

Managing unreasonable actions by complainants: A guide for organisations

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Part 1 • Managing unreasonable actions by complainants

Introduction

In a small number of cases people interact with services in a way that is unreasonable. This may include being unreasonably persistent in relation to their contact and submission of information. This can prevent organisations from providing services to the individual and others and have a significant impact on staff wellbeing. These actions can occur during delivery of a service, while a complaint is being investigated, or once an organisation has finished the complaint investigation.

However, the decision to restrict access to services, including the ability to raise complaints, should not be taken lightly. There is an inherent imbalance of power between organisations and individuals and careful consideration should be given to

Organisations should not operate a blanket approach to managing challenging actions and should consider the circumstances of each individual case.

This guide aims to help local authorities and other bodies within the Local Government and Social Care Ombudsman's jurisdiction develop a proportionate approach when responding to unreasonable actions, based on our view of good practice in dealing with these complainants. It should be read with our Complaint Handling Code and other good practice guides.

Throughout this guide we refer to unreasonable actions in relation to complaints. Unreasonable actions can also include behaviour that is unreasonable. However, the judgement of behaviour can be subjective and what may be acceptable in some cases may be classed unreasonable in different circumstances. Therefore, organisations are encouraged to take account of wider circumstances and actions of each individual case.

This guide focusses on unreasonable actions within a complaints process. However, individuals will often display unreasonable actions when engaging with services before a complaint is made. The information in this guide is also applicable to those cases.

This guide is not intended to cover the relationship between elected officials and the public.

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Part 2 • Principles

Principles

The approach set out in this guide is based on the clear understanding that:

- All complainants are treated with fairness and respect.
- In the absence of very good reasons to the contrary, all complainants have a right to access public services.
- All complaints are considered on their merits.
- Unreasonable actions from complainants do not preclude there being a valid issue. Someone may have a legitimate complaint, but express it unreasonably.
- The substance of a complaint (what is alleged to have gone wrong, and its impact) should dictate the level of resources dedicated to it, not a complainant's demands or actions.

- Anger is an understandable and, to some degree, an acceptable emotion among frustrated complainants as long as it is not expressed through aggression, violence or the use of offensive or discriminatory language.
- Staff safety and well-being are paramount when dealing with unreasonable complainant conduct.
- The decision to change or restrict a complainant's access to services as a result of their actions will only be made at a service management level and in accordance with clearly defined policies and procedures. It must also be subject to review.
- Service managers will ensure relevant systems, policies and procedures are in place to manage complaints including making information available to staff on how to respond to unreasonable actions.
- Any decision to restrict actions to services should be proportionate in relation to the impact the unreasonable actions have on the organisation's ability to deliver an efficient service. Any restriction should still allow fair access to mandatory services.

These are adapted from the [**New Zealand Ombudsman's guide**](#) to managing unreasonable actions.

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Part 3 • Definitions

What are unreasonable actions?

Unreasonable actions are those which, because of the nature or frequency of contact with an organisation, hinder the organisation's delivery of services or consideration of complaints.

It is important that the circumstances of each complaint and complainant are taken into account. There is no universal measure for when actions may be classed as unreasonable.

Some unreasonable actions emerge over time as complainants become more persistent in pursuit of their complaint. It should be recognised that many complainants act in a legitimate but persistent manner in order to pursue their

complaint. Therefore, it is important to recognise the difference between "persistent" and "unreasonably persistent" actions.

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Organisations must also consider whether there are any underlying explanations for unreasonable actions. This could be due to unmet communication or support needs and so it is important that organisations have regard to their duty to make reasonable adjustments under the Equality Act 2010.

Unreasonable actions by representatives

Having a representative can be helpful for many people, not just people who experience difficulties in communicating. A representative could be a friend or family member or a professional such as an advocate or solicitor. Organisations should ensure a representative has consent or other lawful basis for acting on another individual's behalf.

Organisations should not place restrictions on representatives unless there are good reasons for doing so. For example, if a person wants to attend a meeting with a friend or family member for support there is no reason for an organisation to prevent that person from speaking in the meeting without good reason.

However, some representatives may act in a way that is unreasonable. This causes difficulties for the organisation and also the individual they are representing.

Organisations can apply their unreasonable actions policy to representatives where this is warranted. However, in doing so organisations should ensure the individual they are representing is not disadvantaged by this.

To avoid any disadvantage organisations could consider taking the following action:

- Offer to deal with the individual directly taking account of any reasonable adjustments required or requested under the Equality Act 2010.
- Offer to support the individual to find another representative (e.g. advocacy service).
- Ask the individual to nominate another representative.

Examples of unreasonable actions

There is no exhaustive list of actions that may be unreasonable as each case should be judged based on its circumstances. The following are examples of actions which may be considered unreasonable:

- Being abusive, threatening or acting in a manner intended to intimidate staff. This includes any use of racist, sexist, homophobic or other discriminatory language.
- Putting, or threatening to put information on social media or websites which includes personal information of an organisation's employees without their consent and/or making defamatory statements about employees online.
- Making excessive demands on the time and resources of staff with lengthy phone calls, emails to numerous council staff, or detailed correspondence every few days or more often, and expecting immediate responses.
- Submitting repeat contacts or complaints with minor additions/variations which the complainant insists make these 'new' complaints.
- Refusing to specify the grounds of a complaint, despite offers of help.
- Refusing to cooperate with the complaints investigation process. For example, failing to provide information requested that is important for the investigation.
- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- Making unjustified complaints about staff who are trying to deal with the issues, and seeking to have them replaced.
- Frequently changing the basis of the complaint as the investigation proceeds.
- Raising many detailed but unimportant questions, and insisting they are all answered.
- Providing false information and/ or submitting falsified documents from themselves or others.
- Adopting a 'scatter gun' approach: pursuing parallel complaints or contact about the same issue with various organisations.

Recording of interactions with organisations by members of the public

Modern technology now allows individuals to record interactions with organisations more easily than at any time in the past. This includes the ability to live broadcast

interactions in public and private spaces. Sometimes this can be done without an organisation's knowledge and staff may be understandably concerned about what a person may do with a recording.

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However, organisations should not automatically refuse to allow members of the public to record interactions. It is important to acknowledge that organisations routinely record their interactions with the public for training and monitoring purposes. Complainants should not be prevented from making their own recording in order to have a clear record of matters that were discussed. We would expect complainants to advise staff members if they intended to record any interactions and the purpose for doing so.

Having a recording of a meeting or telephone call can be helpful to people with certain disabilities who may struggle to recollect details of what was said or be unable to read or process written records about any interactions.

Sometimes members of the public will record interactions with organisations covertly and with good reason. This could include where a member of staff is suspected of abusing someone in their care. We will consider covert recordings as part of our consideration of complaints on the basis that it can be shared with the organisation and any individuals concerned for comment. Organisations should consider taking a similar approach when considering complaints.

However, a small number of people will misuse technology and act in a way that is unreasonable. This may include:

- Recording interactions with an organisation without good reason.
- Putting recordings online without the consent of those being recorded.
- Live broadcasting interactions with an organisation without their consent.
- Manipulating or editing recordings.

Staff members who operate in public areas should be given advice on what action to take if they become aware they are being recorded as they carry out their job.

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Part 4 • Preventing unreasonable actions

Preventing unreasonable actions

In most cases unreasonable actions can be prevented by ensuring people can access services and the information they need easily. Organisations should ensure information about their services can be accessed in a range of different ways and that they provide a range of channels for people to use to contact them.

An organisation's initial interaction with a complainant is probably one of the most important contacts. The way you begin this interaction can significantly affect how the complainant interacts with you subsequently. A complainant, who feels that they have been listened to, understood, treated fairly and with respect and who has been given a thorough explanation of the complaints process and what is likely to happen

with their complaint is more likely to respond positively to you, your organisation² and the complaints process than if they were not given this information.

This is supported by the "**My Expectations**" report published in 2014. This sets out what people expect from a complaints system when raising concerns. Although based on research in health and care services the findings are applicable to people's expectations of complaint handling in other areas of public service delivery.

Unreasonable actions can also be an indication of an unmet communication or support need. Not all disabilities are visible and therefore organisations should ask everyone who contacts their service whether they need to make any changes to how they deliver their service, such as the way they communicate with them. This allows individuals an opportunity to tell them if they need any reasonable adjustments under the Equality Act 2010.

Where an individual's actions are considered unreasonable, it may be appropriate to speak with other teams, departments and external bodies (e.g. mental health services) involved to share information for the purposes of safeguarding their welfare and exploring other ways in which they can be supported through inter or cross-organisational working.

Staff members should be empowered to warn individuals of the consequences of their actions in the first instance. This may help the complainant to reflect on their actions and provide an opportunity for them to modify it. Staff members should also be able to take immediate action in response to unreasonable actions such as terminating phone calls, asking someone to leave the premises or pausing communications. Any immediate steps should be followed by either an informal warning about future conduct or consideration of further action under the organisation's unreasonable actions policy.

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Part 5 • Managing unreasonable actions

Policy led approach

Organisations want to deal with service users and complainants in ways that are open, fair and proportionate. A considered, policy-led approach helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. Policies should be shared with service users and complainants if they start to act unreasonably. This can help in managing their expectations and their actions, as far as possible, while the substance of their complaint is addressed.

Informal warnings

Staff should be empowered to give informal warnings to individuals who act in an unreasonable way. This should be explained in any policy or procedure. This gives individuals an opportunity to modify their actions. Should individuals continue to act in an unreasonable way then the matter should be escalated for further consideration.

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In the majority of cases an informal warning should be given before further action is taken.

Formal warning

If an individual has failed to adhere to any informal warning from staff then service managers should consider issuing the individual with a formal warning based on evidence. Service managers should consider any evidence staff have gathered and reach their own conclusion on whether a formal warning is necessary or whether other actions may resolve the cause of any unreasonable actions. This may include:

- Exploring whether the individual requires any reasonable adjustments under the Equality Act 2010.
- Offering to meet or speak with the individual to understand any concerns that may be causing them to act in an unreasonable way.
- Offering mediation if the individual requires ongoing services from the organisation.

Any formal warning should be given in writing, where appropriate, and should explain:

- Actions the organisation considers unreasonable;
- Examples of actions considered unreasonable;
- A time period within which future actions will be monitored and when / how / by whom any restrictions on contact or other actions will be reviewed;
- Consequences of failing to address their actions;
- A check on whether the individual requires any reasonable adjustments under the Equality Act 2010; and
- Details of the organisation's complaints process if the person is unhappy with their warning.

Decision to restrict contact

The decision to restrict contact with an individual should be a last resort after attempts at reconciliation and warnings have been exhausted. However, we recognise that in serious cases it may be appropriate to restrict an individual's contact with an organisation without warnings being given.

Given the seriousness of the decision to restrict a person's contact, organisations should give careful consideration as to who is best placed to reach such a decision depending on the size and structure of the organisation.

Any decision to restrict contact should be given in writing, where appropriate (and with regard to any agreed reasonable adjustments), and should explain:

- Actions the organisation considers unreasonable;
- Examples of actions considered unreasonable;
- A time period within which future actions will be monitored; and when / how / by whom any restrictions on contact or other actions will be reviewed;
- Consequences of failing to address their actions;
- Confirmation the organisation has considered the individual's rights under human rights and equality act legislation; and
- Details of the organisation's complaints process **or** details of the Ombudsman if the complaint process has been exhausted.

Reviews

The decision to restrict contact should be reviewed at the end of the time period within which the organisation said it would monitor future actions. The time period will depend on the actions of the individual and any previous decisions to restrict contact. However, restrictions should be reviewed at least every 12 months.

When an organisation reviews restrictions placed on an individual it should write to them to advise them of its decision. If restrictions are to remain in place the organisation should explain its reasons. If restrictions are lifted the organisation may choose to warn the individual about their future conduct.

Further action

In a small number of cases decisions to restrict contact have no effect on a complainant's actions. In most cases, restrictions put in place will help staff to manage the impact this has on services.

However, in the most serious cases, further action may be necessary, particularly where a complainant's actions are having an adverse impact on staff welfare.

Where an organisation is considering placing legal restrictions on an individual's contact or declining to provide a service at all it should seek appropriate advice.

Considering the impact of restrictions on others

In some cases, restricting an individual's contact with an organisation may have an adverse impact on others. For example, if a family member of someone in residential care has been told they can no longer enter the care home, this would have an adverse impact on the resident and potentially engage their human rights.

Organisations should be conscious of the impact restrictions may have on others when reaching a decision on what restrictions are appropriate and mitigate against this.

This could include:

- Requiring an individual subject to restrictions to be accompanied by another person (e.g. family member or social worker) when visiting.
- Putting in place alternative visiting arrangements, such as meeting outdoors or at another venue, so long as this is suitable for the person being visited.
- Facilitating video calls where there is a risk to staff or others in allowing a person to be physically present in the building.

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Part 6 • Restrictions on contact

Examples of restrictions

Organisations should not take a blanket approach to restricting contact with services. In most cases it will be sufficient to restrict access to the service subject to unreasonable actions. However, where their unreasonable actions pose a significant risk to staff members or relate to a number of different service areas it may be appropriate to consider organisation wide restrictions on contact.

Restrictions may include:

- Restricting contact to an individual named officer or generic inbox.
- Placing correspondence on file without acknowledgement or reply.

- Restricting access to certain buildings or premises controlled by the organisation.
- Restricting contact to written contact only (having regard to any agreed reasonable adjustments).
- Restricting the length and frequency of telephone calls.
- Restricting access to discretionary services.

Restrictions should be tailored and proportionate to address the unreasonable actions found in each case.

Organisations are able to withdraw mandatory services towards individuals on grounds of unreasonable actions in certain limited circumstances (e.g. homelessness). Withdrawal, of a mandatory service is a serious step and organisations should have regard to wider human rights and equality duties when reaching such a decision.

Dealing with further communication

Where an organisation decides to place correspondence on file without acknowledgement or reply it should still review the contents to ensure it does not contain significant new information or raise any safeguarding concerns. There is no need to advise the individual that their correspondence contains no new information as this may encourage further unwanted communication.

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Part 7 • Signposting to the Ombudsman

Signposting to the Ombudsman

Organisations should consider complaints before signposting individuals to the Ombudsman, even where they are acting in an unreasonable way. In most cases it should be possible for organisations to progress a complaint through local processes and manage any unreasonable actions using their unreasonable actions policy.

Once the organisation has signposted the individual to the Ombudsman it is reasonable to expect them to contact us directly.

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Part 8 • Information for elected officials

Information for elected officials

This guide is not intended to cover unreasonable actions from individuals directed towards elected officials such as councillors.

The Local Government Association has produced a guide for councillors on handling harassment, abuse and intimidation which can be found on its website:
[Councillors' guide to handling harassment, abuse and intimidation | Local Government Association](#)

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