its nature or frequency, unduly impedes or obstructs the normal delivery of services. This conduct may also pose a risk to personal safety.

Complainants exhibiting unreasonable behaviours may be unwilling to accept decisions and continue to demand action on matters that have already been addressed. They may make multiple complaints regarding the same issue or repeatedly argue their points. It is possible that no reasonable solution will ever be satisfactory. There may be a genuine grievance at the core of their complaint, but they deliberately tax an organization's resources beyond the point where successful resolution is possible.

The Ombudsman's office recognizes different types of unreasonable behaviour, including:

- unreasonable persistence;
- unreasonable demands;
- unreasonable lack of cooperation;
- unreasonable arguments; and
- threatening behaviour.

MANAGING UNREASONABLE CONDUCT

Organizations should consider developing specific policies and processes to effectively manage unreasonable conduct by complainants. Different organizations should develop strategies based on their own unique needs and circumstances. Having an effective and transparent strategy to manage complainants who exhibit unreasonable and inappropriate behaviours will help ensure individual cases are dealt with in a reasonable, fair, and consistent manner.

Ensure that all staff are familiar with policies and know how to apply them in practice. Having a policy for managing unreasonable conduct may allow an organization to redirect an individual from the usual complaint handling process to a different process, one which gives an organization different options for how to respond and interact with an individual. This can help ensure operational



effectiveness while still providing a fair process to that complainant.

There is no 'one size fits all' approach to managing unreasonable conduct by complainants. While there are common threads that run through different types of challenging behaviour, each case should be assessed on an individual basis. Strategies may need to be adapted to suit the individual circumstances, characteristics, or abilities of each complainant.

RESTRICTING COMMUNICATION

In some cases, normal strategies are ineffective at managing or redirecting unreasonable behaviour. It may be appropriate and reasonable for an organization to limit or adapt the ways in which a complainant can communicate with your organization. Strategies may include restricting:

- *who* a complainant has contact with (such as identifying a single contact person);
- *when* they can have contact (such as a particular day, time, or length of time, e.g., Wednesday mornings only);
- *frequency* of contact;
- *how* they can make contact (such as by what communication methods, e.g., writing only); and
- *what* subject matter an organization will respond to.

In the absence of very good reasons to the contrary, no one should be unconditionally deprived of the ability to raise concerns or access public services. Any communication restrictions should be applied proportionately and should correspond to the complainant's behaviour. They should be applied judiciously and should not be more restrictive than necessary to address the negative impact on your organization.

No restrictions should be applied indefinitely. Instead, they should apply for a defined duration of time. The restrictions and reasons for them, along with the complainant's conduct during the restriction period, should be reviewed when the time period expires. In some cases, it may be appropriate for restrictions to be renewed. Periodic reviews may also be scheduled to evaluate effectiveness and determine whether the communication strategy should be modified.

NOTIFYING COMPLAINTS

If restrictions are being placed on an individual, that person should be notified in writing. This notification should include an explanation as to:

- *why* the complainant is being restricted (be specific, citing particular examples when possible);
- *what* restrictions will be implemented and what communication channels remain available;
- *how long* the restrictions are in effect and when they will be reviewed;
- *how* the restrictions conform to policy;
- *who* they may contact for clarification or questions about the restrictions; and
- *how* the restrictions may be appealed (if appropriate).

Complainants should also be notified if the restrictions change or are renewed. Where possible, complainants should be provided opportunities to correct their behaviour.



TEN TIPS FOR DEALING WITH UNREASONABLE CONDUCT

1. Treat all individuals with fairness, professionalism, and respect.
2. Recognize early warnings signs, but at the same time, do not act prematurely or prejudicially towards an individual. Focus on specific, observable conduct and behaviours.
3. Consider each complaint on its merits. Individuals who behave unreasonably (or who have in the past) may have reasonable and legitimate concerns.
4. Manage expectations. Be clear about timelines, the scope of your authority, and the nature of any potential remedies that may result from a complaint to your organization.
5. Maintain ownership of the complaint process. It is the organization dealing with the complaint that determines how it will be dealt with, by whom, and the priority and resources it is given.
6. Allocate resources based on the substance of a complaint, not an individual's demands or conduct.
7. Communicate clearly and transparently. Explain the reasons for your actions. It is best to put things in writing.
8. Establish clear boundaries. Once a complaint has been dealt with fairly, it may be necessary to set and enforce reasonable limits on future contact regarding the same issue.
9. Keep good records. This will support why an individual is being restricted, should this be required.
10. Prioritize staff safety and wellbeing when dealing with unreasonable conduct.

Remember, if a complainant has exhausted all review and appeal options within your organization, they may be referred to the Ombudsman's office. When our office receives a complaint about an authority that is within our jurisdiction, it is our role as an objective and impartial third party to review the issues and assess whether the decisions and actions of an authority were administratively fair.

FURTHER INFORMATION

The New South Wales Ombudsman has produced an excellent manual titled *Managing Unreasonable Conduct by a Complainant*, which is publicly available on their website. This comprehensive and practical guide helped inform the development of our own policies.

A Guide for Public Authorities



www.ombudsman.ab.ca

