

Complaints Handling Practice Guide

Dealing with problem behaviour

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Introduction

Why have we created this guide?

In our work with organisations across Scotland the most common questions we receive from staff dealing with complaints relate to how to respond to the behaviour of people who are complaining in a way they find difficult.

This guide has been produced, therefore, to help organisations and their staff deal effectively with the most common problems that can occur when managing complaints. The examples contained in this guide are based on our own experience of managing difficult behaviours and include suggestions we have picked up from other organisations in managing problem behaviour. This guidance could not be and is not exhaustive and none of the tools we suggest to manage unacceptable behaviours are prescriptive. Each situation is different and it is not possible to say definitively what the correct response should be. Careful judgement is always required. The aim of this guide is simply to provide a starting point to help you exercise this judgement.

The intention throughout is to ensure that complaints can be dealt with in the best way possible. We do not want you to avoid answering or dealing with complaints; rather we want to provide strategies which help you de-escalate problems and to ensure where action is needed to manage a customer's behaviour that the complaint can still be dealt with. You may notice that throughout the guide we refer to people who may complain as customers or even more simply as persons or individuals. Some organisations may be more used to terms like clients or service users. Customer, person and individual are being used in this guide as easily understood, generic terms. Equally we refer to all those who work within or for an organisation as staff.

Remember the organisation and the customer have a shared interest, and it is important for every organisation to know if the decisions they make or the way they act have negative or unintended consequences. Complaints are a valuable source of feedback in this respect. Helping staff to deal with problem behaviour can also help to ensure that customers can make clear what their complaint(s) are and what they would like to happen as a result. In this way the complainant can receive the clearest answer to their complaint and when something has gone wrong the organisation can fix it quickly.

How to use the guide

Each section of the guide considers a different topic and includes suggested tools and techniques that you may find helpful. They are often set out as statements or questions you could use in conversation or as sample letters. This allows you to select the most appropriate approach and consider how they work in practice. As well as being available in this full guide, the individual sections of the guide are also available online.

Throughout the guide you will see the following symbols



an important or useful point



a practical hint, tip or example

Who should use this guide

There is a very close link between the policies and training an organisation has in place and the way staff respond to difficult behaviour. This guide can be used in relation to both but you may want to use it in different ways.

If you have a policy or organisation-wide focus

If you are responsible for creating policy you may need to read all the sections when developing or reviewing completely new policies and training/guidance to support them. We suggest you read

the governance section first and then the particular sections that best identifies the behaviour you are seeking to manage. As a general rule, we expect organisations to have policies around unacceptable actions and zero tolerance. Organisations should also have training and support available for situations which may be challenging for staff. Discussions with staff about the types of difficult behaviour they encounter can help to identify areas where they would appreciate additional help.

If you have a personal focus

Individual staff can use the [flowchart](#) to identify which section of the guide is most helpful for the situation they are trying to manage. You will also need to understand the policies your own organisation has in place. If you are unsure or looking for general information, you should start with the [Difficult for you](#) section.

What this guide will not do?

This guide will not cover every situation or solve every problem. In some cases, it may simply help you to identify areas where your organisation may need to develop tailored solutions or specific training.

What do we mean by problem behaviour?

This is a broad term; it simply means behaviour that staff find problematic. It may include behaviours which some staff find difficult, unreasonable, aggressive, threatening or abusive.



Language which labels people as 'vexatious' or 'difficult' is not helpful. The focus should always be on the behaviour and what you need to do in response. Neither is it helpful to make judgements about the cause of the behaviour. People do not always act at their best, particularly when they are unhappy and stressed. Concentrating on the behaviour rather than the cause of the behaviour can allow you to consider whether you need to actively respond to the behaviour at all but can also allow you to have open discussions with the individual who may not fully appreciate or understand the impact of the behaviour on you and may be happy to change when this is explained.

The behaviour we deal with in this guide

Behaviour can be very varied and may never neatly fit into categories. We have used the following headings to help structure the advice and support in this guide. You should note, however, our experience of this behaviour is most often by telephone which is our most common form of contact with our customers. We do include some examples of how to deal with this in writing. The strategies we suggest may, however, need to be adapted for face to face contact.

Difficult for you

This is behaviour which an individual may find difficult to manage, while for a variety of reasons, another member of staff may be able to deal with effectively.

Unacceptable actions

This is behaviour which affects the ability of the member of staff or the organisation to do their job. It can most easily be identified by considering the impact that the behaviour has. When the impact of the behaviour means an unfair or disproportionate amount of resource is required, it may be unacceptable and should be addressed. Impact on resources is not only about the use of physical resources or time but can include the emotional impact on staff and behaviour which is abusive or threatening should be viewed as unacceptable. At times it is so extreme that the behaviour needs to be stopped immediately. We deal with situations when action needs to be taken to stop the behaviour immediately in the [Zero Tolerance](#) section of this guide. It should be noted these behaviours are simply another form of unacceptable action but the risks and challenges are very specific and that is why they are dealt with separately.

Persistence

This is the behaviour most commonly cited as a problem by staff and organisations. We look at this in a section separately from Unacceptable actions. It is not a category SPSO use in our Unacceptable Actions Policy and the section on [persistence](#) explains why and also provides some suggestions for how to respond to unreasonable persistence.

Zero Tolerance

Zero tolerance is used to refer to situations where either an immediate response is needed or to define behaviour that is always unacceptable and, therefore, always requires action. It is really a sub-category of unacceptable actions but the potential impact means we have given this a [section on its own](#).

Section 1 - Governance matters

The basic requirements

The relevant Model Complaints Handling Procedures published by the SPSO across each sector require organisations to have in place a policy to deal with unacceptable actions.

The Model CHPs do not prescribe a particular policy or approach. As a minimum, we would recommend that organisations should be able to demonstrate:

- that a policy is in place and is available to staff;
- there is a procedure in place for logging incidents and communicating decisions to customers which fall under that policy;
- customers are notified of a right of appeal;
- there is regular management review of the use of the policy; and
- it can be demonstrated that, when required, reasonable adjustments are being made.

It is for each organisation, based on their own experience and needs of their customers and staff, to define what may be regarded as unacceptable behaviour and it is recognised that behaviours that are deemed to be unacceptable may differ across different organisations. The SPSO's policy and the definitions in this guide may be a useful starting point and may be adopted, however, organisations will need to consider whether these are appropriate to their business and also what that would mean in practice.

Recording and monitoring

It is vital that any decisions made in respect of managing unreasonable behaviour are based on accurate, reliable and appropriate information. Maintaining good quality records is essential, and a clear audit trail will prove vital in the event that any decisions are challenged or further information is requested.



Organisations should ensure that staff are aware of organisational requirements and best practices regarding the recording of telephone discussions which are abusive, offensive, obscene or threatening. Staff must always ensure an appropriate record of these calls is made. This helps to inform the decision making process should any action to be taken as a result. If a written note is kept, the note should document the discussion, using, as far as it is possible in the exact words used by the caller. If calls are electronically recorded, provision should be made to ensure that any abusive calls can be accessed and stored. Staff should be made aware that without this sort of detailed record-keeping it may not be possible to take effective action to manage the unacceptable behaviour. The record of the problem behaviour should always be factual and unemotional. Staff and organisations should be aware that this information may be released, for example, under data protection legislation or to SPSO in our examination of a customer complaint. Policies should be in place to ensure that there is clarity about how and where these records are kept and also to allow for the review of decisions to limit contact. Records should be kept in a way that staff will not come across abusive or upsetting language without warning.

Moving towards best practice

The experience and requirements of each organisation will vary but we would recommend that organisations should consider the following:

- Demonstrating clear ownership at a senior level so that staff feel confident and empowered in using the policy. This could be demonstrated by regular communication to staff of how the policy has been used appropriately.
- Providing support and training for individual staff who may face difficult situations whether covered by the unacceptable actions policy or not.

- Providing clear information not only to staff but to the public to allow them to understand what behaviour may be unacceptable and also allowing them to raise any concerns, particularly around any requirements they may have for reasonable adjustments.
- Proactively considering the impact of technology such as social media in terms of how this can be used inappropriately and whether the policy needs to reflect this.

Reasonable adjustments

All members of the community have the right of equal access to the complaints handling procedure. It is important, therefore, to be clear that any policy on unacceptable actions does not preclude the need to ensure that any service provided is accessible to all on an equal basis. There is a requirement to consider whether you need to make reasonable adjustments to your service to enable a person to make a complaint. This may mean it is necessary to respond differently to individuals who have genuine access requirements.

Organisations are often concerned about how to approach behaviour which they think may be occurring as a result of a mental health problem. Staff who are not clinically qualified should never attempt to make a diagnosis of a mental health problem or to make assumptions about what the impact of a particular condition may be on an individual. It is also not appropriate to consider behaviour related to underlying mental health as a category to be explicitly dealt with in a general, unacceptable actions policy. Each case will be different and the organisation has a responsibility to the individual. In the resources section we include reference to some specific materials on mental health which may help provide some assistance.

Freedom of information and Data Protection

This guide looks at behaviour in the complaints process. You need to bear in mind that you will have other legal responsibilities. In particular, a member of the public who is restricted from contacting you about a complaint is still entitled to make Freedom of Information, Environmental Information or Subject Access requests. It is important that staff understand and are able to identify when other legal obligations need to be considered when responding to a complaint.

Section 2 – Difficult for you

This section is aimed at individual staff and helping them to deal with behaviour that they find personally difficult.

There are many reasons why a person may find behaviour difficult. We can all experience difficulties when we do not know how to respond to behaviour which is unexpected or challenging. Sometimes we can be unsure about how to respond to behaviour which confuses us or seem odd or disproportionate. We may find behaviour difficult when it does not conform with the standards we expect or when it does not meet our values.

It is important to remember that there is a strong subjective element to this. Behaviour that you may find particularly challenging may not present the same difficulties to some of your colleagues.

Please remember that if you are in a situation where you are finding behaviour or your response to that behaviour difficult to manage, it is possible that you will be reacting in a way that may make the situation worse. In these circumstances, you may still need to end the contact and seek support even if the behaviour is one you would normally expect to manage.

Identifying behaviour you can manage with training or support

This category refers to behaviour which you can manage using interpersonal skills. By manage we mean deal with appropriately. In this context difficult refers to anything which is making communication a problem. This could include behaviour which you may readily identify as difficult, such as anger or distress, but there may be other factors that can make communication difficult but which are less easy to identify.

The types of behaviour you may encounter when dealing with complaints and could manage with support include:


- anger
- distress and upset
- confused, illogical communication
- someone raising concerns they may be a harm to themselves
- repetitive and circular communication
- unpleasant language which is below the level of abusive

The aim is to make your communication more effective and work better for both you and the member of the public.

This is about the ability to be professional and to be able to deal with the public in difficult, but not threatening or dangerous situations. These are situations which may escalate and you should bear in mind that if at any point the situation becomes threatening or dangerous, you will need to move to a zero tolerance position and end the contact.

This section looks three topics which can help. It concentrates on spoken communication but there is a specific section on dealing with written communication. The three topics ('basic assertiveness skills', 'know your trigger points' and 'have strategies') all work together.

In order to build confidence in this area we would expect that you should have training in or be able to use **basic assertiveness skills** - that you would have spent time working out what you find stressful and difficult and that you **know your trigger points** - that you have developed some ideas about how you might deal with different situations, and therefore you **have strategies**.

 You may have colleagues who have particularly good interpersonal skills and you can learn a great deal from observing how they deal with difficult customers.

After dealing with a difficult customer, it is important to debrief. Share experiences which have worked well or badly. If it is possible to do so, try to take a break and discuss difficult experiences with a colleague before your next contact. This will help to make sure you do not carry one bad experience into your next contact with the public.

Basic Assertiveness Skills

Many people who deal regularly with the public already have skills that enable them to manage some difficult conversations. They may not have had training or formally recognise these as assertiveness techniques. Training and techniques are not a substitute for good people skills. However, they do allow you to consider what is already working for you and what techniques may help in areas you may have trouble with.

The SPSO e-training models www.spsotraining.org.uk provide specific training to support staff in handling complaints through your organisation's Complaints Handling Procedure. Organisations can also develop their own training by encouraging staff to share what has and has not worked for them.

Below are some basic descriptions of the most common techniques and when these may be useful. These are all used in an interactive way in our e-learning modules.

Basic Assertion

A straightforward (unemotional) statement expressing your wants, needs, opinions, beliefs or feelings. For example:

'I need to discuss your complaint with you.'

'I feel you are not being fair with me, as I am trying to help you.'

'I will be able to do that later today.'

Use this technique at the beginning of a conversation or whenever you need to raise an issue:

'Mr Jones, I am not happy that you are shouting at me.'

If at first you don't succeed ... you can repeat a basic assertion to re-emphasise a point or where you feel you are being ignored.

One tip is that if you are finding it hard to do this, it may be because you are unclear what your role is or what you can or cannot do for the person. 'I don't know' is basic, and important assertion. You can say 'I'm sorry I don't have the answer to that right now. I will find out and call you back, or arrange for someone else to call you'. If the true answer is 'I don't know', then do not try to be helpful by guessing at the answer as this will almost always be counterproductive.

Broken Record

Calmly repeating what you want or what the position is again. This is a very useful way of keeping your cool and can be helpful if someone is struggling to keep to the point or is not hearing something which it is important. about something you don't know the answer too or where you have already given an answer. The aim is to refocus the individual on the key points by your persistence. Normally three repetitions are enough. Try decreasing the volume of your voice each time in face-to-face conversations.

If after three repetitions this has not worked, you will need to move on to another technique as the repetition to remain focused on the point can begin to sound aggressive and may escalate the situation.

Empathetic Assertion

A statement that contains an element of empathy but at the same time still expresses your own needs or wants. Use this technique when the other person holds a different view to you and feels very strongly about his/her view. You are letting them know that you understand their position.



'I appreciate this is a very difficult situation for you Mr Thompson and I am trying to help you by arranging a visit as soon as possible.'

'I can hear you are frustrated. In your position I would be frustrated too. I will try to get you the answer as soon as I can.'

Avoid the use of 'but' in the middle of the sentence, it sounds too negative. Break in into two sentences if necessary:

'I realise you feel you have been let down, Mr Brown. You had previously agreed to let us know as soon as you had a problem.'

Discrepancy Assertion

A statement that points out an inconsistency in someone's position or actions but without blame or criticism. It is important to be as factual as possible and not express an opinion on which version of events etc is correct. This technique is useful when you are getting contradictory information and are trying to work out a solution or compromise. It can be helpful if you take the burden of the confusion on yourself. For example, 'I'm sorry I think I've got myself confused. I've noted down your bins should have been picked up on Tuesday and I think you just said Monday can I check when you were expecting this to happen?'

It is also useful if you want to check whether someone has deliberately ignored a previous agreement or advice or has just misunderstood what was agreed or said. Either way the original agreement or advice still stands! 'I'm sorry I thought we agreed you would not call me again until next week; has something changed?'

Negative Feelings Assertion

This technique is a way of expressing your own concerns or apprehensions about the situation/conversation without becoming judgemental or blaming the other party. You must:

- state your case clearly
- state how you feel
- state what you want to happen.



'Mr Smith, please do not use abusive language. It makes me feel uncomfortable and is preventing us coming to a solution. I need you to stop now.'

Consequence Assertion

This technique can be used in conjunction with other techniques to explain what will happen if the undesired behaviour continues. **WARNING:** this can come over as very aggressive or threatening. Make this a positive statement to begin with rather than a negative one, for example:



+tive: 'If you stop swearing at me, I can help you and we can resolve this calmly and quickly.'

-tive: 'If you don't stop swearing then I will put the phone down'

In starting out with the positive consequence you are letting the other party know you would prefer to cooperate. Ultimately though, you may need to make it a negative statement and carry out the action you have warned about.

Know your trigger points

Everyone reacts differently to different situations and by trigger point we mean situations which will lead to a heightened reaction from you. This is perfectly normal.

There is a subjective element to what we find difficult. You should be very honest with yourself about what you personally find difficult. This may surprise you as it may not be the same as your colleagues. In this context, by difficult, we mean a situation where you are more likely to react emotionally, or which is more likely to worry or concern you later.

If you think about conversations where you have later thought 'I wish I had said' or ones where you felt you needed a break before the next conversation, you may find a common factor.

A trigger point, then, is behaviour/language that consistently irritates or annoys you, or that you find offensive or makes you feel vulnerable and unsure what to do. You will have an emotional reaction. You may feel flustered or angry. You may also find you tend to prejudge the person behaving in the way you find difficult.

When this happens, you are more likely to say or do something that later you will feel was unhelpful or made matters worse. Even if you do handle the situation well, you may find the contact has been stressful and/or draining and you have less energy for the next contact.

In training we have been told that some people find it particularly difficult to deal with (ie they react emotionally to):

- patronising or sarcastic language
- someone being rude about colleagues
- certain phrases that have been repeated to them too often, for example, 'I am a council tax payer', or 'you are a public servant and are supposed to serve me'
- someone who is very distressed and crying or threatening to self-harm
- someone they think may be telling deliberate mistruths or is being manipulative.



It is unlikely that the person who pressed your trigger point knows this is a particular issue for you. They might not even be aware they are acting in a way that someone may find difficult. There could be reasons a person is behaving in this way and you do not know enough about their context to judge this.

The first thing you need to do is to make sure you are not labelling the person. If you find you are defining the person as difficult; or obnoxious; or condescending; or weak; or needy; or over acting in your head that is likely to inform your reaction to them and make that interaction more emotional. You should also be wary of becoming overly involved with someone who you genuinely feel sorry for. This can lead to you feeling overwhelmed by the difficulties the other person is facing.

Empathy is very powerful and letting someone know you would feel the same way or accept the feelings they are having may be appropriate, but if you want to help you need to be able to remain calm and clear-headed.

Positively, this can help the other person by creating a sense that there is a safe place for them within which they are being listened to. In some circumstances, people can feel frightened by feeling out of control. Staying calm for those people can help them to calm down.

In less emotionally charged situations, and when it comes to particular phrases that may annoy or irritate you, remember that this may well be the first time they have said this and it may be something they are only saying because they have reached the end of their tether.

Once you have identified your trigger points, you need to make active efforts to relax and stay calm in those situations. You may also need to debrief. For example, you can share with colleagues

that you find something upsetting or annoying. This may help you to release and manage the emotions. For your colleagues, if they do this, you should empathise with but not reinforce the emotional reaction.

In dealing with trigger points it can be useful to have a strategy or approach in mind, we look at these in more detail below.

Strategies for dealing with difficult conversations

We set out below some possible approaches to a set of different scenarios. These are artificial. Conversations need to be personal to be effective and standard or clichéd phrases will likely have the opposite effect to the one you intend. These are not meant to be used word for word but it can be helpful to have some prompts or to be aware of language to avoid.

Staff in the SPSO have access to prompt cards suggesting strategies and approaches that they can use when on a difficult telephone call. This can help to build confidence particularly for new staff who may worry they will forget what to do or what information they need to provide to the customer. The strategies below draw on that experience.



If there are areas you are nervous about - you can print out a prompt or have a selection of scenarios to hand.

<p>Basic tips for all situations you find difficult</p>	<p>Make sure you stay calm. You can use some basic body awareness techniques – these apply to all strategies below.</p> <ul style="list-style-type: none"> • ensure your breathing stays steady • pushing your feet into the ground can make you feel more in control • keep your voice low; the higher the pitch the more distressed you sound. • try to keep the pace of your voice steady do not speed up or increase tone
<p>The person is shouting</p>	<p>Let the person know the problems they are causing and that if they stop you will be able to help.</p> <p>'Can I please ask you not to shout so that we can deal with this and I can try to offer you some help?'</p> <p>'I appreciate you are upset. It's difficult for me to follow what you are saying when you are shouting, if you can calm down we can talk this through'</p> <p>'I'm sorry you feel that way ... we can't solve the problem if you continue to shout.'</p>
<p>The person is distressed and upset</p>	<p>Make it clear you can hear the distress and upset. Check if they need time out to deal with this.</p> <p>'I appreciate this is very difficult for you/ I can hear you are becoming very upset. Would you like to take a break and I can call you back in five minutes?'</p> <p>or</p> <p>'I can hear that you are upset, would you like to take a few minutes until you feel able to talk more calmly? I can call you back if that helps?'</p>

The person is angry Reflect back that you can feel the anger; 'I can hear you are very angry'. You can empathise if appropriate, this is not the same as agreeing with their point of view.

'I understand why that would be upsetting'.

'I agree that would be frustrating.'

You may feel able to respect both views 'I understand your position and why you feel strongly about this'. We have looked at this carefully and we have come to a different view.

The person is going round in circles Reflect this:

'We are now going round in circles and this is not taking things forward'.

'Can I ask you some questions'
or
'Can I ask you to put this in writing'
or
'Can I ask you to [what you need to do next to progress this]?'

'I want to focus now on what steps you now need to take to progress your complaint'.

Or when you need to move to end the conversation.

'I am sorry, we are now repeating ourselves which is not helpful. I have explained what I will do next. I need to now ...'

The person will not stop talking Going silent will often prompt the other person to go silent too, when this occurs you need to be ready with a statement which takes the conversation forward.

'I now need to ask you some questions.'

'I need to let you know what I am going to do next.'

'I have noted the main points can I check those with you?'

'I need to take the information you have given me and go away to check this. I will get back to you by...'

'I have explained why I am unable to help. Can I give you details of the organisation who may be able to assist' [if this is a case where there is another organisation who can help that you can signpost to]

The person is making accusations or allegations Probing these sorts of questions means the person is not able to make allegations without justification. It can also help you to work out what is going on if you are unsure why someone is reacting this way. Avoid why questions which can be confrontational - you might consider what/where/how/when questions:

- What makes you think that?
- What has happened that makes you feel that way?
- When did you start thinking we weren't listening to you?

The person has said or indicated in some way they intend to hurt themselves

You should not attempt to hide from this. Check what you heard, this shows you have listened. You can show empathy where appropriate Then signpost to appropriate support.

'Let me just check what I've heard. Did you say that you are thinking about taking your own life? ...'

'I can't imagine how you are feeling just now and I can hear that you are very distressed ...'

You should signpost to appropriate support, for example, we may use this phrase

'We have a good partnership with the Samaritans, they are an organisation who are particularly skilled in offering support for people who are experiencing difficult / stressful times. I'd like to offer you their telephone number'.

If it is not clear you can still raise this:

'When someone is saying there is no point going on, feeling hopeless and withdrawing from family and friends, they are sometimes thinking about suicide? There are a number of organisations that can support you at this difficult time, would you like more information about them?'

Other tips

'We' messages can be helpful.

'We could look at it this way'

'How can we resolve this?' 'How can we move forward?'

Try to keep the pace of your voice steady do not speed up or increase tone

After the contact ALWAYS

- note and record the contact
- discuss with manager if the situation escalated.

Section 3 – Unacceptable actions

In this section, we consider situations where the impact of the behaviour means an unfair or disproportionate amount of resource is being used and also where the behaviour will need to be addressed as it may be becoming unacceptable. This section considers both how an organisation and individual staff members can respond to these situations.

We concentrate on behaviour which is about the impact on the key resource of staff or organisation. Managing the behaviour of customers who are unacceptably using too much of your time, can free up time to deal with other customers who also need your support. This section also considers the behaviours we find difficult at SPSO and how we respond to them.

The general approach to managing unacceptable actions is very simple and can be used to create policies, respond to an individual and deal with a broad range of behaviours.

The DESC Model

The DESC model is the most simple and effective one to use and all the ideas and suggestions below build around or on this.

D - Describe the behaviour

E - Explain the impact of the behaviour

S - Suggest how the behaviour should change

C - Confirm what will happen if the behaviour changes and, what will happen if it does not.

The first two steps are very important. In particular, they may help the person to understand their behaviour is having an impact they do not intend. It also provides the opportunity to explain the reason for their behaviour. This could allow you to work together to put in place a suggested approach which is acceptable to both of you.

We will first look at some general guidance and then set out how this works in practice by using SPSO's own policy as an example.

Identifying and describing behaviour

You should always be able to **Describe** the specific behaviour and **Explain** why that is a problem. It can be helpful to also think through as an organisation what behaviour, in general, causes you problems and why. This helps to ensure that you can fairly and consistently identify behaviour which has a negative impact on you or your organisation's resources. It is worth noting that such behaviour can be a one-off interaction or can be the result of a build-up of communication over time.

SPSO have identified some types of behaviour that cause us problems in our Unacceptable Actions Policy. This ensures we can identify the behaviour objectively and impartially. It also helps us to describe and explain to people why these behaviours are unacceptable for us. The level of resource that you use for an individual complaint will vary from one organisation to another depending on the role of your organisation and the substance of the complaint. This means that you can take into account your organisations size, capacity and role when assessing the impact of the behaviour.

You should also think about the individual and why they may require more of your time. Remember not all disability is visible; the majority is hidden. Someone may genuinely simply need more time and, as referred to in the governance section of this guidance, organisations must always take into account their commitment and responsibilities to equality.

The benefits of pre-emptive action

It is possible to take steps to reduce the likelihood of difficult behaviour occurring. Ensuring the public receive timely and good information about what they can expect from the process can lessen the number of people who are contacting you because they are confused about what is happening or are unsure about what to do next.

When and how you provide this information will depend on your customers. The information you give has to be useful for them. The complaints you have already received and your experiences of situations which became difficult are a good resource for this. You can use this information to communicate your expectations of your customers. Additionally, if people are coming to you with the same questions then you can pre-empt these by providing answers upfront.

It will not work in all cases but you can help reduce some problems by letting people know:

- the timescales you work to
- what you expect from people who approach you
- what you can and cannot do.

You may also have policies which staff can apply to help to proactively manage impact. A simple example is that SPSO do not generally respond to copied correspondence such as emails/ letters sent to another organisation but cc'd to us. If this happens, we will return this and explain that we do not keep or store such correspondence. We need someone to contact us direct before we would become involved.

Making it easy for the person to access your organisation can also help reduce frustration and anxiety. Simple forms can be used to help people to clarify or set out their problems and what they would like to happen. The Model Complaints Handling Procedure requires organisations to clearly identify what exactly is the customer's complaint or complaints, and what they want to achieve by complaining. This helps to focus the process on the customer, which in turn, often makes the whole experience easier for them. Difficult processes or defensive responses, however, can help drive frustration which for some customers may be the trigger that leads to them behaving in ways that your organisation then needs to manage.

Putting DESC in to action

The SPSO currently identifies in our Unacceptable Actions policy four behaviours which can cause us problems.

1. contacting us too often or taking too much time
2. making unreasonable demands
3. refusal to cooperate
4. unreasonable use of the complaints procedure.

We will look at these in turn to show how the DESC model has been used to develop our policy and also how it can be applied in practice.

1. *Contacting us too often or taking too much time*

Describing

- identify what you would normally expect
- identify the level you are experiencing
- ensure you have considered whether there are additional needs which mean additional support is reasonable.

Explaining

- What: be clear why this is a problem, explain the impact this may not be clear
- When: act early before behaviour becomes an established pattern.

Let's look at this in more detail.

Describing the problem

Identify what you would normally expect - The first step is to identify clearly what level of interaction you would normally expect. This may also be part of your pre-emptive approach above. The level of contact you have with an individual will depend on the service you provide. This can vary and you may find that while it is appropriate to have very regular contact about the direct service (particularly in a health care setting), the customer could well require a different level of contact with the person handling their complaint.

Identify what you would normally expect of your customer

This is useful because it gives you a framework to work from when you are considering whether a particular situation is problematic. There is, however, a difference between what is normal and what is the maximum you allow. For example:

- some individuals will exceed the average without this being a problem; their complaint may be more complicated and the extra contact may be useful
- some people will have specific communication requirements which you have to take into account and that may take more time
- some complaints are more sensitive
- some people find the process very difficult and may need more support.

The person handling the complaint may feel that, while normally the resource being used is unreasonable, in this case it may not be because of a number of reasons. It is helpful to note this on file so that anyone else dealing with the complaint does not take action to limit the level of contact without considering those reasons.

Identify what would be a problem

Once you know what you generally would expect you can also set out more clearly what contact in excess of that will cause you problems. Again this can reflect your role and your organisation's capacity. Generally, while you would not have particular difficulties with someone whose contact is a level above what you normally have you will be able to identify what would be excessive. The key point is to consider what behaviour affects your resources.



Be aware of your personal trigger points. If someone acts in a way that you find annoying or irritating you may be more likely than a colleague to identify their behaviour as unacceptable. You need to have a neutral way of identifying what is problematic. At SPSO, to ensure consistency and support for staff, we have developed a policy that sets out what we would generally find to be unacceptable behaviour. This is available to both staff and our customers.

As part of this process, organisations should ensure staff can share or identify problems early. For example: Can you quickly identify if someone is raising the same concern through multiple entry points? Or, can you quickly identify if someone is using up a lot of time of two or more colleagues, and the cumulative effect.

We use a specific leaflet to tell people what would cause us a problem. Here is an extract:



Sometimes the volume and duration of contact made to our office by an individual causes problems. This can occur over a short period, for example, a number of calls in one day or one hour. It may occur over the life-span of a complaint when a complainant repeatedly makes long telephone calls to us or inundates us with copies of information that has been sent already or that is irrelevant to the complaint.

We consider that the level of contact has become unacceptable when the amount of time spent talking to a complainant on the telephone, or responding to, reviewing and filing emails or written correspondence impacts on our ability to deal with that complaint, or with other people's complaints.

Do not delay

It is important that behaviour does not become established. It can feel very unfair to an individual who has been allowed to act in a way for some time to be told that the way they have been behaving is unacceptable and contact will be controlled. They can quite rightly feel aggrieved that this was not raised with them sooner or that no one explained this to them and may feel that the reason you are now labelling the behaviour unacceptable is not the behaviour but some other reason. It becomes very difficult at this point to find any way to rebuild the relationship.

Putting it into practice - Acting before it becomes a real problem

Once you are clear what will be unacceptable, you can spot early signs of this developing. This allows you to address the behaviour with the person before it becomes unacceptable. The advantage of raising the issue early is that you can do so in a more exploratory, neutral fashion. You can ask why the behaviour is occurring and that may well help you to solve the problem together with the customer. You should record that you have raised the issue. Any agreement you have come to with the customer, should be confirmed in writing by you to let the customer know you will honour this or to record any undertakings they have made. There are examples of how to do this in the putting it in writing section below.

Putting into practice - When the behaviour has become unacceptable

If this early contact does not work or is inappropriate because the specific behaviour has already become unacceptable, you need to make it clear why the behaviour is a problem and make a specific request that it change.

This can be done by telephone, in person or in writing. If you speak with the customer, you should though follow this up in writing to make sure they understand the next steps. While you can rely on the general terms of any policy held by the organisation, you need to specifically identify the particular behaviour and its impact.

It is important that you do not deliver the message that behaviour needs to change more than twice before acting on any of the consequences you have set out. If you do, this simply means that your customer will consider you are not telling the truth and that their behaviour is not having an unacceptable impact. This means they are likely to feel you are acting unfairly and for reasons of personal preference if you do need to put restrictions in place.

Dealing with unacceptable actions - suggested phrases and techniques:

As always, these will need adapted to suit your communication style and the needs of the customer in a real conversation. These strategies can be used in one conversation or used in stages across a number of contacts but remember it is important to stop negative patterns of behaviour becoming established.

You are receiving short but very frequent contact, with no additional significant information being provided Clarify why they are contacting you so often. There are a number of ways to do this:
'Since we last spoke what has changed? Do you have any new information?'
or
'Can you let me know why you are contacting me so often? ...'

Dealing with the response:

'I appreciate you would like an early resolution. The timescales we have are to allow us to look at this thoroughly and contacting me more often will delay rather than speed this up.'

'I will be in contact when I promised. Can we agree you will only contact me before then if something significant happens?'

If you think there is a genuine need for additional contact you can put an agreement in place for this:

'I know this process is making you anxious would it help if I arranged to call you at a specific time each week while I am looking at your complaint?' You can also commit to a time limit.

If the above does not work restate the position:

'We have spoken a number of times today/over the last few days. I have explained I won't be able to respond in detail until the end of next week.'

Explain the impact.

'Every time you contact me I have to take time away from dealing with your and other people's complaints.'

If you are not receiving agreement you should add:

'We have a policy which says if someone is contacting us too often, we can restrict contact. I don't want to do this so I would like to reach an agreement with you about contact.'

If this does not achieve the desired outcome:

'I am sorry we are unable to agree today about this. I would like to give you some time to think about this a bit more and I will write to you explaining why I am concerned about your contact with a leaflet/copy of policy explaining what steps we can take.'

The person keeps visiting the office The process is similar to the above. You could also advise them they have to book an appointment or what policy you have on meeting customers. You may need to put this in writing if an initial verbal explanation does not work.

The person is providing too much irrelevant information 'I am calling about the documents you sent me today. I am not sure how these relate to the matters I am looking at and would be grateful if you could explain this to me.'

'I appreciate you are concerned to make sure I have all the information I

need to make a decision. However, you have sent a large amount of information. I have reviewed this and it appears most of it is not directly relevant. Each time you send me more paperwork that is not relevant it prevents me spending time on your and other people's complaints. Can we agree that I will ask you if I need any additional information? ...'

'When you receive my response you will see what information I used to consider your complaint and we can discuss if I've missed anything at that point.'

Each call is very lengthy and detailed

Let the person know at the start of the call that you only have a limited amount of time. You may also reflect back if each contact is not progressing the matter.

'Last time we spoke, we talked about similar issues and I think we are spending a lot of time talking around the issue without this moving forward. The longer I spend talking to you on the same points the less time I have to investigate your and other complaints. I will contact you when our response is ready. Can we agree we will wait to discuss your complaint again then when you have seen our response?'

If you are not receiving agreement you should add:

'We have a policy which says if someone is contacting us too often, we can restrict contact. I don't want to do this so I would like to reach an agreement with you about contact.' If not achieved: 'I am sorry we are unable to agree today about this. I would like to give you some time to think about this a bit more and I will write to you explaining why I am concerned about your contact with a leaflet/copy of policy explaining what steps we can take'.

Some people do need more time. If this is the case you can manage this by agreeing times for calls in advance. This means you can give the person the attention they need without worrying that you need to end soon to deal with another issue.

The person has been contacting lots of different colleagues

'I know you have spoken to my colleague today/this week on the same point. I have explained I am looking at your complaint and have explained the timescales for response. Can I ask why you have been in contact with my colleagues? ...'

'My colleagues know I am dealing with your complaint and will refer to me to answer your questions. Can we agree if you have concerns you will contact me direct? If I am not here you can leave a message for me.'

If you are not receiving agreement you should add:

'We have a policy which says if someone is contacting us too often, we can restrict contact. I don't want to do this so I would like to reach an agreement with you about contact.'

If not achieved:

'I am sorry we are unable to agree today about this. I would like to give you some time to think about this a bit more and I will write to you explaining why I am concerned about your contact with a leaflet/copy of policy explaining what steps we can take.'

You should bear in mind any governance arrangements you have. At SPSO, the decision to issue a warning is usually made after discussion with a manager. Where you decide to issue a warning, you also need to consider how your colleagues will know about this as they will need to be aware of this if the behaviour transfers to them.

Putting it in writing

The same model applies to putting this in writing, when doing so, you should explain what they can do if they disagree with your decision. It is also appropriate to include a leaflet explaining the organisation's policy at this point. The sample letters below are to give you some ideas about what this might look like in practice.



Dear Mr Smith,

I am writing because you have emailed me on several occasions this week.

As I have explained previously the amount of contact you are having with this office is causing concern.

I am writing to explain that I am having problems with the volume of material you are sending me.

You have contacted me every day since we agreed I would look at your complaint. I appreciate this complaint is important to you but contacting me so often is preventing me from looking at your and other people's complaints. This means it has the opposite effect of the one you intend as it delays my consideration of your complaint and is unfair to other people. I need to ask you to stop contacting me in this way.

If you continue to contact me daily, I may need to restrict your contact to this office by refusing to answer your calls. This is not something we like to do but we have a policy in place that ensures we deal with everyone fairly. I enclose a leaflet about this.

I hope this letter and leaflet together explain why I need to ask you to change your behaviour.

Consequences in action

If the initial attempt does not result in changed behaviour you will need to move to formal restrictions.

When deciding what restriction is needed you should link this closely to the problem. For example, if someone is contacting you through lots of routes and that is causing you problems, you could restrict their contact to one point of contact. If someone is calling or emailing too often, you may restrict a method of contact. In some cases, you may combine these by insisting on one point of contact and only in writing, for example. Or one point of contact and by telephone.

You should always aim to put on the least possible restriction to manage the behaviour.

Here is an example letter for escalating the process:



Dear Mr Smith,

I wrote to you previously and explained that your behaviour was causing problems. I asked you to stop calling me continually, unless you had new and relevant information about your complaint.

Since then, your behaviour has not changed. I previously explained that this behaviour was preventing us from doing our work and was unfair to other people. I said that if this continued we may have to use our policy to restrict your contact.

Unfortunately, I have to tell you we have decided we have to restrict your contact. From today, staff will be told not to engage in conversation but end any call made by you.

[If they need emergency access you may add something like: You will still be able to contact our repair line. However, staff will be told they will not be able to talk to you about your complaint/this matter and will end any call if you raise that issue.]

Once again I enclose a copy of our leaflet which explains why we sometimes have to act in this way. If you are unhappy with this decision you can ask for it to be reviewed by my manager. The decision will remain in force until the end of that review.

[We will continue to provide care services and will review this decision to restrict contact every three months. If we consider that it no longer is required we will write to let you know we have decided to lift this restriction.]

2. Making unreasonable demands

There are times when you will need to say no to a request or a demand.

Pre-emptive action

For an organisation, there are usually common requests and it can be helpful for staff to know before being asked by a customer when and how their organisation would:

- agree to a meeting
- agree to a site visit
- escalate to a manager or other senior staff.

before they are asked by a customer.

For example, staff dealing with complaints should be able to answer:

- do we always allow meetings on request unless there is a good reason not to?
- would we consider a site visit and in what circumstances?
- would we usually visit someone at home and only not do so if there were good reasons?
- what level of flexibility do staff have, do they have discretion to act outside the normal policy without seeking authorisation?

Having clear answers to these questions means staff can provide accurate and consistent advice to someone making requests and that may be enough to prevent situations escalating.

Remember, it is unlikely that a specific request will always be unreasonable and there will be a need to consider whether an exception should be made.

Describe and explain

Again it is useful for organisations to set out what they would generally find difficult. We say this in our policy document:



A demand becomes unacceptable when it starts to (or when complying with the demand would) impact substantially on the work of the office

Examples of actions grouped under this heading include:

- repeatedly demanding responses within an unreasonable timescale
- insisting on seeing or speaking to a particular member of staff when that is not

- possible
- repeatedly changing the substance of a complaint or raising unrelated concerns.

Putting it into action

<p>The person wants you to respond to their timescale</p>	<p>'Can you tell me why it is important we respond by that date? ...' There may be some circumstances where the request is reasonable, for example where there would be significant repercussions if not 'I am sorry I know you would like a response sooner. It is important that we take our time to make sure we investigate your concern properly.' If needed you could add: 'I am afraid we would need a very good reason to cut the process short and you have not given me one'.</p>
<p>The person insists you conduct your investigation the way they would like you to do this</p>	<p>'I will look at your concerns carefully and consider what information I need.' 'At present I do not consider I need to take those steps. This is because I have enough information from you about the location, I do not need to check that information' or say whatever reason this is not possible, for example, it may be disproportionate. 'I will let you know in my decision the steps I have taken to obtain evidence and consider your complaint properly.'</p>
<p>The request continues to be made after you have explained this is unreasonable</p>	<p>Your approach will be similar to those in terms of too much contact.</p> <p>'I have explained why I am unable to do this. It is not helpful for us to continue to have the same conversation. If you are unhappy with this decision you can put your concerns in writing ... Meanwhile, I will continue to consider your complaint and respond by the end of next week.'</p> <p>At this point you may find the problem is the amount of contact and you should combine this with the strategies set out above.</p>
<p>The person wants you to look at a specific issue which is unreasonable/has a list of detailed complaints running to several pages and is unwilling to have them linked into fewer more manageable number</p>	<p>'I am sorry. I know you would like us to look into all your concerns. We are not able to do that because some of these occurred more than five years ago. What we can do is look at the more recent issues.'</p>

Putting it in writing



Dear Mr Smith,

I am writing in response to your letter.

You have said you would like me to respond to you by the end of this week. I have explained why this is not possible. Our complaints procedure allows twenty working days

for me to respond to your concerns and I will respond to you within that timescale.

I will continue to look at your complaint. I would ask you to wait until you receive the decision which should be with you by [date]. If, at that point, you are unhappy, you will be able to take your concerns about the way we have dealt with your complaint to an independent body.



Remember these strategies relate to the complaints process. It is not helpful to keep the person in the complaints loop by asking them to make a formal complaint about the way you are considering a complaint. However, if the request was made in another area of decision-making, the planning process for example, you can and should refer their dissatisfaction with that to the complaints process

3. Refusal to cooperate

Describe and explain

This situation is usually fairly straightforward to identify. Again, it may help to consider what your organisation expects from a person in terms of cooperation and to communicate this generally.



When we are looking at a complaint, we will need to ask the individual who has complained to work with us. This can include agreeing with us the complaint we will look at; providing us with further information, evidence or comments on request; or helping us by summarising their concerns or completing a form for us.

Sometimes, an individual repeatedly refuses to cooperate and this makes it difficult for us to proceed. We will always seek to assist someone if they have a specific, genuine difficulty complying with a request. However, we consider it unreasonable for a customer to bring a complaint to us and then not respond to reasonable requests.

You should also consider the ability of the person to co-operate. For example:

- if someone is capable of producing several pages of detailed analysis, it is reasonable to ask them to complete a summary or a complaint form which sets this out more succinctly
- it would be unreasonable to insist that someone with limited literacy skills puts everything in writing
- if a person makes allegations and claims to have evidence it is unreasonable to expect you to look at those allegations without providing you with that evidence
- it is likely to be unreasonable for someone to say they have more issues and then not provide further detail.

Deciding that someone is refusing to cooperate will be on a case by case basis, however, you can also let people know as we do in our policy document, what level of cooperation you will ask for.

Putting it into action

The person is refusing to cooperate	'Can you tell me why you would be unable to ... provide a summary, provide evidence.'
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This is to make sure you have checked there is not a good reason for the customer's action.

'I know you do not want too but I:

- am unable to proceed without this,
- will not be able to consider this unless I have a good understanding of your complaint;

- will not consider these allegations unless you provide the evidence you tell me you hold.

... I am sorry you do not want to provide me with help. This means I will not be able to take this further. I will put this in writing to you.

Putting it in writing



Dear Mr Smith,

Thank you for your telephone call.

As I explained, I need you to provide me with the information we discussed in order to complete my investigation. I would like to give you the opportunity to do this now. I will not proceed with your complaint until you provide this. If I do not hear from you by next week, I will assume you do not wish to proceed and will close your complaint.

I look forward to hearing from you soon with this information.

4. *Unreasonable use of the complaints procedure*

At SPSO, we identified rare situations where the way the complaints process was being used was, in effect, a way of harassing a public organisation or seeking to prevent them carrying out a legitimate decision. While this behaviour must be addressed, preventing someone accessing a complaint process is a significant step. Any such decision must carefully balance the impact of such a decision with the needs of the individual.

Describe and explain

Where this happens, we set out in our policy very clearly. We say:

Individuals with complaints about SPSO or a public service provider have the right to pursue their concerns through a range of means. They also have the right to complain more than once about an organisation with which they have a continuing relationship, if subsequent incidents occur.

However, this contact becomes unreasonable when the effect of the repeated complaints is to harass, or to prevent an organisation from pursuing a legitimate aim or implementing a legitimate decision. We consider access to a complaints system to be important and it will only be in exceptional circumstances that we would consider such repeated use is unacceptable - but we reserve the right to do so in those exceptional cases.

Describing exceptional

This again has to be linked back to the specific resources available. An example of when we may consider this is where an individual uses the complaints procedure in response to every contact and while these are new, they are trivial complaints.

It is important to identify whether the complaints look new or are simply an attempt to reopen a decision that has been made by either reframing or by seeking to prevent the work needed to implement the decision. For example, every social work contact leads to a complaint about the way that person was treated but this is effectively about the decision that has been made that they should be involved. If the person is repeatedly trying to re-raise the same issue by reframing the case then they are persistent and so we would not use this strategy because that problem can be dealt with more simply by another method.

Putting it in practice

Before considering using this very strong strategy, you should prepare a report that itemises all the complaints received over a reasonable period and include the topics and outcomes. This is to ensure you are taking an objective view of the position. The aim should be to give the person a

clear chance to manage this themselves by letting them know about the consequences of continuing to complain about certain issues. Only if the behaviour continues should you consider this restriction. You do need to communicate appropriately with your decision always being confirmed in writing to ensure the person has a record.

The complaints process is an important safeguard, therefore, any decision to restricts access to it requires the highest possible sign-off.

Putting it in writing



Dear Mr Smith

I am writing to you to set out the problems we are experiencing with the way you are communicating with our organisation.

Since last August, you have complained to us 27 times. I set out below, a list which shows when you complained, about what and the outcome of each complaint. We have either not upheld your complaints or only upheld on minor points.

I appreciate the complaints you have raised are important to you. However, this organisation has a responsibility to use the resources we have fairly and I consider that responding to all of your regular complaints is now becoming disproportionate and means you are receiving an unfair amount of our resources.

Your complaint about your care which is the main reason you are unhappy with this organisation was considered last August and you were told of your right to approach the Ombudsman.

While the complaints you have raised are technically different from the original complaint, they are closely related and I consider they are attempts by you to reopen that original issue.

I need to ask you to carefully consider your use of the complaints process. I enclose a leaflet which explains that in some very rare cases, we can limit access to this process. I do not wish to do this. However, it is not a fair use of our resources to continue to provide you with a full response to each contact. If you continue to contact us about this issue, we will review each complaint but only respond to those which we consider are in the wider interest for us to consider or which have a significant, new impact on you.

Consequences in action



Dear Mr Jones,

You have submitted a new complaint.

I wrote to you previously and explained the problems we had with the way you were using the complaints procedure. I consider that this new complaint is continuing the pattern of behaviour we asked you to change.

I have now decided to restrict your access to the complaints procedure. This means that while you will still be able to submit a complaint, each complaint will be assessed to decide whether there is a public interest or a new significant impact on you. If there is, we will write to tell you we will consider your complaint. If we consider that there is not, we will not consider your complaint and you will only receive an acknowledgement noting the correspondence.

I am sorry to have to take this step. I enclose again a copy of our leaflet which explains why we sometimes have to act in this way. If you are unhappy with this decision you can refer to the Ombudsman.

[While we are restricting access to the complaints procedure, we will continue to provide you with services and will review this decision to restrict contact every three months. If we consider that it no longer is required we will write to let you know we have decided to lift this restriction.]

Section 4 - Persistence

The problem of persistence

Persistence should not be a skill that someone who has been let down by a public service needs to exercise in order to be heard. That said, there are well documented instances where significant public injustices were only finally highlighted and understood as a result of the persistence of a small group of individuals.

Yet persistence is often seen as a significant problem in the complaints process. Organisations tell us they find it difficult to deal with. They are unsure what to do when someone who has completed the complaints process continues to:

- correspond on the same point
- repeatedly try to raise the same issue using new arguments or claims they have new information and is supplying copious documents
- pursue completed complaints by approaching elected representatives
- use more than one route to raise the same issue.

We have also been told that organisations are unsure of the process to handle a person who constantly questions the action and decisions of the body but, refuses to enter the formal complaints process and insists they are simply seeking clarification.

When we speak to organisations about this, they usually see it as a problem created by the individual. However:



The decision of an individual to disagree with you is legitimate as is their decision to refer matters to elected representatives, or to pursue their disagreement by approaching external organisations and agencies. The use of their own energy and resource to continue to pursue an issue important to them is a matter purely for that individual.

This means it is not appropriate to use an unacceptable actions policy when the only issue is that an individual is persistent.

BUT

- you are responsible for the resource and time your organisation puts into dealing with the individual; and
- if you have reached a final decision, you do not need to continue to explain that decision and it may be unhelpful both to the organisation and to the individual to continue to try to do so.



You cannot prevent people disagreeing with you. You can and should prevent situations where unhelpful, circular correspondence occurs and you both restate the position in different ways meaning both you and the complainant get stuck in a correspondence loop.

Preventing the problem in the first place

There are steps which can be taken to help prevent people getting stuck in loops of contact and response which do not take the matter forward. You will see that most of these are also simply good complaints handling techniques.

The first of these is keeping the complaints process simple and ensuring it operates well.



If someone finds it difficult to access a process or make a complaint, you have already used their resources without any benefit to them

If the answer to the complaint is no, it does not help to say this to someone three times at three different levels of management before they can ask an external organisation to look at the complaint

The model complaints handling procedures limit the amount of times an individual needs to raise concerns before they can take those concerns to an independent external body. This helps them to move their complaint forwards.

Make sure you have a clear understanding of the complaint at the start of the process. A conversation where you talk through the complaint and agree what is important to that person and what you are looking at will help to avoid the situation where someone has to repeatedly complain because they don't feel you are getting the point.

It is also important at this early stage to make it clear what you can and cannot achieve for that person. If they have unrealistic expectations or are unsure themselves what outcome they want, they are unlikely to be happy with any outcome.

Clarity in the decision

A clear, direct and personalised answer can either help someone accept your decision or help them to identify where to focus their energy next if they remain unhappy. Clarity in the decision means that it is easier for both the organisation and the person to understand where any outstanding disagreement exists. This should include letting people know what evidence you have used, and what you have done to investigate their complaint. This may allow them to disagree with your decision while accepting the process was fair. This is particularly important if you need to have an on-going relationship with the individual.

How to say no!

Organisations who are aware the person may be disappointed with a 'no' often avoid being clear and this, in turn, can lead to confusion and generate further confused contact. If the answer is 'no' being clear and letting the complainant know sooner rather than later that the outcome is negative can help. It is good practice to call someone before they receive the written response. You can defer detailed questions until they have had a time to absorb the decision letter but this forewarning can help them to actually absorb the information better. This means subsequent questions from the customer may be better framed and you can provide a better response. This can help you to focus on any genuine outstanding issues rather than getting stuck in a loop.



If you feel nervous about this consider using language like:

I wanted to call to let you know I have reached my decision. Having spoken to you at the start of the process, I know you will find it disappointing.

I know you will have a lot of questions, I can give you a general idea of the reasons behind the decision but to be fair to you I would ask you to take your time to read through the letter and I will be happy to answer any more detailed questions then.

It is not possible to ensure that everyone who complains will agree with your decision. If you communicate well and are transparent they are more likely to accept they have been treated fairly even if they still disagree with your decision and wish to pursue that with an external organisation.

What to do if you are dealing with someone who is being persistent

If someone disagrees with an organisation at the end of the process, there is no need to continue interaction unless there is some clearly, defined benefit.

It is appropriate to provide additional explanation or answer questions but be sure that it is clarification that is being sought. If clarification is sought more than once consider whether it is actually an attempt to reopen the complaints process.

It is appropriate to reopen the process if the person has new evidence or a clear indication you have made an error. Providing clarity in your decision will help you and the complainant to focus on this.

However, if you are in contact more than three times after the process has concluded, and no change has been made to the decision, it is probably time to end the contact on that point.

The disagreement is not unacceptable and you do not need to label the behaviour as an unacceptable action. You simply need to clearly refer the individual to the next stage in the process if there is one (most organisations have an independent body they can refer the complaint too) and let the person know you will not respond on the complaint again. At this point, if you have said you will not respond, then you should ensure that this happens.

Make sure that you have identified the correct problem

The decision to engage once a process is concluded is completely within the discretion of the organisation and the decision can be made to continue or not continue contact.

Often persistence is confused with other issues, for example, an individual who is contacting a body too often or in an aggressive way. It is important to make sure you have identified what the problem is and respond to the specific behaviour that is causing the problem. It is important to remember it is the behaviour and the impact on your resource you need to deal with. It is preferable if people can agree with you but everyone has the right to their own views, disagreement in itself is not a problem.

<u>A person is repeatedly asking questions or for more information but is refusing to enter the complaints process</u>	<u>You can use variations on the strategy for someone who is contacting you too much. You may need to make it clear you have done all you can and if they will not engage with the complaints process, you will no longer respond to questions about this. Remember they do still have their right to make FOI/ Data access requests, therefore, this can only apply to requests for comment or further clarification.</u>
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<u>The person has asked an elected representative to make the same complaint on their behalf</u>	<u>You simply restate the decision you have already made to the elected representative and let them know you have informed the person of their rights to take this further. It is appropriate for a representative to support a person in making a complaint. However, once the decision has been made and unless the representative has new evidence or information, there is no reason to change your decision simply because someone is writing on their behalf; indeed it would be inappropriate to do so.</u>
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<u>The person has been contacting lots of different colleagues</u>	<u>'I know you have spoken to my colleague today/this week on the same point. I have explained I am looking at your complaint and the timescales for response. Can I ask why you have been in contact with my colleagues? ...'</u>
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'My colleagues know I am dealing with your complaint and will refer to me to answer your questions. Can we agree if you have concerns you will contact me direct? If I am not here you can leave a message for me.'

If you are not receiving agreement you should add:

'We have a policy which says if someone is contacting us too often, we can restrict contact. I don't want to do this so I would like to reach an agreement with you about contact.'

If not achieved:

'I am sorry we are unable to agree today about this. I would like to give you some time to think about this a bit more and I will write to you explaining why I am concerned about your contact with a leaflet/copy of policy explaining what steps we can take.'

The person has completed the process but is now contacting different agencies to pursue their concerns about you. This may lead to multiple contacts from those agencies

It is appropriate to discuss the outcome with someone or to provide some clarification. You should not normally expect to have to do so more than once or twice. If you have done this, you should remind the person that the letter has informed them of their right to approach an independent body. You may want to use variations of the following.

'I hope this additional clarification is helpful. Our consideration of your complaint is now at an end and will not be reviewed by us further. We have told you of your right to approach the SPSO and I include their contact details again.'

'Thank you for your letter. Your disagreement with our decision has been noted on file. Having done so, I have to explain that our consideration of your complaint is now at an end and this complaint will not be reviewed by us further.' [referral to SPSO or other body]

'Thank you for your letter. I appreciate you remain disappointed with our decision. As you know, our consideration of your complaint is now at an end. We will be happy to consider any new complaints but will not consider this complaint again (in some cases it may help to detail exactly what that complaint is).' 'In line with our normal procedures, if you write to us again on this matter, we will file your correspondence but will not acknowledge nor respond [or will simply respond with an acknowledgement]. This is because it is not helpful to let you think we will review this again.'

The person is sending you lots of detailed but irrelevant information

'I am calling about the documents you sent me today. I am not sure how these relate to the matters I am looking at. I am considering xxx.'

'I appreciate you are concerned to make sure I have all the information I need to make a decision. However, you have sent xxx amount of information. I have reviewed this and most of it was not directly relevant. Each time you send me more paperwork that is not relevant it prevents me spending time on your and other people's complaints. Can we agree that I will ask you for any information I need? ...'

'When you receive my response you will see what information I used to consider your complaint and we can discuss if I've missed anything at that point.'

The person has completed the complaints process but is unhappy and wants to raise the same issue with you again

You may have to respond to a number of different agencies. You need to make sure that your response is co-ordinated and that whatever route is used, your response is consistent. This would include consistently changed, if you do identify a problem as a result of external contact.

The person insists you need to consider new arguments or new evidence

The first time or the second time this happens, you should have a look to see if this is new and significant. It is not enough that this is new, it needs to make you feel your original decision has been undermined by this.

Remember the other strategies can be used at this stage too, and if someone insists they have new arguments or evidence, you can insist they present them in a way you can process them.

'I have reviewed the points you consider to be new evidence. Thank you for agreeing to set these out in summary form, that has been very helpful. I know you will be disappointed to learn that I do not consider the points you have made to be new, significant information which would lead us to review your complaint. As you know, you can ask the SPSO to consider your concerns and I repeat their details here'

'You have asked me again to consider new information. We have reached our decision on your complaint and have done so on the basis of the best evidence available to us. I have also reviewed the evidence you provided recently. I have explained your right to approach the SPSO and do not intend to consider this matter further.'

Related issues

Using multiple agencies

Organisations will sometimes find it difficult to manage situations where a person uses multiple agencies or representatives in order to pursue a complaint.

You should always remember that it is we (as civic society) who have set up all of these systems and individuals may be being told by organisations 'we can deal with issue A but cannot deal with issue B, that is the responsibility of C' which means they believe they do need to contact the different organisations.

Individuals do have the right to enlist the help of elected representatives.

In itself, there is no need to change the decision or undertake a new investigation because a new representative or organisation is involved. Good complaints handling should mean you can provide evidence of the investigation you have already undertaken.

The enquiry that is really a complaint

If someone is choosing not to complain but clearly has a complaint in line with the definition of a complaint contained in the organisation's CHP, and is seeking simply to avoid the complaints process, the organisation should direct to the complaints process.

Individuals can genuinely be concerned about the personal impact of complaining. Reassurance that there will be no negative impact may help.

Ultimately if the individual does not wish to engage with the complaints process, and advice and information has been given, the organisation will need to consider what additional benefit there may be from continuing to correspond. They should take into account the need to ensure fair and proportionate use of their own resources when they do so.

In some cases, it may be appropriate to refuse to deal with the issue further if the organisation has already attempted to deal with it as an enquiry and this has not resolved the matter. Organisations should inform people that if they do not engage with the complaints process they may be losing certain rights. Complaints can normally only be brought to us within certain timescales. The model CHP also includes a time limit of six months for initially bringing a complaint to an organisation.

Persistence and the special case of policy decisions

This section has so far only addressed the issue of persistence in the context of a complaints process - this is a process with a clearly defined entry and exit point and almost all organisations in Scotland will also be able to signpost an individual to the next, external stage, if they remain unhappy.

Individuals and groups who do not wish to complain about an individual decision or situation, but plan a campaign in order to change policy are in a different position. There is still a need to ensure fair and proportionate use of resource and so unacceptable actions policies can be used to manage levels of contact. However, the decision not to engage with campaigners (whether individuals or groups) is ultimately a matter of judgement.

Staff in organisations need to be able to identify the difference between someone complaining and someone seeking to engage politically. It can be difficult to make the distinction as some people may wish to change a law or policy following an unsuccessful complaint because they discover the reason they could not have the decision changed was as a result of law and policy. It is important to keep complaints and the political process separate. Again, clarity in your letter with the decision can help individuals and groups be clearer themselves about the next steps they wish to take. It may also be helpful to check what they are trying to achieve in their contact.

When it is clear that individuals and groups are seeking to influence law and policy and are now campaigning rather than complaining, it is appropriate to ensure campaigners are signposted to political routes. For example, you can inform them how to contact elected representatives who may be in a position to make the changes they require. It is for those elected representatives alone to decide how much time they wish to put into engaging with such individuals and groups.

Section 5 - Zero tolerance

Certain behaviours are never appropriate in a work, or in some cases, any setting. It is important to be able to identify this, and to be aware that it may happen unexpectedly when contact with someone has been going well. You should also note that while all the behaviour listed below is considered to be unacceptable, the response you choose may vary and you remain in control of deciding how to respond in each situation.



The dangerous situation

If you feel you, or others, are at immediate risk, you need to take quick and decisive action.

There are skills which can help you de-escalate situations and may be helpful in emergencies when you feel someone's behaviour is becoming dangerous to you or others. One example is the three D's which encourage you to Divert, Deflect, Distract.

This may allow you time and space to move to safety, to get help, or to help the person calm down. If you do have to do this, the incident should always be logged in case this is a pattern of behaviour you need to deal with. You should always de-brief with a manager or appropriate senior colleague after any significant incident.

Identifying behaviour that could fall within the category of behaviour you should never tolerate

There is a wide range of types of language and actions which you need to consider when deciding whether behaviour has fallen into the Zero tolerance category. Most organisations have a Zero tolerance policy and should ensure that staff not only know this but that staff know at what point behaviour would be regarded as intolerable by the organisation. Below are some categories of behaviour that it can be useful to have in mind when developing a policy and also when discussing such behaviour with staff.

Physical violence this is the most obvious behaviour and will always fall under this category.

Threats

These can come in different forms:

- Direct threats, like physical violence, a direct threat of violence is never acceptable
- Indirect threats, this can range from statements which are very close to a direct threat for example, 'I know where you live' to much more vague suggestions and hints and may be as much about the tone used as the words themselves. If you feel at risk, you should always take steps to ensure you and others around you are safe.
- Threatening posture or body language. Sometimes it is not the words but the posture or body language that is threatening.

It is possible for behaviour which is not direct to be no less threatening. For staff it is important that they know and understand that if they feel threatened, and at risk, they do not need to maintain the contact simply because a specific direct threat has not been made.

- Threats to others. These are always unacceptable and will need a response. You will need to consider informing the person threatened and/or the police. Individuals should not be able to make threats to others without consequences and staff should not have to listen to detailed or aggressive threats to others.

Abusive or degrading language

This includes language which is personally insulting, for example, allegations of criminal behaviour, or sexist, racist, homophobic, language which is directed to you or to others. It would include abusive name-calling ie the person swearing directly at you aggressively.

Please bear in mind, however, swearing in a casual context would not necessarily be regarded as abusive or degrading to the extent of requiring a Zero tolerance approach. You may also be able to manage some situations where allegations are made about competency that are not at the level of abusive or degrading. This does not suggest unpleasant language is acceptable but that, in some cases, it is possible to deal with this behaviour rather than using a Zero tolerance approach.

Some Strategies and techniques

Physical violence

Contact should be ended immediately and you need to make sure you and your colleagues and anyone in the immediate area are safe.

People can be unpredictable. You should ensure you are familiar with all the exits from meeting rooms, that you are always closest to the exit and you know the location of any panic buttons. Your organisation may have specific advice and guidance for home visits and also for certain office locations. You should always follow these.

Threats

As noted above, there can be a range of types of threat and below are some scenarios and suggested responses. These should only be taken as a guide. If you feel at immediate risk, your primary responsibility is to your own safety and the safety of others. This may mean leaving the area without any further comment.

Direct threats

It is not acceptable to be threatened and this behaviour needs to be stopped immediately. When deciding how to respond, you should think first about vulnerability and risk. How you react will depend very much on your location at the time.

You are in the same space

Generally, you should politely end the contact and leave the area or ask the person to leave. If you deal regularly with the public, you may be able to access specific training within your organisation about dealing with aggression and threats.

It can be tempting to take someone to a private space to help them calm down. However, this may increase your personal vulnerability. This does not mean this approach should not be used if you think it could be effective. However, you should use it with care and know that any space you move to still allows you to access help if needed. Suggesting someone moves to a quiet area can be used to divert someone while you seek assistance.

You may find the threat is withdrawn or it is clear that this is part of a general 'rant'. You still need to address this behaviour and it may be appropriate to let the person know that making threats may be a risk for them as it could lead to them being reported to the police.

Possible strategy after a threat has been withdrawn

'I am really glad you said that. I am sure you'll appreciate we have rules and we usually have to end discussions if someone makes a threat and let the police know. I can see you didn't mean it so we can go on. I have to let you know if you make a threat again, I will need to end the discussion and may need to call the police.'

You are on the telephone and receive a direct threat

You should address any threat politely but firmly. It cannot be ignored. You should let the caller know you are ending the call and why. You should also let them know that you will either call the police or discuss with a manager whether to call the police (this will depend on your own policy). Again if the threat is immediately withdrawn the strategy above could be appropriate.

A threat is made in written correspondence

Reply with a statement that this is not acceptable. You may also need to let the author of the threat know that this has been recorded and has already/may be sent to the police. As we stated in the defining section, the method of delivery does not change whether something is or is not acceptable behaviour.

Abusive, degrading and insulting language on the phone or in person

You need to let the member of the public know that the language is inappropriate and you have a policy which says you should end contact if the language continues. If it does, end the call or contact.

Abusive, degrading and insulting language is used in written correspondence

Return with a statement that this is not acceptable. It would be appropriate to confirm this with a manager before doing so and to record for your files the main points: the date it arrived, what was unacceptable and a copy of the return statement. You can and in most cases it would be appropriate to keep a copy of the document as evidence. However, this should be stored in a way that ensures it cannot be read easily. These statements can cause considerable stress and if it has been decided a statement is so abusive this response is needed, staff should not be exposed accidentally or repeatedly each time they pick up/or access your normal systems. You can either store in a separate file with a note on the main file or if kept on the main file it should be sealed in some way. (In an electronic file the heading can be used to identify that it contains disturbing content).

After the contact

Whenever you have needed to use a zero tolerance approach this should be appropriately recorded. Your organisation may have its own rules but as a minimum you need to:

- clearly identify what happened and write a note of the contact on the appropriate record-keeping system
- if there are witnesses you should note their details
- discuss with a manager how you handled the situation and if there are any additional steps you can take.

Additional steps you and your manager should consider:

Who needs to know what happened?

Outside of the situation where there has been physical violence when the police should always be called, you may need to consider whether the police should be informed. Do you need to tell any other person who may be at risk if threats were made?

The standard answers to both of these questions should be yes. However, you may decide that there are particular circumstances which mean that is not appropriate. The reasons for a decision not to follow the standard response need to be noted and recorded.

You should also consider how you ensure other colleagues in your organisation know about what happened. Do you have an alert system for other walk-in offices? Can you record this contact centrally so if the person repeats the contact your colleagues are aware of any previous problems. It can be helpful to think through scenarios in your organisation. How quickly would you be able to spot someone who was repeatedly calling different numbers and being abusive or threatening for example? How would you quickly move to stop this to prevent staff being abused?

Following up with a formal written warning

Consider if a written warning should be sent to the individual about their behaviour. We would always recommend that this is sent from a senior member in the organisation. As above, you do have discretion to decide if this would not be appropriate for the particular individual or situation. Given the standard response is to send a written warning, any decision not to do so should be noted and recorded.

If you do send a written warning it should follow the process set out for restricting behaviour in section 3 and, where appropriate, include:

- identification of the behaviour clearly giving the date, time and details (including additional supporting evidence if available)
- an explanation of why this was inappropriate
- an explanation of the steps you have taken
- advice to the individual that if they repeat this behaviour there will be restrictions put in place or alternatively that the incident was so serious that restrictions will be in place immediately
- guidance on what the individual can do if they wish to challenge your decision.

Ensure staff are supported

It is important to ensure a proper debriefing occurs. Ask if there is anything you can do to support staff. In the short term someone may need to take a break from dealing with the public in order to recover. In a serious incident, you should also talk to staff after a period of time has passed, say a week or so, to make sure they feel it was dealt with appropriately by the organisation and to also confirm that their confidence has recovered.

Resources

[Please note: we may have additional links on our valuing complaints website]

The New South Wales Ombudsman has published an extensive manual on managing unreasonable complainant conduct. There is lots of useful tips and it is very comprehensive. You should though be aware that, in particular, specific language may have different cultural contexts

<http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/unreasonable-complainant-conduct-manual-2012>

SPSO training courses – our free frontline e-learning course includes a section on basic assertiveness skills

<http://www.spsotraining.org.uk/>

The High conflict Institute has published some articles on dealing with some of the most difficult categories of behaviour

<http://www.highconflictinstitute.com/articles/our-articles-a-newsletters>

The Mental Health First Aid site provides links to other organisations who may hold useful information as well as information about their own training

<http://www.smhfa.com/>

How to respond to behaviour – Flowchart

