

DEALING WITH 'DIFFICULT' COMPLAINANTS

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Fundamental facts of life

Before we even start to consider how we might better deal with so called 'difficult' complainants, I believe there are four fundamental facts of life that need to be recognised and accepted.

Fact number one: some complainants can indeed be difficult. They can be unreasonable, obsessive, overly demanding, overly persistent, rude or aggressive.

Fact (or widely held perception) number two: anecdotal evidence from a wide range of sources suggests that this problem is growing, both in terms of the numbers of difficult complainants, and the seriousness of their 'difficult' interactions with agencies and review bodies.

Fact number three: most people would prefer not to deal with difficult people. In fact, most people will actively try to avoid or minimise circumstances where they have to deal with such people. This reflects normal human nature. Unpleasant interactions are stressful. Many people will do anything to avoid them.

Fact number four: this avoidance approach of staff seems to often be reflected in the culture or approach of organisations (or those parts of larger organisations that are responsible for dealing with complainants or customer service). Difficult complainants are seen as a nuisance, an irritant, a side issue on the periphery of and interfering in the pursuit of the core complaint handling business.

Background

At the NSW Ombudsman Office we deal with many people who have come to the end of their tether. Many of them are justifiably upset, angry and generally difficult because they are caught up in some outrageous wrong. Others are, to put it in technical complaint handling terms, just bloody difficult.

Those who are bloody difficult make up a very small percentage of our complainant population, but they take up an inordinate amount of time and resources and cause much stress to staff and, indeed, themselves. Widespread anecdotal evidence suggests that complaint handlers generally share our experience. What's more, it seems the number of those who present as difficult seems to be on the increase and the nature of the difficulties they create seems to be getting more complex.

The same person's complaint can often be found in a multitude of agencies at the same time; it can form the basis for FOI applications and ultimately may end up as a review application, or indeed a string of review applications, to the NSW Administrative Decisions Tribunal for example.

Apart from the impact on staff and resources, there is also an equity issue in relation to the resources available to deal with other complaints – the more resources devoted to dealing with one complaint, the less that is available to deal with all other complaints.

It is not uncommon for difficult complainants to change the focus of their issues from the substantive issue and the organisation responsible for it, to complaints about how their matter is being handled by the organisation and often particular staff of that organisation. So the substantive complaint is followed by a string of complaints about the handling of their complaint.

There are of course many other, less spectacular, but no less troubling difficulties:

- the people who insist on having daily and lengthy telephone contact with their case officer
- those who send voluminous quantities of information, sometimes delivered in a suitcase
- those who insist on regular progress meetings
- those who demand that their case be managed in a particular way – their way
- those who are rude or aggressive, or
- those who simply cannot let go, even when all avenues of complaint and appeal have been exhausted.

‘Dealing with Difficult Complainants’ guidelines

In the interests of helping organisations within its jurisdiction, the NSW Ombudsman addressed the difficult complainant issue in its publication “*Dealing with Difficult Complainants*” (first published in September 1998). The ‘trigger’ for this publication was the problems the NSW Ombudsman and other agencies within its jurisdiction were experiencing at that time with certain complainants. One had made over 23 complaints to the office at that time, not to mention the numerous complaints she had made to a range of agencies within its jurisdiction (by September 2006 the tally was 39 complaints, three requests for reviews of decisions on complaints and 19 other inquiries or oral complaints – a total of 71 contacts). Another ‘trigger’ complainant was a man who had made numerous complaints to a particular local council, and a large number of complaints to the Ombudsman about that council (the tally at September 2006 was 23 complaints to that office, six requests for reviews of decisions and 33 other inquiries or oral complaints – a total of 62 contacts in all).

The NSW Ombudsman’s continuing interactions with ‘difficult’ complainants and applicants led it to realise that while those guidelines were a good start, the management strategies for dealing with ‘difficult complainants’ could be greatly improved.

All Parliamentary Ombudsman Offices in Australia agreed in 2006 to pilot a new approach to the categorisation and management of so called ‘difficult’ complainants. I am working with Helen Mueller of our Office who is coordinating the National Project.

The work of Professor Paul Mullen, Professor of Forensic Psychiatry, Monash University, Victoria, and Dr Grant Lester, Consultant Psychiatrist, has greatly assisted the Australian Ombudsman in their thinking. They have identified a group of complainants they called “*unusually persistent complainants*” who, they found in their study, “*pursued their complaints for longer, supplied more written material, telephoned more often and for longer, intruded more frequently without an appointment and ultimately were still complaining when the case was closed*”. They found that these complainants often wanted what a complaint handling system is not designed to deliver – vindication, retribution and revenge. They associated the behaviour of these complainants with ‘querulousness’. Pre-existing vulnerabilities to querulousness include egocentric personality, self-referential and suspicious tendencies, being self-righteous and easily affronted, possessing obsessional traits, etc.

The new approach to dealing with ‘difficult’ complainants

The new approach to dealing with ‘difficult’ complaints includes:

- a realisation of the need to change the culture of organisations in relation to how they deal with so called ‘difficult’ complainants
- a re-categorisation of the conduct that is seen as ‘difficult’
- legislative provisions directed at better managing difficult complainants
- the description of each category of behaviour which emphasises that the conduct in question is ‘unreasonable’ (for example the mere fact that a complainant is persistent, makes demands, makes numerous complaints or applications, or may be angry, does not mean that their conduct is unreasonable in the circumstances)
- the implementation of fair and reasonable management strategies specifically designed to address each separate type of unreasonable behaviour, and
- a change in focus away from the person – the ‘difficult’ complainant– to the person’s conduct or behaviour – looking at the person’s observable conduct rather than trying to divine their mental state or possible motives – a shift away from a one-size-fits-all approach where the focus is on the person.

From the experience of the Australian Ombudsman, it is clear that for organisations to be able to properly deal with ‘difficult’ complainants appropriately, in most if not all cases a fundamental shift needs to occur in the culture or approach of those organisations. That change in culture requires a complaint handling organisation:

- to realise that dealing with unreasonable conduct is an unavoidable and integral part of their core work
- to give this work proper priority and adequate resources, and
- to give front line and complaint handling staff the support, encouragement, guidance, training and direction necessary to overcome the natural tendency of most people to avoid involvement with unreasonable complainant conduct.

Terminology

An important issue needs to be addressed concerns terminology. At the moment the most commonly used term, in Australia at least, appears to be ‘difficult complainant’. Other terms that have been used in the literature or in complaint handling circles include querulent complainants (a particular subset of difficult complainants), people who monopolise resources, resource-intensive complainants, high maintenance complainants, vexatious complainants or applicants, repeat applicants, HCP’s (high conflict people), unusually persistent complainants.

This is not a theoretical issue as it can influence or dictate how such complainants and their conduct are perceived and responded to by the people within an agency who must deal with them.

A problem with the above terminology is that each title labels the person not the problematic conduct or behaviour. Such a focus runs the risk that a ‘one size fits all’ approach or response will be adopted to the person as being ‘difficult’. The focus should therefore not be on the person, but on conduct or behaviour - on observable behaviours, not the person’s mental state or possible motives. This focus:

- allows for the fact that many people we generically label as ‘difficult complainants’ often exhibit different types of unreasonable conduct that warrant different management responses – this enables more focussed management strategies that target particular conduct
- allows for implementation by people who are not mental health professionals

- facilitates greater transparency in interactions between complaint handlers and complainants for the purpose of responding to or dealing with unreasonable conduct, and
- facilitates the separation of behaviour from issue in question so that the issue can be effectively addressed.

Categories of unreasonable conduct

Working with front line and experienced staff, a detailed list was developed of all the difficult behaviours and interactions that are commonly experienced by Ombudsman staff and by the staff of organisations within their jurisdictions. This catalogue of individual behaviours and conduct was then sorted into five categories:

1) Unreasonable persistence including, for example:

- persisting with a complaint even though it has been comprehensively dealt with and even where all avenues of review have been exhausted
- showing an inability to accept the final decision by an independent body
- reframing a complaint when previous attempts to get it taken up have failed
- persisting in interpreting the law, policy or practice in a way that is not in accordance with generally accepted or expert views and insisting that action be taken accordingly.

2) Unreasonable demands including, for example:

- insisting on outcomes that are unattainable (eg, the sacking of the agency's head, abolishing the department and the like)
- demanding an apology or compensation when there is no reasonable basis warranting or for expecting such outcomes
- wanting what is not possible or appropriate (for example names and contact details of other complainants or whistleblowers)
- issuing instructions and making demands about how their complaint should be handled
- expecting resources to be used out of proportion to the seriousness of the issue (for example wanting the agency to seek expert opinion)
- moving the goal posts – that is, changing the desired outcome during the course of the complaint
- shopping for a sympathetic ear in the office
- placing the office on an extensive mailing list and expecting responses
- consistently creating complexity where there is none.

3) Unreasonable lack of cooperation including, for example:

- presenting a large quantity of information which is not organised, sorted, classified or summarised – where the complainant is clearly capable of doing this
- refusing to define the issues of complaint – again where the complainant is clearly capable of doing this
- focusing on 'principles' rather than substantive issues (eg, truth, justice and the common good)
- changing the complaint once it is in the process of consideration.
- presenting information in dribs and drabs (for example where a complainant finds an extra piece of information in support of their complaint once a decision to decline or discontinue the complaint has been made)
- generally displaying seriously unhelpful behaviour (for example withholding information, misquoting others, swamping the agency with documents, dishonesty).

4) **Unreasonable arguments** including, for example:

- holding irrational beliefs (for example, the computer chip in the brain so the CIA can monitor their every movement)
- seeing cause and effect links where there are clearly none
- holding what is clearly a conspiracy theory unsupported by any evidence
- insisting that a particular solution is the only correct one in the face of valid contrary or alternative arguments.

5) **Unreasonable behaviours** including:

- aggression
- anger, and
- threats

Unreasonable complainant conduct can be any one or a combination of these categories of conduct.

Management strategies for dealing with unreasonable conduct

The division of individual unreasonable conducts into these five categories reflects the different management strategies needed to address the different types of conduct:

1) **Unreasonable persistence** – addressed through management strategies that are about saying ‘no’, for example:

- providing only one review of a decision
- maintaining a ‘no means no’ stance following review
- adopting, when appropriate, a firm no-further-correspondence or contact stance
- not allowing complainants to reframe complaints to re-enter the process, unless they raise new and important issues
- communicating clearly and transparently with the complainant (such as telling the complainant firmly that something is ‘not going to happen’)
- terminating telephone calls that are unproductive
- refusing meetings that do not advance work on the complaint
- asserting our position while acknowledging that the complainant has a different view
- making it clear that we are the independent arbiter, and, for better or worse, we have made our decision.

2) **Unreasonable demands** – addressed through management strategies that are about *setting limits*, for example:

- making sure the complainant’s expectations are realistic from the outset
- making sure the complainant understands that **we** decide how the complaint should be handled
- limiting contact to writing only where necessary
- restricting contact to defined times and staff members where necessary
- avoiding being drawn into hypothesising, conspiracy theories, unproductive arguments and personal attacks more generally
- not doing for unreasonably demanding complainants something we would not normally do for any other complainant, just to appease them.

- 3) **Unreasonable lack of cooperation** – address through management strategies that are about *setting conditions*, for example:
- requiring complainants to organise or summarise the information they have provided before we will look at the complaint – in cases where they are clearly capable of doing this
 - requiring complainants to define what their issues are before we will look at the complaint – in cases where they are clearly capable of doing this
 - telling complainants that we will not look at their complaint until all the information has been presented
 - terminating our involvement in the complaint where it is discovered that the complainant has been wilfully misleading or untruthful in a significant way.
- 4) **Unreasonable arguments** – addressed through management strategies that are about *declining or discontinuing* involvement at the earliest opportunity,
- 5) **Unreasonable behaviour** – addressed through management strategies designed around a *risk management* protocol that we are developing:

It is of course important that every complaint is managed as well as possible from the beginning to minimise the chances of misunderstandings and unrealistic expectations. Strategies for this might include:

- managing complaint expectations to ensure they are realistic from the outset
- adopting a firm, clear and authoritative communication style both in writing and orally
- making sure the communication style is appropriate to the specific complaint
- making sure the complainant understands our role
- defining the key issues that we are going to address and keeping the focus on them
- keeping the complainant informed of progress, and
- providing clear reasons for our decisions.

The mere fact that a complainant or applicant is persistent, makes demands or may be angry does not mean that their conduct is unreasonable in most circumstances. Unreasonableness needs the conduct to go beyond the norm of situational stress that many complainants and applicants experience. Therefore, these management strategies need inbuilt checks and balances to ensure that the person who is legitimately 'difficult' or 'unreasonable' because of some outrageous wrong does not slip through the cracks.

The National Ombudsman Project on Dealing with Unreasonable Complainant Conduct

The eight Parliamentary Ombudsman of Australia have joined together in a national project to apply the new management strategies and to study the effectiveness of their application.

The National Ombudsman Project aims to:

- minimise the adverse impact of unreasonable conduct on resource management and the relevant processes of the agency
- minimise staff stress
- minimise harm to people displaying unreasonable conduct
- ensure equity across all matters handled by Ombudsman Offices
- achieve consistency of practice across all Ombudsman Offices.

There are certain prerequisites for the management strategies we are developing to be successful:

- 1) the first thing that needs to happen is for there to be an acceptance of the proposition that dealing with this conduct is an unavoidable and integral part of an organisations core work, whether they like it or not.
- 2) the second thing that needs to happen is for the organisation to accept the need to give front line and complaint handling staff the training, support, encouragement, guidance and direction necessary to enable them to deal with unreasonable conduct and to overcome their natural and understandable tendency to avoid involvement with difficult-to-handle people. If staff, again particularly front line staff, have the knowledge to recognise difficulties as soon as they arise and the confidence, resources and organisational backing to appropriately engage with people exhibiting unreasonable behaviours, chances are that the difficulties will be contained at that point.
- 3) the third thing that needs to happen is an acceptance that the need to properly resource staff and to encourage and support them is ongoing. It is not enough merely to show staff what to do and tell them to do it. If this is all that happens, it is likely that most staff will sooner or later revert to their original avoidance behaviour. Once started, the process must be continuously reinforced and become an integral part of the ongoing management of the organisation.

In brief, the project aims to achieve a cultural change in complaint handling.

The foundation stones that underpin these proposed management strategies can be described by the acronym **BEST PRACTICE**:

BEST:

B - Boundaries between complainant and the agency are made clear – the complainant ‘owns’ the issue, the agency ‘owns’ the complaint.

E - Expectations are kept realistic and managed from the beginning and during the course of the complaint through the provision of appropriate information in writing and orally.

S - Support from management is strong and consistent – staff are well supported by the provision of resources, appropriate delegations and supervision (supervision is invisible to the complainant – it only becomes visible at strategic times, for example when complaints about the case officer’s handling of the matter arises).

T - Training is comprehensive and ongoing – staff receive comprehensive, ongoing, formal on-the-job training for dealing with unreasonable complainant conduct.

PRACTICE:

P - Practices are maintained in a normal manner in abnormal situations so staff do not act as 'saviours' or 'persecutors'.

R - Responsibilities are clear and mutual:

- staff are responsible for professional behaviour and thorough work in assessing and dealing with a complaint
- complainants are informed of their responsibilities and are held responsible for providing clear information about their complaint in understandable form and for providing all the information in a truthful and timely manner.

A - Authority is exercised – staff dictate the direction and progress, not the complainant, and are in charge of the specific interactions with the complainant. Their actions are backed up by their organisation (staff have the training, knowledge and experience and hence the authority, to manage the case).

C – Communication with the complainant is effective – communication is clear, comprehensive, timely and firm.

T - Time to deal with complaints is sufficient – management ensures that staff have sufficient time to properly consider and deal with a complaint, and to effectively interact with the complainant.

I - Impartiality is maintained – staff act impartially and maintain neutrality, making sure the complainant understands that they do not act as advocate for the complainant or the agency.

C - Consistency of practice is in place – strong policy direction and supervision ensures consistency of practice in dealing with particular complainants, and in dealing with all complainants across the organisation.

E - Equanimity is maintained – staff are encouraged to remain calm and even-tempered during difficult interactions with complainants (debriefing is provided where interactions prove stressful for staff).

So, to conclude, in broad terms our new approach to dealing with unreasonable complainant conduct is about:

- recognising that dealing with unreasonable complainant conduct is part of the core function of complaint handling organisations
- devising a comprehensive and systematic management strategy framework for dealing with unreasonable conduct
- training, supporting and resourcing staff in their handling of unreasonable complaint conduct, and
- developing communality of practice among complaint handlers in order to give a consistent message to those complainants whose conduct is unreasonable.

We will also be looking at developing a set of standard ground rules, or 'rules of engagement' for complainants and complaint handlers, that we will seek to have adopted by complaint handlers across Australia. In this regard we will be considering, and may suggest model legislation to authorise certain actions to be taken by public sector complaint handlers for serious and blatant breaches of the ground rules. This might conceivably include such things as, for example, clarifying that blatant breaches:

- are a valid basis for declining to deal with or to discontinue action on a complaint, or
- justify the imposition of reasonable conditions that must be complied within any on-going interactions between the agency and the complainant, or
- can constitute a specific offence in relation to threats, intimidation, harassment, etc.

It may also include some suggestions for model provisions that could be enacted to put beyond doubt that, in appropriate circumstances, complaint handling bodies can exchange information between themselves and with police and mental health professionals for the purposes of:

- developing a common response/approach
- preventing forum shopping, duplication and matters falling between the cracks
- dealing with serious threats to staff or to third parties, and
- dealing with risks of self harm, etc.

For some years we have run training courses in dealing with difficult complainants both advertised and in-house on request. We will continue to modify the training over time to reflect the insights and new experience that flows from our national project. In this way, benefits should flow on to the public sector from the project even before it is completed.

The second stage

At the end of the project we intend to publish an evaluation report outlining the results, as well as a number of discussion papers on related issues.

The second stage of the project will be to adapt the framework and strategies to suit the work of agencies within our jurisdictions, particularly those that need to maintain an on-going relationship with complainants (eg, hospitals, schools, correctional centres, universities) or who are required by law to provide a particular service (eg, dealing with FOI applications).