



PUBLIC PROTECTOR
SOUTH AFRICA

Accountability · Integrity · Responsiveness · Justice · Good Governance



UKZN & AORC Webinar

Dealing with Challenging Behaviour

How to productively deal with challenging behaviour

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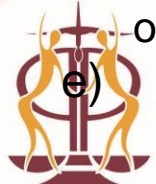
OVERVIEW OF THE PRESENTATION

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2. What is unreasonable complainant conduct?
3. Possible causes
4. Impact of Unreasonable complainant conduct
5. Need for systemic approach
6. Manage, prevent or minimise unreasonable complainant conduct
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A COMMON OCCURRENCE

- Complaint handling institutions and ombudsmen offices in particular, have recorded trends and experiences in complainant behaviour that present challenges to the institutions and individuals involved in the handling of their matters .
- Some of these patterns include bombarding institutions with unnecessary telephone calls, emails and large amounts of irrelevant information or insist on things they are not entitled to and outcomes that are clearly not possible or appropriate in the circumstances.
- At the end of the process, these same complainants are often unwilling to accept decisions and continue to demand further action on their complaints even though they have exhausted all available internal review options.
- In the experience of these institutions it is also very common for this category of complainants to
 - a) lose perspective and change the focus of their complaints from the substantive issues and the people or organisation(s) responsible for them,
 - b) Lodge allegations of incompetence, collusion, conspiracy and corruption against the case officers and organisations that they have approached to resolve those issues. such,
 - c) unnecessarily escalate complaint to multiple organisations at the same time;
 - d) turn to the internet and social media to malign and defame the people and organisations they are interacting



WHAT IS UNREASONABLE COMPLAINANT CONDUCT?

- Unreasonable complainant conduct is defined in some jurisdictions as “*any behaviour by a complainant which, because of its nature or frequency, raises substantial health, safety, resource or equity concerns and issues for the parties involved,*” including –
 - a) the institution responsible for handling the complaints,
 - b) the investigators/ managers tasked with dealing with the complaints,
 - c) the institution involved or complained against,
 - d) a complainant himself or herself (potentially including members of their families and friends) and
 - e) other complainants and service users.
- Complainants who display characteristics of this type of behaviour are often branded as difficult complainants”. A complainant’s conduct is not necessarily unreasonable just because it is seen as challenging or difficult to manage. Most ombudsmen offices agree that the focus needs to be on **the conduct of the complainant, rather than on the complainant** as a ‘difficult’ person in order to –
 - a) Separate the management of their behaviour from managing their issue;
 - b) Avoid an approach that relies on professional psychiatric or psychological knowledge for its implementation;
 - c) Ensure that the legitimate and reasonable rights and interests of complainants are protected and their complainants, irrespective whether their behaviour is challenging or not, are treated with fairness and respect



POSSIBLE CAUSES FOR THE BEHAVIOUR OF SOME COMPLAINANTS TO EXCEED THE ACCEPTABLE NORMS FOR COMPLAINANT CONDUCT

From international experience there are a wide range of reasons why some complainants behave unreasonably. They can be divided into the following motivational categories:

- a) Attitudes – they are dissatisfied with a person, an organisation or the systems and processes that they are interacting with.
- b) Emotions and psychologies – they are experiencing anger, frustration and disappointment at such a level that causes them to express those emotions in unacceptable ways; they reached a point where their sense of entitlement has an inflated or are they unable to accept any personal responsibility for their issue and the way they behave.
- c) Aspirations – they are seeking satisfaction on a very personal level, beyond the outcomes and redress that complaints process and ombudsman remedial action are designed to deliver; they are looking for ‘justice’, a ‘moral outcome’ or are obsessively pursuing their issue on ‘a matter of principle’; they want revenge, vindication, or retribution .
- d) Needs and expectations – their expectations, physical (also financial) needs or emotional needs are not/have not been met.



IMPACT OF UNREASONABLE CONDUCT

- A study conducted by *Grant Lester et al* * found that, compared to a matched control group, the 'unusually persistent complainants' generally -
 - a) pursued their complaints for longer,
 - a) produced far greater volumes of material in support of their case,
 - b) telephoned more frequently and for longer,
 - c) personally visit the office more frequently without an appointment,
 - d) in the end were still complaining when their case was closed;
 - e) Often involved other agencies ...
 - f) Behave in a manner that was typically more difficult and intimidating.”
- The study found that these complainants often wanted what a complaint handling system could not deliver – “*vindication, retribution, revenge.*”
- Some of the risks for organisations dealing with complainants who display these types of behaviours are that -
 - a) Staff members avoid complainants who they view as 'difficult', which contribute to the development of an organisational culture where these complainants are seen as an irritant or interference to other more 'important' work.
 - b) Their complaints are often delegated to junior staff members whose work and time is seen as being more disposable or assigned to someone in the organisation who is considered to be 'naturally good' at dealing with “difficult” complainants.
 - c) Valid complaints may be neglected or even declined without sufficient consideration of the merits of the issues.
 - d) These approaches place additional demands on skill levels, time and resources and can contribute to increased stress levels among staff dealing with these complainants.



NEED FOR A SYSTEMATIC AND CONSISTENT APPROACH

- There is consensus amongst ombudsmen offices that there is no one size fits all approach to managing unreasonable complainant conduct. and it is not possible to suggest or prescribe responses that will be effective 100% of the time.
- While many offices have developed strategies in this regard, there is an understanding that the strategies need to be adapted to suit the circumstances of each case and should supplement rather than replace existing organisational policies, procedures and protocols.
- The Public Protector subscribes to the notion for a systematic and consistent approach to
 - a) ensure equity and fairness through consistency in the handling of all complaints within the office,
 - b) to improve efficiency in the use of resources, and
 - c) to comply with occupational health and safety concerns by reducing the stress experienced by staff (and as an adjunct to also assist complainants reduce their stress).



MANAGE, PREVENT OR MINIMISE UNREASONABLE COMPLAINANT CONDUCT

- Manage and set clear expectations: Clearly communicate relevant information to complainants. Let them know what the organisation can/cannot do, what communication they can expect, who will be involved, the organisation's processes, timelines and possible outcomes.
- Identify, test and manage complainant expectations at the outset, and throughout the complaints process, by defining the complaint issues, identifying the complainant's requested outcomes, correcting misunderstandings, and redefining unrealistic/unreasonable expectations.
- Exercise ownership of complaints. Explain to Complainants that the organisation will decide if and how their complaint will be dealt with – (issue belongs to complainant but the decisions and prerogative to deal with issue belongs to Ombudsman).
- Professional Communication (respect) – Investigators who deal with complainants. should treat complainants fairly and respectfully, remain calm, act professionally and impartially and clearly communicate outcomes. Complainants who feel they have been heard, properly informed and treated with respect are more likely to respond positively, even when faced with a negative outcome.
- Establish ground rules about the conduct expected of complainants and make the organisation's expectations clear and publicly available (Necessity to act on good faith).
- Avoid labelling complainants - this can negatively influence how they are dealt with. Instead, respond to observable conduct.
- Recognise the early signs of anger and use techniques to avoid escalation.
- Make and keep good records of complainant interactions.



SET SERVICE STANDARDS

- **Complaints and persons using the ombudsman services should be entitled**
 - To make a complaint and to express their opinions in ways that are reasonable, lawful, and appropriate, regardless of cultural background, national origin, sex, sexual orientation, gender expression, disability or other cultural or personal characteristics
 - To a reasonable explanation in a wide range of languages of the organisation's complaints procedure, including details of the confidentiality, secrecy or privacy rights or obligations that may apply
 - to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case
 - to a fair hearing
 - to a timely response
 - to be regularly informed and updated in at least general terms about the actions taken and outcome of their complaint
 - to have decisions that affect them explained to them
 - to be treated with courtesy and respect
 - to communicate valid concerns and views without fear of reprisal or other unreasonable response.



Possible strategies for dealing productively

Unreasonable persistence:

- Examples:
 - a) Persisting with a complaint even though it has been considered and addressed;
 - b) Showing inability to accept the final decision;
 - c) Persisting with own interpretation of law and policy
 - d) Demanding a review without sound grounds
- Proposed strategy
 - a) Communicate clearly and firmly;
 - b) Advise complainants to request an internal review of the decision they are not satisfied with;
 - c) Where appropriate, advise the complainant that there would be no further recourse and correspondence with them.
 - d) In the event the complainant is extremely difficult, a final letter to be signed by Ombudsman to reiterate the finality of the matter.



Possible strategies for dealing productively Unreasonable demands

- Examples:
 - a) Insisting on outcomes that cannot be attained;
 - b) Demanding an apology or compensation where there are no grounds;
 - c) Dictating terms on how the investigation must be conducted;
 - d) Demanding unwarranted, regular and lengthy telephone contact;
 - e) Continuously raising new issues and redress sought;
 - f) Providing excessive documents or information not relevant to the complaint
 - g) Placing an investigator on email copy list and expecting responses to numerous correspondences
- Proposed strategy
 - a) Inform the complainant well in advance how the Ombudsman intends to deal with the complaint;
 - b) Clarify limitations of the investigation process;
 - c) Ensure that the complainant understands that it is Ombudsman who decides on the approach to the investigation; and
 - d) Prefer written correspondence over unproductive telephone calls and meetings.



Possible strategies for dealing productively Unreasonably frustrating investigation

- Examples:
 - a) Presenting large quantities of information which is not organised or sorted where the complainant is clearly capable of doing so;
 - b) Refusing to share all available information at the outset;
 - c) Changing the complaint i.e. raising new issues in the process of investigation; and
 - d) Withholding information, being dishonest and misrepresenting facts.
- Proposed strategy
 - a) Require the complainant to organise or summarise the information they have provided (where they are capable of doing so);
 - b) Advise the complainant about the difficulty of proceeding with investigations when not all information has been provided;
 - c) Confirm the issues to be investigated early in the investigation and not allow for a change of focus; and
 - d) End an investigation where it is discovered that the complainant has been wilfully dishonest, misleading in a significant way. This should be done in a detailed closing letter



Possible strategies for dealing productively Unreasonable arguments

- Examples:
 - a) Insisting that a particular solution is the only correct way in the face of other valid alternatives;
 - b) Interpreting facts in an unreasonable way and insisting that the interpretation is correct;
 - c) Insisting on appointment of new investigator;
 - d) .
- Proposed strategy
 - a) Complaints that are based on unreasonable arguments must be declined at the outset or discontinued as soon as it becomes clear that the arguments are unreasonable or baseless;
 - b) The investigator may separate issues and focus on substantiated issues

Possible strategies for dealing productively:

Unreasonably threatening or potentially abusive behaviour

- Examples-
- The following conduct is prohibited and will strictly not be tolerated:
 - a) Consistent rude or abusive behaviour, threats to staff or third parties;
 - b) Damage to the property of the Ombudsman;
 - c) Intimidation or threat of physical harm to staff or third parties;
 - d) Physical violence;
 - e) Producing a weapon; and
 - f) Making defamatory / derogatory remarks about the Ombudsman or Staff.
- Proposed Strategy
 - a) A record of incidents must be kept in the file at all times and the complainant must be advised verbally and in writing to desist from unreasonable behaviour, failing which his or her access to the Public Protector will be limited or denied;
 - b) Where the complainant poses immediate danger or becomes disruptive to the running of the office, the Manager must take steps to ensure the safety of staff and may call the police or security to remove complainant from the building;
 - c) Ombudsman may direct that the complainant no longer be allowed to enter Ombudsman premises/ offices and/ or;
 - i. All future communication between Ombudsman and complainant must be in writing;
 - ii. No telephone calls or interviews must be granted; and
 - iii. Where social media is being used, the complainant should desist from such conduct forthwith.
 - iv. and
 - v. Any decision place limitation on access to premises or services should be approved by the Ombudsman who must also sign the letter informing the complainant of those limitations.



Supporting complaints staff

- First and foremost ensure their safety is considered
 - Mental health issues
 - Stress level
 - Support with abusive complainants
- Have good protocols in place
- Ensure staff have enough time
- Develop a supportive culture
- Consider the subject of the complaint as well as complaints handling staff

Summary

- Unreasonable complaints are inevitable at some point
- A good process will minimise the impact of these
- Distinguish between the “issue” and “behaviour”/ “person” and “conduct”
- Robust policies will help manage these objectively
- Be aware of the vulnerable
- Train and support your complaints staff
- Be a good listener
- Have a specific policy



Resources

- Ombudsman: Western Australia : Practice manual Managing unreasonable complainant conduct:
- When Complaints Become Unreasonable (Nick Nurden, The Ridge Medical Practice, Bradford, West Yorkshire)
- Manual for managing unreasonable conduct by complainants, NSW Ombudsman, 2021
- Managing Unreasonable Complainant Conduct Practice Manual, 2nd edition (practice manual)
www.ombudsman.qld.gov.au/ArticleDocuments/503/GL_Unreasonable-Complainant-Conduct-Manual-2012_LR.pdf.aspx



**THANK YOU, NGIYATHOKOZA, DANKIE,
ENKOSI, NGIYABONGA, KE A LEBOGA,
KE A LEBOGA, KE A LEBOGA, NDI A
LIVHUHA, NDZA KHENSA**

