



MANAGING UNREASONABLE COMPLAINANT CONDUCT

PRACTICE MANUAL

2ND EDITION



Managing unreasonable complainant conduct – 2nd Edition

A manual for frontline staff, supervisors and senior managers

May 2012

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Ombudsman's message of support

Unreasonable complainant conduct ('UCC') has been an on-going problem for Australian public sector agencies for many years. Public organisations, in particular Ombudsman offices, have been dealing with this issue (in some form) since we first opened our doors. The issue was highlighted more than 25 years ago in a speech by the former High Court Justice Kirby, who observed that:

One of the universal problems of the Ombudsman is the chronic complainer; people who feel passionately about their own cause and are uncompromising in their reaction to a negative conclusion on the part of the Ombudsman. Such people can sometimes cause a great deal of disproportionate disruption to the work of the Ombudsman and his staff.¹

He continued:

Of course, the Ombudsman already can decline to investigate matters. But vexatious complainants can cause a great deal of time loss. The issue was discussed at a recent meeting of ombudsmen in Helsinki. It is a universal phenomenon. It should have attention in this country.²

Although the terminology that we prefer to use at the Ombudsman's office has changed over the years, it is clear that the issues former Justice Kirby spoke about 25 years ago continue to affect Ombudsman offices and public organisations everywhere. The problem of the chronic or overly persistent complainant and the disruptive effects of their conduct on public resources continue to be problematic issue for all offices, including my own.

To help address this problem my office, with the support and involvement of the other Australasian Parliamentary Ombudsman, began a two-staged joint project on managing unreasonable complainant conduct in 2006. The project has sought to minimise the often disproportionate and unreasonable impacts of UCC on public organisations, their staff, services, time and resources by proposing a framework of strategies for managing such conduct. These strategies have been incorporated into a practice manual for public sector organisations and their staff, which has been at the core of our work in both stages of the UCC project.

I am pleased to present the second edition of the Managing Unreasonable Complainant Conduct Practice Manual. This manual updates the first practice manual published in 2009. It provides an extensive range of strategies for dealing with UCC, including in circumstances where it is not possible to terminate services to a complainant. Although it has been developed with public sector organisations in mind, it is equally applicable to customer or private sector situations.

It is my hope that this manual will assist organisations and their staff to respond confidently, firmly and consistently to UCC and that it will contribute to shaping a complaint handling approach across all organisations that systemically discourages UCC and effectively manages it.

Organisations that fall within the jurisdiction of the NSW Ombudsman can expect our support in cases where they have implemented the approach and strategies provided in this manual in a fair, appropriate and reasonable manner.



Bruce Barbour
Ombudsman



¹ Hon. Justice Michael Kirby, Ombudsman – The future. Speech delivered at a dinner following the seminar on 'Ombudsman through the looking glass', 7 September 1985. Canberra Bulletin of Public Administration, vol XII no 4, pp 300.

² *ibid.*

If you read nothing else, read this page

The approach and the strategies suggested in this manual are based on the clear understanding that:

- They are equally relevant and applicable to all staff within an organisation including frontline staff, supervisors and senior managers.
- All complainants are treated with fairness and respect.
- In the absence of very good reasons to the contrary, all complainants have a right to access public services.
- All complaints are considered on their merits.
- Unreasonable complainant conduct does not preclude there being a valid issue.
- The substance of a complaint dictates the level of resources dedicated to it, not a complainant's demands or behaviour.
- Anger is an understandable and, to some degree, an acceptable emotion among frustrated complainants as long as it is not expressed through aggression or violence.
- Staff safety and well-being are paramount when dealing with unreasonable complainant conduct.
- The decision to change or restrict a complainant's access to services as a result of their behaviour, will only be made at a senior management level and in accordance with clearly defined policies and procedures. See Unreasonable Complainant Conduct Model Policy available at: www.ombo.nsw.gov.au.
- Senior managers will ensure relevant systems, policies and procedures are in place to manage complaints and UCC and that all staff who interact with complainants will receive training, guidance and direction about using the strategies suggested in this manual.

PART 1



Introduction

Chapter 1 – Overview

The problem

'It certainly appears that angry, hostile and abusive behaviour is increasing, and that government employees have become convenient targets for the frustrated and angry.'³

Public organisations deal with many thousands of complainants each year, most of whom act responsibly. These organisations also deal with complainants who have come to the end of their tether. Some are justifiably disappointed and angry because they have suffered harm through no fault of their own. Some may have been treated unfairly or disproportionately without reasonable explanation. Some may have been given incorrect information or advice that they relied on to their detriment or may have suffered substantial losses as a result of an improper decision that was made against them. Yet, despite these setbacks, these complainants are able to manage their frustration and anger and productively engage with the systems, processes and people they are interacting with.

Other complainants, however, do not act so responsibly. Their anger about their complaint or its outcome is often translated into aggressive and abusive behaviour towards the organisations and staff handling their complaints. These complainants threaten harm, are dishonest, provide intentionally misleading information or deliberately withhold information that is relevant to their complaint. Some of them bombard organisations with unnecessary telephone calls, emails and large amounts of irrelevant information or insist on things they are not entitled to and outcomes that are clearly not possible or appropriate in the circumstances. At the end of the process, these same complainants are often unwilling to accept decisions and continue to demand further action on their complaints even though they have exhausted all available internal review options.

It is also very common for this category of complainants to lose perspective and change the focus of their complaints from the substantive issues and the people or organisation(s) responsible for them, to allegations of incompetence, collusion, conspiracy and corruption against the case officers and organisations that they have approached to resolve those issues. As such, it is not uncommon to find that their complaints have grown over time and have been unnecessarily escalated to multiple organisations at the same time – where they re-enter the complaints cycle all over again.

In a nutshell, these complainants behave in ways that go beyond what is acceptable from people, even when they are experiencing a wide range of situational stress.

'One local character has said that he is not going to rest until he has cost the Commonwealth one million dollars. He has already cost it at least half a million. I wonder whether there ought to be some explicit mechanism by which we can decline to take on a complaint because there is no light at the end of the tunnel to justify the expense.'⁴

The problem is growing

Anecdotal evidence from a wide range of organisations and jurisdictions indicates that this problem is widespread and on the rise. In addition, the types of behaviours that organisations and their staff are being confronted with are getting more complex – for example, the growing tendency for disgruntled complainants to complain over the internet and in social media. In increasing numbers complainants are turning to the internet to vilify and defame the people and organisations they are interacting with and in the process are causing significant reputational and psychological harm to their victims.

³ Bacal, R 2010, *Defusing Hostile Customers Workbook*, 3rd edn, Bacal & Associates, Casselman, pp. 1.

⁴ Richardson, J E, *The Ombudsman: Guardian, Mentor, Diplomat, Servant and Protector*. Speech delivered at a dinner following the seminar on 'Ombudsman through the looking glass', 7 September 1985. Canberra Bulletin of Public Administration, vol XII no 4, pp. 224.

One of the main challenges for organisations dealing with complainants who display these types of behaviours is that most staff members, regardless of their job description, prefer not to deal with complainants who they view as ‘difficult’. In fact, many try to actively avoid or minimise circumstances where they have to deal with these complainants. This avoidance has resulted in organisational cultures where these complainants are seen as an irritant or interference to other more ‘important’ work. Their complaints are often:

- Delegated to junior staff members whose work and time is seen as being more disposable.
- Assigned to someone in the organisation who is considered to be ‘naturally good’ at dealing with difficult complainants.
- Declined with little consideration of the merits of their issues.
- Escalated to a senior staff member who can tend to the squeaky wheel – when the situation has spiralled out of control.

Unfortunately, the unintended consequences of these approaches are increased stress levels among staff dealing with these complainants and, because of differences in skill levels, significant disparities in the ways that challenging complainants are dealt with.

About this manual

This manual is designed to help organisations and their staff take a systematic and consistent approach to managing their interactions with complainants. It provides a series of suggestions and strategies to assist all staff members – not just frontline officers – to deal with complainants, in particular those who behave unreasonably. The strategies have been developed by complaint handlers for complainant handlers, and although the focus of this manual is on the public sector, the suggested strategies may be equally applicable to customer and private sector situations.

The information in this manual is the result of a two-staged joint project of all Australasian Parliamentary Ombudsman that started in 2006 and is referred to in this manual as ‘the project’. It was originally prepared as an *Interim Practice Manual* in 2007, and was piloted in Ombudsman offices around Australia over a 12-month period during 2007 and 2008. The first edition of this manual was published in 2009.

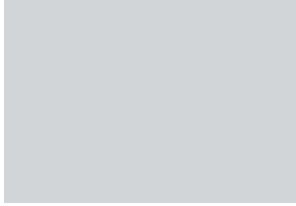
This second edition builds on the 2009 publication and the suggested strategies in that manual. It has been updated to include a broader range of strategies to suit organisations that do not have the discretion to terminate their services/relationships with complainants. This manual has also been expanded to include strategies for dealing with the problems posed by newer communication technologies, like social media, which have created a murky middle ground between conduct that has traditionally been considered to be ‘private’ – and beyond the scope of issues to be dealt with by organisations and conduct that must be dealt with in this regard.

There is no one size fits all approach to managing unreasonable complainant conduct.

It is important to note that this manual is not intended to be prescriptive in any way. There is no ‘one size fits all approach’ to managing unreasonable complainant conduct and not every suggestion in this manual will be effective 100% of the time. The strategies need to be adapted to suit the circumstances of each case and should supplement rather than replace existing organisational policies, procedures and protocols.

It is hoped that this manual will contribute to shaping a complaint handling approach across public sector organisations that systematically discourages unreasonable complainant conduct and effectively manages it. By consistently applying the approach advocated in this manual, it will not only help you and your organisation – but hopefully it will also help other organisations that deal with complaints from the public, as well.

Guide to this manual



Summary

Point of emphasis or additional information/explanation provided.



Case study example

Real life example of a UCC incident.



Quote

Written or verbal quotation.

PART 2



The fundamentals



Chapter 2 – What is UCC and why does it happen?

What is unreasonable complainant conduct?

Unreasonable complainant conduct ('UCC') can be defined as any behaviour by a current or former complainant which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for the parties to a complaint. The parties to a complaint that might be detrimentally impacted by UCC include, the organisation responsible for handling a complaint, the case officer(s) tasked with dealing with a complaint, the subject of complaint, a complainant himself or herself (potentially including members of their families and friends) and other complainants and service users.

UCC is behaviour by a current or former complainant which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for the parties to a complaint.

UCC can happen anywhere. It is not limited to telephone communications or face-to-face interactions with complainants. It can occur over the internet or on social networking websites, in a public location or in written correspondence. So far as the complainant's conduct is unacceptable and arises during the course of, or as a direct result of, professional work/services provided by an organisation or its staff, it can legitimately be characterised as UCC.

Why do some complainants behave unreasonably?

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

- **Attitudes** – they are dissatisfied with a person, an organisation or the systems and processes that they are interacting with.
- **Emotions and psychologies** – they are highly angry, frustrated or disappointed and express those emotions in unacceptable ways; they have an inflated sense of entitlement or are unable to accept any personal blame for their issue.
- **Aspirations** – they are seeking 'justice', a 'moral outcome' or are obsessively pursuing their issue on 'a matter of principle'; they want revenge, vindication, or retribution – things the complaints process is not designed to deliver.
- **Recreational interests** – they are carrying out an all-consuming hobby or are making a career of complaining; they are deriving pleasure from the activities associated with the complaint process or are enjoying the social contact with the case officer or organisation.
- **Needs and expectations** – their expectations, physical needs or emotional needs are not/have not been met.

Complainants can also have ulterior motives – they may make a complaint or series of complaints with the intention of harassing, intimidating, embarrassing, or annoying another person or organisation. For example, in a recent local court judgement in NSW a Magistrate said of the complainant: '[he] presents in my view as a serial pest and appears to take a macabre [morbid] pleasure in annoying public figures.'⁵ Some complainants have also been known to use the complaints system as an information gathering process for subsequent legal cases, while others may be experiencing personal or mental health problems that we have no direct control over.

Whatever the reasons are for UCC, in our view they are largely not relevant to our work as complaint handlers. While psychiatrists and psychologists may have reasons to focus on the causes behind a person's behaviour (to assess their mental state or make a psychological diagnosis), it is generally not a complaint handler's role to do this. Our role and expertise is complaint handling – that is, dealing with people who are dissatisfied with a service they have received, a failure to follow a process or procedure or an improper/incorrect decision – not the personal motivations behind their conduct.

Also, as complaint handlers, we generally do not have the qualifications to assess and diagnose complainants in this way. Even if some of us do, as complaint handlers we will rarely have enough face-to-face contact with a complainant to make a valid diagnosis of them.

⁵ Transcript of proceedings, *R v Steven Diehm* (Local Court of Taree, McCosker J, 18 July 2011).

As a result, the suggestions in this manual are based on the recognition that the most effective way for us to manage UCC is to deal with a complainant's observable conduct and the content of their communications – rather than speculating on the possible reasons for them, except of course those that relate to their complaint. This ensures that:

- Those of us who are not mental health professionals, counsellors or social workers are able to confidently manage UCC without being experts in psychoanalysis or behavioural psychology.
- We can take a more focused approach to dealing with UCC by responding directly to the things and behaviours we observe, rather than the things we assume or suspect.
- A complainant's behaviour does not negatively affect their complaint (if valid) or the level of attention that we give to it.
- We manage UCC and its impacts in ways that are transparent, reasonable and fair.

The most effective way for case officers to manage UCC is to deal with observable conduct, rather than the possible motivations or causes for that conduct.

Who pays the price for UCC?

In 2010 it was reported that one NSW resident cost his local council more than \$151,000 over a five year period, because of his incessant access to information requests and code of conduct complaints. The resident was a former Councillor at that same council.⁶

Although complainants who behave unreasonably are very few in number, their behaviour can have profound effects on an organisation's resources and efficiency levels, and the productivity, safety and wellbeing of its staff. For example, the common and widespread feedback that we have received throughout the UCC project suggests that:

- UCC is only an issue in about 3-5% of cases – sometimes more.
- UCC on average takes up between 25-30% of an organisation's resources – sometimes more.
- UCC can cause significant equity problems for organisations that are forced to substantially and unreasonably divert resources away from other complaints and functions to manage it.
- UCC can be a major source of stress for the staff members who have to deal with it – including affecting their right to dignity, physical and emotional safety and wellbeing as well as affecting their work performance – in some cases. This in turn can result in increases in the number of stress leave applications and compensation claims that are made by these staff members and can create duty of care and workplace health and safety issues for employers.⁷
- UCC can have damaging and sometimes devastating consequences for the complainants who engage in these types of behaviours. It almost always hinders their ability to achieve appropriate and acceptable outcomes for themselves and, in extreme cases, can result in unemployment, bankruptcy or self-harm – with obvious flow on effects on their families and friends.⁸ See Appendix 1 – A word on unusually persistent complainants (querulants).
- UCC can have negative consequences for external review agencies and regulatory bodies that have to dedicate time and resources to dealing with review applications that have been unnecessarily escalated by complainants who cannot 'let go' of their issue. This problem was highlighted in a speech delivered by Robert Davey, Commissioner for Superannuation from 1976 – 1986. He said:

The misuse or overuse, by some, of the many channels of review now available to those members of the public dealing with the decision-taking areas of Commonwealth Government administration has to be a cause for concern. Certainly it is of concern to me when 14 per cent of the costs of my office in administering the Superannuation and Defence Force Retirement and Death Benefits legislation can now be attributed directly or indirectly to internal and external review. In 1985-86 costs are expected to reach \$1,500,000.⁹

6 Murray O 2010, 'Hornsby Council not to respond to Pennant Hills resident's letters', *Hornsby Advocate*, viewed 28 October 2011, <<http://hornsby-advocate.wherelive.com.au/news/story/hornsby-council-not-to-respond-to-pennant-hills-residents-letters/>>.

7 See: Comcare 2009, *Prevention and management of customer aggression*, OHS 33, Canberra, pp.9.

8 Lester G, Wilson B, Griffin L & Mullen PE, Unusually Persistent Complainants, *British Journal of Psychiatry*, 2004.

9 Davey, R The Ombudsman – A Bureaucrat's Impression. Speech delivered at a dinner following the seminar on 'Ombudsman through the looking glass', 7 September 1985: Canberra Bulletin of Public Administration, vol XII no 4, pp. 275.

He added:

Increasingly, complainants are adopting a multi-channelled approach to review, but relatively few decisions are changed as a result of the processes of external review – on average less than 10 a year; more changes occur at the internal review stage.¹⁰

Figure 1 below illustrates the wide ranging impacts of UCC on the various parties to the complaints process. It is hoped that by using the approach advocated in this manual you can minimise and possibly eliminate their impacts on the relevant parties.

Figure 1 - Negative impacts of UCC

Negative impacts of unreasonable complainant conduct					
Organisations		Staff members		Complainants	
<ul style="list-style-type: none">• loss of focus among affected and de-motivated staff• unable to effectively and fairly allocate resources• unnecessary time and resources responding to complaints made externally• loss of reputation and a poor public image• increased staff turnover and absenteeism leading to added recruitment and training costs for replacement staff and salary costs for staff who are absent from work• increased stress leave applications and compensation claims• duty of care and WH&S issues• increased financial expenditure on counselling, ADR, support and legal advice• damage to property and equipment		<ul style="list-style-type: none">• stress, anxiety and frustration• fear of attending work or reporting incidents• withdrawal, loss of motivation and/or indifference towards the job• loss of confidence, feelings of powerlessness and vulnerability• psychological and/or physical trauma• reduced productivity and timeliness• personal blame and/or guilt• loss of personal and/or professional reputation• irritability and deteriorating relationships at work and/or at home• emotional exhaustion and/or burnout• depression		<ul style="list-style-type: none">• unable to achieve the outcomes they are looking for• obsession or loss of perspective leading to losses that are greater than the original harm they suffered• increased likelihood of distrust for other organisations and their staff• stress• damage to reputation and credibility• damage to career, relationships, friendships etc.• depression• suicide	
External review bodies and agencies		The subjects of complaint		Other complainants/ service users	
<ul style="list-style-type: none">• additional demands on their time and resources, including dedicating staff to deal with escalated complaints• inequity and resource allocation issues - time taken away from other review applications• potential for all (or many) of the same impacts listed under 'organisations' and 'staff members'		<ul style="list-style-type: none">• stress due to interacting with the UCC and/or responding to escalated complaints made against them• damage to reputation• fear or apprehension for self or family• feelings of being under attack, victimised and/or powerless• emotional exhaustion		<ul style="list-style-type: none">• inequitable allocation of organisational resources including staff time• reduction in service level received including, waiting times over the phone, delays in receiving correspondence etc.• discomfort when observing incidents involving UCC• feeling threatened and/or inadvertently being drawn into incidents• negative feelings towards the organisation and its staff resulting in more complaints	

¹⁰ *ibid.*

Case study example – The potential impacts of UCC

provided by the NSW Ombudsman



In 2002 Mr M approached our office with a complaint about his former employer (a university). He believed the university had taken detrimental action against him because he had made a protected disclosure. The alleged detrimental action included a failure to re-appoint him to his position at the end of his contract term, as well as an alleged failure to follow proper procedures in finding a replacement for him. Mr M also alleged that he had been 'knowingly misled' by the university about the terms of his employment and claimed that one of his former colleagues had failed to declare certain conflicts of interest which he considered to be quite significant.

Our office declined Mr M's complaint for a number of reasons including that Mr M insisted we read numerous Hansard documents in order to understand his complaint. Mr M also refused to summarise these materials and would not specify how they related to his complaint – as we had requested.

Dissatisfied with our decision Mr M continued to make a number of complaints to our office and about our office and our staff to other agencies. He alleged that the case officers who had dealt with his complaints were corrupt because of an alleged (and unsubstantiated) conflict of interest. He also accused them of being corrupt when we decided to restrict his access to our services and his contact with our staff – an action which was taken because of the impact that Mr M's conduct was having on our staff and our resources.

Still dissatisfied, Mr M proceeded to lodge numerous FOI applications with our office and several other public agencies that he had complained to about his issues – including the Director-General of the Attorney General's Department, the Director General of the Cabinet Office, the Commissioner of Police and his former employer. Most of Mr M's FOI applications were refused.

Mr M then sought reviews of the FOI decisions in Administrative Decisions Tribunal (ADT), the supreme court and the court of appeals – at a significant cost to all the agencies. In total between 2005 and 2010 Mr M was a party to over 80 decisions of the ADT, 15 supreme court decisions and 6 court of appeals decisions.

Mr M's conduct appeared to follow the 'downward spiral' referred to by Mullen and Lester.¹¹ See Appendix 1. His obsessive drive for vindication resulted in unemployment, marriage breakdown, severe financial trauma, allegations of domestic violence and tragically – suicide. His unreasonable conduct also seemed to prevent him from achieving the outcomes he was seeking and his apparent loss of perspective about his substantive issue – ie loss of employment – ultimately resulted in disproportionate losses for him and his family.

This case provides a bleak example of how UCC can spiral out of control having devastating impacts on complainants, their families and others.

¹¹ Lester, Wilson, Griffin & Mullen, *Unusually Persistent Complainants*.

Chapter 3 – Understanding the approach and framework

Key features of the approach

To properly apply the approach in this manual, you need to understand the principles and objectives that underlie it. The approach has three core objectives. They are to:

- ensure equity and fairness for all complainants
- improve resource allocation and efficiency
- protect staff health and safety.

To achieve these objectives, you need to be guided by three broad underlying principles – prevention, management and accountability.

Table 1 – Core objectives and underlying principles

Core objectives	Ensure equity and fairness Ensuring that all current and potential complaints are dealt with equitably and fairly and resources are distributed on the basis of a complaint's merits, rather than a complainant's demands or conduct.
	Improve efficiency Improving overall efficiency by allocating sufficient time and resources to dealing with UCC which, if left unmanaged, can be a massive drain on the complaint handling resources of an organisation.
	Ensure health and safety Complying with WH&S and duty of care obligations by identifying the potential risks posed by UCC to staff health, safety and security and implementing measures to eliminate or control those risks. Staff safety is the number one goal. See Chapter 17 – Management roles and responsibilities (Systems for identifying, assessing and managing UCC related risks) (page 98).
Prevention principles	Manage complainant expectations at the outset Managing complainant expectations from the beginning of the complaints process to ensure they are reasonable and realistic. Unmet expectations are one of the primary triggers for UCC. See Chapter 2 – What is UCC and why does it happen? See also Chapter 6 – Effectively managing complaints and expectations from the outset (page 24).
	Insist on respect and cooperation Insisting that complainants show respect for and cooperate with staff as a prerequisite to receiving services and having any further contact with or communication from the organisation.
	Implement policies and procedures Implementing appropriate policies and procedures for managing UCC and ensuring that all staff are familiar with and receive training on them. See – Unreasonable Complainant Conduct Model Policy. It is available at www.ombo.nsw.gov.au .

Management principles

Exercise ownership and control over complaints

Exercising ownership and control over complaints and ensuring complainants are aware that:

- The organisation and its staff effectively 'own' the complaint – they decide whether it will be dealt with and if so by whom, how quickly it will be dealt with, the priority and resources it will be given, the appropriateness of the outcome achieved, and so on.
- Complainants 'own' their issue – they are free to raise it in any other forum they like including with oversight agencies, the courts and tribunals, the media or a politician.

Focus on specific, observable conduct – not the person as a problem

Moving away from any approach that labels or categorises complainants as 'difficult'. Other terms used to describe complainants with problematic behaviours include resource-intensive, high maintenance, high conflict, vexatious or querulous. These terms all focus on labelling the complainant (as a person) as being difficult or challenging rather than their behaviour – which is the real issue. Also, when these terms are used by case officers to describe certain complainants, they can negatively influence how these complainants, and their complaints, are perceived and dealt with by other staff.

Using the term 'unreasonable conduct' allows us to focus on the problematic behaviour and respond to it openly and transparently and without the worry that we might be incorrectly or offensively labelling someone – in this case we are labelling their conduct.

Respond appropriately and with consistency to individual complainants and complaints

Making full use of the framework and strategies in this manual when dealing with UCC. The framework provides a systematised series of strategies and serves as a 'thinking tool' that can be used to prevent and respond to UCC. Used appropriately, the framework can also ensure consistency in how matters are dealt with individually and across the board – both within and across public sector agencies.

Effective communication

Providing complainants with clear, timely and firm communication including regularly informing them about the status of their complaints, even if there has been no progress.

Complainants who are not kept informed about the progress of their complaints are more likely to make negative assumptions about how they are being dealt with. This includes assuming that no one is working on their complaint, that it is the subject of a significant investigation (when it is not) or that there has been a 'stuff up'.

See Chapter 6 – Effectively managing all complaints and expectations from the outset (page 24).

Also see – *Reporting on the progress and results of investigations*, NSW Ombudsman, available at www.ombo.nsw.gov.au.

Commitment to the approach

Demonstrating management commitment and support for the approach is critical to its success. It is not enough to send staff off for training and expect them to be able to deal with the challenges presented by UCC.

Senior managers need to:

- Actively endorse and support the use of the strategies by staff at all levels.
- Demonstrate commitment to the approach by applying it consistently.
- Support staff with the necessary policies, procedures and authorisations to use the strategies in this manual. Staff need to be clearly informed of what they are and are not specifically authorised to do in relation to UCC and when to defer matters to nominated senior managers for further action.
- Provide staff with adequate and ongoing training, supervision and guidance in their dealings with UCC.

Supervision

Ensuring that supervision, as far as the complainant is concerned, happens behind the scenes, except perhaps in limited circumstances – eg a staff member decides they are unable to manage a complainant's conduct and/or that escalating the matter to a senior manager will defuse the situation.

In our view, it is generally not appropriate to allow complainants to be escalated to supervisors and senior managers just because they demand this. There are at least two reasons for this. First, complainants who are treated this way can feel that they are getting preferential treatment in having their complaint escalated or can make false assumptions about the importance of their complaint. Second, once a complainant has been escalated to a senior manager they will continue to expect similar treatment in their future interactions with the organisation – especially when they do not get their own way.

Unless the complainant wants to make a complaint about a case officer, which should be done in writing anyway, and perhaps in the limited situations identified above, we strongly discourage case officers from escalating calls to supervisors and senior managers.

Also supervisors and senior managers need to ensure that when they review complaint decisions made by lower level staff they consult those staff members to obtain all the relevant information about the complaint and the complainant. They should also ensure their review decisions are compliant and consistent with their UCC policies and procedures – in particular when they decide to overturn an earlier decision.

See Chapter 17 – Management roles and responsibilities (page 98).

Recognise that complaint handling, including dealing with UCC is a core part of a public organisation's work

Ensuring that managing UCC is recognised as a core organisational responsibility, rather than a peripheral issue, and is given proper priority and adequate resources. This includes ensuring that staff are provided with adequate time to deal with cases where UCC is an issue. Although this may require greater initial outlays in terms of time, training and supervisory support, over time the benefits flowing from this approach should result in significant overall savings for the organisation.

Adequate training and guidance

Providing all staff (including senior management) with adequate training and guidance on their roles and responsibilities and the policies and procedures for preventing and managing UCC. Comprehensive training on an ongoing basis is fundamental to staff developing and maintaining the skills and confidence needed to appropriately deal with UCC in their daily work.

Accountability principles (all staff)

Calm demeanour

Remaining calm in the face of UCC and maintaining control over emotions and reactions to such conduct.

Show respect

Showing respect to all complainants regardless of their conduct.

Respect is fundamental to preventing and successfully managing UCC. Everybody believes they deserve respect no matter how they behave, and a failure to show respect will invariably lead to a negative response from a complainant. As a result, it does not matter how a complainant acts out they should be treated with respect. This is not about faking an emotional response, but about being courteous, polite, attentive and responsive. It does not mean you cannot be firm with a complainant, say 'no' or manage their conduct.

See Chapter 7 – Dealing with anger through effective communication (page 29).

Demonstrate impartiality

Demonstrating impartiality throughout the complaints process and not acting as an advocate for either side – especially when dealing with complainants who try to use pressure tactics, intimidation and manipulation to get their way.

The obvious exception here is if advocacy is a part of your job.

Professionalism

Understanding that case officers play an important role in promoting productive and professional interactions with complainants. This includes displaying a professional approach in all dealings with complainants – even when they are behaving unreasonably.

The framework

To use and apply the strategies in Part 5 – Responding to and managing UCC, you also need to understand the framework that we use to manage UCC. The framework divides UCC into five broad categories of complainant conduct and provides an overarching strategy for managing each category. It also identifies the specific behaviours that fall under each of the five categories and provides a list of options for dealing with each one.

The framework is demonstrated in Table 2 below and is detailed in Part 5 – Responding to and managing UCC (starting on page 37).

Table 2 – The framework of strategies

Unreasonable persistence	<p>This includes complainants persisting with their issues even though they have been dealt with to finality, refusing to accept final decisions and sending excessive amounts of correspondence.</p> <p>The overarching management strategy for dealing with unreasonable persistence is saying 'no' – not necessarily using the word but the same principle.</p> <p>See pages 39 – 43 for more examples of unreasonable persistence.</p>
Unreasonable demands	<p>This includes complainants insisting on outcomes that are unattainable, moving the goal posts or demanding to have their complaints dealt with in particular ways.</p> <p>The overarching management strategy for dealing with unreasonable demands is setting limits – eg limiting how often a complainant can telephone the organisation, who they can call, for how long etc.</p> <p>See pages 50 – 54 for more examples of unreasonable demands.</p>
Unreasonable lack of cooperation	<p>This includes complainants providing disorganised, excessive or irrelevant information, being unwilling to consider other valid viewpoints, or refusing to define their issues of complaint when they are capable of doing so.</p> <p>The management strategy for dealing with unreasonable lack of cooperation is setting conditions – eg requiring a complainant to define their issues of complaint or organise information they have submitted with their complaint.</p> <p>See pages 64 – 65 for more examples of unreasonable lack of cooperation.</p>
Unreasonable arguments	<p>This includes complainants seeing cause and effect arguments where there are clearly none, holding conspiracy theories unsupported by evidence, and irrationally interpreting facts or laws and refusing to accept other more reasonable interpretations.</p> <p>The management strategy for dealing with unreasonable arguments is declining and discontinuing – eg refusing to deal with complaints that are not supported by any evidence.</p> <p>See pages 69 – 71 for more examples of unreasonable arguments.</p>
Unreasonable behaviours	<p>This includes extreme anger, aggression, threats or other threatening or violent conduct.</p> <p>The management strategy for dealing with unreasonable behaviours is setting limits and conditions about acceptable and unacceptable behaviour and, if necessary, applying risk management strategies and/or security policies and procedures.</p> <p>See pages 77 – 85 for more examples of unreasonable behaviours.</p>

How you will benefit from using this framework

By using the framework in this manual you can be confident that:

- ✓ Complainants will not be any worse off if you use the strategies provided within the framework – whether or not the strategies are successful in managing their problematic behaviour.
- ✓ All complainants, whether their behaviour is challenging or not, will be treated with fairness and respect.
- ✓ Complainants' rights will be observed.
- ✓ By taking control of interactions with complainants, you can separate the way you manage their behaviour from the way you deal with their issue – that is the two issues are not conflated.
- ✓ You will be able to easily implement the strategies, while also relying on your own professional knowledge, skills and experience to deal with UCC – it is all common sense stuff.
- ✓ It has been designed to ensure your safety and reduce your stress levels when dealing with UCC thereby helping employers to meet their duty of care and WH&S obligations.
- ✓ The impact of UCC on organisational resources will be reduced.
- ✓ All complaints, not just those where UCC is an issue, will be dealt with in a more equitable, fair and consistent way.

The process behind the framework

The framework of management strategies is based on original work by the NSW Ombudsman's office. It has been refined through extensive consultation with a range of Ombudsman offices, highly skilled complaint handlers and specialist professionals from a range of disciplines – including consumer behaviour, suicide intervention and mental health. It has also been informed and supported by a study into 'unusually persistent complainants' conducted by Grant Lester, FRANZCO, Beth Wilson, LLB, Lynn Griffin Med, and Paul E. Mullen, DSc.¹²

Initially, the framework was 'road tested' for twelve months by all the Australasian Parliamentary Ombudsman offices, starting in 2007. It has since been used by staff from a wide range of organisations, both public and private, around the world.

While preparing this edition of the manual, we also held focus group consultations involving approximately 180 public servants representing 80 organisations across Australia. Among the various issues discussed during these sessions was the effectiveness of the UCC approach and our framework. All of them confirmed that the framework is the main one that they are using to deal with UCC, including in circumstances where they are required to maintain an ongoing relationship with a complainant – which was our focus in Stage 2 of the UCC project.

¹² ibid.

PART 3



Identifying UCC



Chapter 4 – Recognising the early warning signs

What are the early warning signs of UCC?

Like most things in life early intervention is typically the most effective way to prevent and/or minimise the impacts of UCC and data gathered during the course of the UCC project suggests that there are several early warning signs of UCC. By identifying some of these warning signs you may be able to see difficult and potential UCC cases and prepare for them, before they become a full blown problem. Table 3 below provides a list of our findings.

It must be emphasised that the warning signs provided in Table 3 are only factors to consider. None of them are individually determinative and they do not always escalate into UCC. Nonetheless, in our experience they are almost always present in cases where UCC becomes an issue.

Also, while some of the warning signs are very obvious, others are more subtle. Some may be identified early on and others may only become apparent later on in the complaints process – eg at the end of the investigation when an otherwise reasonable and cooperative complainant discovers that the outcome they were anticipating has not been achieved. Whatever the case may be, these warning signs should never cause you to be disrespectful, unfair, heavy handed or partial towards a complainant (or their complaint) in any way.

Table 3 – Early warning signs of UCC

Complainant's history – the complainant has:
<ul style="list-style-type: none">• made a number of previous complaints and review requests to your organisation about their issue (or related issues)• made contact with various other government agencies, MPs, Ministers or oversight bodies about their issue• made a number of access to information requests for their issue• complained about a case officer's (or organisation's) integrity or competence largely or solely because they were dissatisfied with the outcome or level of attention they were given etc.• suffered disproportionate losses in their personal and/or professional lives as a result of pursuing their issue – eg financial or social problems, employment or career related problems or clinical depression• a known history of physical violence or serious verbal threats, including having a previous history with police in relation to such issues• safety alerts on their file either at your organisation or another organisation• a history of substance abuse or mental health issues – only in some cases.
Style of writing – the complainant's electronic or written communications contain:
<ul style="list-style-type: none">• text that is UPPERCASE, lowercase, <u>underlined</u>, bolded, highlighted, in different colours, fonts or sizes. See Appendix 2 – Email sample received from complainant with characteristics of UCC.• extensive and/or inappropriate uses of technical language – eg legal or medical terminology• a formatting or reporting style that appears to imitate an official style – eg police operational format• excessively dramatic language and/or idiosyncratic emphasis• multiple cc's addressed to various people and/or organisations• text or notes all over the page(s), including in the margins• references to themselves in the third person by name or as 'the victim' or 'the defendant'• repeated restatements of their issue, often done in different ways• an excessive number of pages and/or supporting information, most of which are irrelevant – eg photocopies, press clippings, diary entries or testimonials when they are not warranted.
See also Appendix 1 – A word on unusually persistent complainants (querulants) (page 116).

Interaction with the organisation – the complainant:

- is rude, confronting, angry, aggressive or unusually frustrated
 - is overly complementary or manipulative or makes veiled threats
 - makes excessive phone calls, sends excessive amounts of information and correspondence or regularly makes appointments to discuss their complaint when this is not needed
 - gives forceful instructions about how their complaint should be dealt with and/or by whom
 - has an unreasonable or unusual sense of entitlement
 - displays an inability to accept responsibility and blames others
 - expresses a general dissatisfaction with a person, agency or 'life in general' at the outset and without clear reasons for doing so
 - appears to have a low anger threshold and very little self-control
 - attempts contact while under the influence of drugs or alcohol
 - refuses to define their issues of complaint when they are clearly capable of doing this
 - is resistant to explanation if this runs counter to their own views
 - refuses to accept advice, even if it is clearly valid and reasonable
 - intentionally harasses, intimidates, embarrasses or annoys the people they are interacting with to get their own way
 - provides information in dribs and drabs, even though they have been asked to provide all relevant information relating to their complaint or intentionally withholding information
 - provides false information
 - displays an inability to 'let go' and move on from their issue/complaint
 - makes excessive demands on resources.
-

Outcomes sought – the complainant wants:

- a manifestly unreasonable amount of organisational time and resources to be spent dealing with their complaint – eg wants it dealt with by a specific senior officer
 - financial compensation that is manifestly inappropriate or unreasonable in the circumstances
 - an outcome that is altogether illogical or irrational
 - an apology when it is clearly not warranted or the terms of the apology sought are clearly unreasonable
 - vindication, revenge or retribution
 - their issue pursued based on a matter of 'principle' or the public interest, when their interests are clearly personal.
-

Reaction to news that their complaint will not be taken up, will not be pursued further or an outcome/decision they disagree with – the complainant:

- refuses to accept the decision made/outcome reached in their matter
- reframes their complaint in an attempt to have it taken up again
- provides previously withheld information in an attempt to have their case reopened
- raises a range of minor or technical issues and argues that they somehow invalidate the decision/outcome of their complaint
- expects a review of the decision/outcome simply because they are dissatisfied with it and without making a clear argument for one
- demands a second review when they have already had the benefit of one
- takes their complaint to other forums alleging bias or corruption on the part of the case handler or organisation, simply because the decision went against them.

See also Chapter 7 – Dealing with anger through effective communication (Understanding and recognising complainant anger) (page 29).

Things to do when you recognise the warning signs of UCC

If you recognise any of the warning signs for UCC during your interactions with complainants refer to the suggestions in Part 4 – Preventing UCC and consider the following:

- **Make sure you don't act prematurely** – Just because you've identified a potential problem does not mean it will necessarily become one. Avoid being judgemental or overly reactive because the complainant may just be having a bad day or may not understand how the complaints process works/ how to make an effective complaint – which should be explained to them.
- **Check your communication style** – Think about how you have interacted with, and reacted to, this complainant. What can you do differently to bring about a different response from them? See Chapter 7 – Dealing with anger through effective communication (Communication strategies for avoiding or minimising the triggers for anger, conflict and UCC).
- **Stop, think, and arm yourself with the strategies** – By identifying the potential for trouble early on you have a unique opportunity to think through the appropriate strategies. See Part 5 – Responding to and managing UCC (starting on page 37).
- **Seek guidance** – It is always easier to prevent UCC than to deal with it once it becomes a full blown problem. Speak to a colleague or consider sitting down with your supervisor to develop an action plan on how you will respond if the complainant's conduct escalates. Having a plan helps to take some of the stress and anxiety out of the situation.
- **Assess the risks** – Do an informal risk assessment of the situation to see if the complainant's conduct poses an unreasonable level of risk to your health or safety (or those of others). This will usually help you to decide how you should respond in the circumstances. See Chapter 14 – Assessing risks (page 89).
- **Set limits and communicate them to the complainant** – If necessary, talk to the complainant about the behaviour that has concerned you and inform them of your boundaries. See Unreasonable Complainant Conduct Model Policy (Appendix 1 – Individual Rights and Mutual Responsibilities of the Parties to a Complaint). It is available at: www.ombo.nsw.gov.au.
- **Keep an open mind and remain positive** – There will be days when you will come across one, two, even three complainants who will test your patience and your desire for the job. Don't let it drag you down. There is always another day and another complainant who will remind you why you love doing the work you do.

Chapter 5 – When does conduct become unreasonable?

When does conduct become unreasonable?

'The question of whether a complainant's conduct is unreasonable primarily relates to whether an organisation and/or its staff are justified in taking steps to restrict or terminate contact, or implement alternative service arrangements to manage the impacts of that conduct.'¹³

A complainant's conduct is unreasonable if it has unacceptable consequences for one or more of the parties to a complaint – this being the case officer and the organisation handling their complaint, the subject of their complaint, other complainants and services users, and the complainant himself/herself in certain circumstances.

However, it is not always easy to identify the specific point when a complainant's conduct goes from being 'reasonable' to being 'unreasonable'. At what point do the negative impacts of their conduct become so significant that they become unacceptable and therefore 'unreasonable'?

The answer to this question can be fairly straightforward in some situations, for example where a complainant is overtly violent or aggressive. However, where a complainant is emotionally manipulative, passive aggressive or acts in subtle ways, this assessment can be far more difficult. In these situations, you might feel uncomfortable with the complainant's conduct, your alarm bells go off or you may have a gut feeling that things are not right, yet because there is nothing overt or obvious in the complainant's conduct it can be quite difficult to specify or explain why you consider their conduct to be unreasonable. What's more, conduct that might be reasonable in one set of circumstances may be unreasonable in another – making your assessment that much more difficult.

As a result, the following list of criteria has been developed to assist you to assess whether a complainant's conduct is, or has become, unreasonable. These criteria will need to be balanced against each other in each case to determine whether the conduct in question is unreasonable. They are:

1. The merits of the case

- Is there substance or value in the complainant's matter?
- Is there an inherent right or wrong in the matter?
- Does it appear that the complainant may have suffered a relatively substantial loss, either in financial terms or impact on their wellbeing?

2. The complainant's circumstances

- Does the complainant have the health, intellectual, linguistic, financial and social resources needed to cooperate and meet the requirements of the complaint process? If they do, then more can be expected of them in terms of their conduct than if some or all of these resources are absent.
- Are there any cultural influences that may be affecting the complainant's conduct that you are misinterpreting – eg in some cultures people prefer to talk quite closely which others may perceive as being intrusive. Also in certain cultures there are underlying apprehensions or reluctances to engage with government or authority figures which may affect your interactions with complainants from these cultural groups.

3. Proportionality

- Is the complainant's behaviour/reaction proportionate when compared to the loss or harm they have suffered?
- Are the complainant's demands on time and resources proportionate to the seriousness of their issue – eg wanting it dealt with by a supervisor or senior officer?

4. The complainant's responsiveness

- Do calming measures and explanations help to settle the complainant down?
- Is this the first time the complainant has displayed this type of behaviour or has it occurred in the past?
- Has the complainant been warned previously about their conduct?

¹³ Chris Wheeler, NSW Deputy Ombudsman.

5. Personal boundaries

- Have your personal boundaries been crossed? For example, do you feel unusually stressed, anxious, threatened or otherwise uncomfortable when interacting with the complainant?

Note: everyone's personal boundaries are different. Some of us may have a high tolerance for swearing, raised voices or insults, but others will not. This question is therefore completely individual to you.

6. Conduct that is unreasonable and unacceptable under all circumstances

- Does the conduct involve aggression, harassing words or actions, threats, violence or assault which should not be tolerated under any circumstances?

7. Jurisdictional issues

- Is there any law, legislation or policy that might limit or affect the types of strategies you can use to manage the complainant's conduct? For example, does the complainant have a statutory right to the services provided by your organisation thereby preventing you/your organisation from terminating their access to those services?

For information on specific types of UCC, see Part 5 – Responding to and managing UCC (starting on page 37).

Case study example – Identifying UCC

provided by the Victorian Ombudsman



Mr X made multiple complaints to Ombudsman Victoria over a two month period. During this time Mr X made repeated phone calls about each of his complaints.

In relation to one particular complaint, Mr X became very agitated while we awaited a response from the agency he had complained about. Mr X told our staff that he would call every day until the matter was resolved to his satisfaction. He then proceeded to phone our office several times a day over a number of weeks.

Mr X made three phone calls to our office in quick succession that caused us to be concerned about his conduct.

During the first phone call Mr X spoke with a female officer, Officer Y. Officer Y was not handling Mr X's complaint but agreed to take a message for the case officer dealing with his matter. Mr X advised Officer Y that he had called as he felt lonely and wanted to talk to 'someone pretty'. He then began to ask Officer Y questions about his case officer's appearance and asked Officer Y to 'suss out' the case officer by the water cooler. Officer Y ended the call and reported Mr X's conversation to a manager.

Mr X made a second phone call on the following day. He spoke with another female officer, Officer Z. After enquiring about the progress of his complaint Mr X asked Officer Z who was more attractive, Officer Y or his case officer? Officer Z advised Mr X that his question was inappropriate and that she would end the call. Mr X advised that he would continue to call the office every day because that was how he would get to know everyone. This conversation was also reported to management.

During his third phone call, later that afternoon, Mr X spoke with Officer Y – for the second time. At the outset of the call Officer Y asked Mr X to confirm his full name. Mr X replied by saying: '*I am the one that you are not supposed to flirt with*'. Mr X also asked whether Officer Y thought that Officer Z liked him as he did not think that she did. This phone call was also ended.

Mr X's conduct was reported to management and a management strategy was developed to deal with his conduct. It was decided that all staff would end conversations with Mr X immediately if he engaged in any inappropriate behaviour.

This strategy was added to the office's case management system via an alert which pops up when a relevant case is accessed. A consistent approach by staff to the implementation of this strategy led to Mr X ceasing this behaviour.

Consistency in the identification of unreasonable conduct, supported by the development of a management plan which is then consistently applied is critical to the successful management of this type of behaviour.

PART 4

Preventing UCC

Chapter 6 – Effectively managing complaints and expectations from the outset

Handling the initial interaction successfully

Your initial interaction with a complainant is probably one of the most important contacts that you will have with them. The way you begin this interaction can significantly affect how the complainant interacts with you in subsequent interactions. A complainant, who feels that they have been listened to, understood, treated fairly and with respect and who has been given a thorough explanation of the complaints process and what is likely to happen with their complaint is more likely to respond positively to you, your organisation and the complaints process than if they were not given this information. This is supported by organisational justice theory which argues that:

where a person perceives that an organisation/person has followed proper procedures when handling their matter and their interactions with that organisation/person have been appropriate, then they are less likely to have negative perceptions of the organisation/person, even if they achieve a negative outcome.¹⁴

As a result, it is important that you begin all interactions in a positive and helpful manner, using the types of communication strategies provided below. These strategies can help you prevent/minimise the likelihood of UCC.

Establishing the ground rules

When interacting with complainants it is important to establish clear ground rules with them about what they can expect from the complaints process and what will be expected from them in return. The reason for this is that in our experience a common feature of many complainants who behave unreasonably is a significant failure to recognise that what they consider to be their 'rights' (eg the right to complain) are subject to a balancing set of 'responsibilities' that they must accept when they make a complaint. These responsibilities can include a responsibility to:

- clearly identify their issues of complaint
- provide all relevant information about their complaint – to the best of their ability
- cooperate with any requests for information, inquiries or investigations
- act honestly
- treat the people handling their complaint with courtesy and respect.

While these responsibilities may seem 'self-evident' to us as complaint handlers, many complainants whose behaviour becomes problematic are either unaware of or give little thought to them. Some are also unaware of or overlook that a condition of being able to exercise their own rights is, in most cases, an acceptance of and respect for the rights of others to do the same. This includes your rights as a case officer to dignity, physical and emotional safety and respect. It also includes the rights of other complainants/service users to an equitable share of public resources.

To help all complainants better understand their rights and countervailing responsibilities, we suggest that all organisations should adopt a set of ground rules or 'rules of engagement' for accessing their services. These rules should clearly identify the rights and responsibilities of the key parties to the complaints process and should be made publicly available – eg on a website and in leaflets/brochures displayed in their reception area(s).

In addition, as case officers you should assume the responsibility for ensuring that complainants are aware of these ground rules when they make a complaint and that their questions about them are responded to – within reason particularly if you are dealing with a complainant who is engaging in UCC.

See Unreasonable Complainant Conduct Model Policy (Appendix 1 – Individual Rights and Mutual Responsibilities of the Parties to a Complaint). It is available at: www.ombo.nsw.gov.au.

¹⁴ For more information on Organisational Justice Theory see: Greenberg J & Cropanzano R 2001, *Advances in Organizational Justice*, Stanford University Press, Stanford.

Managing complainant expectations

In addition to establishing ground rules another important part of preventing or minimising the likelihood of UCC is to effectively manage complainants' expectations.

In practice, it is not uncommon for complainants to be unaware of an organisation's role, procedures or practices for dealing with complaints. They may believe – without realising that these expectations are inappropriate – that they have the right to dictate:

- how the organisation will handle their complaint, including the priority it will be given who within the organisation will deal with their complaint
- the type and level of involvement they will have with their complaint
- how long it will take to deal with their complaint
- what the outcome of their complaint will be – eg that they will receive significant financial compensation or that someone will be fired.

As a result, it is essential for you test and manage complainant expectations at the earliest possible opportunity to minimise the likelihood for disappointment, anger or frustration – emotions that are all catalysts for UCC.

Other than for simple matters that can be dealt with over the phone, at the beginning of the complaints process all complainants should be informed in general terms, of:

- your role as a case officer and the functions of your organisation
- the complaints processes and procedures that you/your organisation intend to follow in relation to their complaint
- how their complaint will be dealt with
- the likely timeframes for completing key tasks relating to their complaint
- the likely and unlikely outcome(s) of their complaint
- their responsibilities as a complainant – eg acting honestly, cooperating with and respecting you as a case officer and the complaints process generally
- your responsibilities as a case officer (and those of your organisation) in relation to them and their complaint.

This information will help to manage a complainant's expectations and may minimise the likelihood for subsequent misunderstandings which can lead to UCC.

Information that is designed to test or manage complainant expectations can be communicated in a number of ways including:

- **Before a complaint is made** – in publicly available information materials such as brochures and leaflets or on an organisation's website.
- **When a complaint is made** – during an initial interaction with a complainant – eg over the phone or in person.
- **Immediately after a complaint is made** – in a letter acknowledging receipt of their complaint and explaining in general terms what will happen next. See Appendix 3 – Sample acknowledgement letter for managing expectations.
- **While the complaint has being dealt with** – during any interactions with a complainant about the progress of their complaint – eg over the phone, face to face, in written or electronic communications etc.
- **Immediately before the final letter is sent or in the final letter** – explaining the outcome of their complaint, as well as the reasons for that outcome.
- **After a complaint has been closed/on an ongoing basis** – in cases where a complainant persists with their complaint, for example by reframing their complaint or insisting that it be re-opened, and/or pursues a review of their complaint.



Table 4 below provides some script ideas for testing and managing the complainants' expectations. These scripts should be used during your interactions with all complainants – not just those who present with unreasonable behaviours.

Table 4 – Testing and managing complainant expectations

Actions	Script ideas
Testing expectations – finding out what the complainant expects and wants.	<ul style="list-style-type: none"> • <i>What were you hoping to achieve by bringing your complaint to our attention?</i> • <i>What did you hope to achieve when you decided to contact us?</i> • <i>What do you think our organisation can do for you?</i> • <i>What outcome are you hoping for?</i> • <i>What can we do to resolve this in a way that is fair to everyone?</i> • <i>Let's have a look at your goals in this situation.</i> • <i>How do you propose that we resolve this?</i> • <i>Let me explain what happens when you make a complaint.</i> • <i>Do you understand how the complaints process works at this organisation?</i>
Defining the issues of complaint – clarifying the complainant's issues to determine whether they can be dealt with by your organisation.	<ul style="list-style-type: none"> • <i>As I understand it, you're complaining about ... and.... Is this correct? (Allow for clarification) And you want ... to happen. Is that correct?</i> • <i>You appear to be complaining about ... and.... Is this correct? (Allow for clarification) ... is an issue we can look at, but ... and ... aren't things we can take up because</i> • <i>Are you saying that...?</i> • <i>Let me see if I understand your issue(s).</i> • <i>And am I correct that you want ... to happen?</i> • <i>Can you share that with me one more time just to make sure I understand you completely?</i> • <i>Thank you for going to the trouble of explaining this to me. As I understand it you're saying ...</i> <p>If the complainant is rambling:</p> <ul style="list-style-type: none"> • <i>I don't need that level of detail to be able to do something about your complaint. Tell me about</i> • <i>So I don't waste your time, why don't you tell me about</i> • <i>Tell me what the key issue is that you're complaining about.</i>
Retesting and reframing expectations – correcting any misunderstandings and expectations that are unrealistic or unreasonable.	<ul style="list-style-type: none"> • <i>Are you aware of what our organisation can do? (often the answer is 'not really') Perhaps I could tell you a bit about how this organisation works and what we can and can't do.</i> • <i>Let me give you an idea of what our organisation can do.</i> • <i>... is what we can do.... we can't do....</i> • <i>I realise that you want.... We can/can't do ...because....</i> • <i>.... won't happen because...However, might be possible.</i> • <i>We won't do....But we may/will be able to...</i> • <i>So that you aren't disappointed later on, I should clarify now that it is very unlikely that we'll be able to do ... because....</i> • <i>It seems to me you're hoping we can do ... I have to tell you now that this will not be possible because</i>

Actions	Script ideas
Redefining expectations – correcting the expectations you/your organisation create if they cannot be met, especially those relating to timeliness.	<ul style="list-style-type: none"> <i>I'm calling because I said that we would get ... to you by.... Unfortunately for [state reason(s)] we haven't been able to do this. I can call you in a couple of days, if you like, to let you know exactly when we can have it done. I apologise.</i> <i>I know you were expecting that ... would happen today, but it will not be possible. It is likely that it will happen....</i> <i>I'm sorry, but we won't be able to.... However, we can...</i> <p>See – Chapter 8 Apologies.</p>
Preparing the complainant for disappointment – delivering bad news as early as possible to avoid the complainant developing unrealistic expectations about their complaint and any possible outcomes.	<ul style="list-style-type: none"> <i>I wanted to call you and tell you about my decision/the outcome of your complaint before I send out my letter, because I know the outcome isn't what you'd hoped for (explain).</i> <i>I wanted to call you and tell you directly that we won't be able to take up your complaint, before I send you a letter saying this (explain).</i> <i>I will, of course, send you my decision in writing, but speaking with you means I can also answer any questions you have about my decision/the outcome.</i> <p>Note: Although these conversations are not easy, they allow you to discuss the 'bad news' on your own terms and at a time when you are mentally prepared to do so – instead of some hours, days or weeks after you have sent the complainant their final letter and they have had time to script or rehearse a response to the bad news.</p>



Case study example – Managing Expectations

provided by the Commonwealth Ombudsman

Mrs A complained to the Commonwealth Ombudsman about an ongoing dispute that she was having with a government agency. Mrs A alleged the agency had suspended and then cancelled her 'Parenting Payment' welfare benefit, without her knowledge, and that when she appealed the cancellation some months later

the agency reinstated the payments, but refused to reimburse her several outstanding payments that were still owing to her.

Mrs A thought that this was a gross injustice against her and pursued it with the Social Security Appeals Tribunal and the Administrative Appeals Tribunal (AAT) before complaining to our office. Both tribunals upheld the agency's decision not to reimburse her payments because the agency had provided Mrs A with sufficient notice by sending letters to her via Australia Post. Also, the relevant legislation stated that in cases where a cancellation decision is overturned on review (like in Mrs A's case) and a request for review is not made within 13 weeks of the original decision, then arrears may not be paid. Mrs A had not requested the review within the 13 weeks period.

However, the AAT did acknowledge that Mrs A had not done anything wrong and had provided the agency with all the correct banking and address details. Unfortunately, for Mrs A there was evidence of mail in her neighbourhood regularly going missing and not being delivered. Mrs A approached our office to assist her in lodging an application under the Compensation for Detriment caused by Defective Administration (CDDA) to recoup the excess payments which she had very high expectations of receiving.

Because the issues involved in Mrs A's matter were quite complex and because English was her second language a lot of time was spent explaining how the legislation worked, as well as the CDDA scheme. We also had to repeatedly manage her expectations and remind her of the Ombudsman's role and the fact that we could not guarantee that she would get the payments – we had no determinative powers in the matter.

Mrs A's application was subsequently denied. Although she felt that there was an injustice, her understanding of the process, purposes and roles of the relevant schemes and bodies allowed her to rationalise and accept the decision and eventually put it behind her.

Managing your own expectations

It is not just complainants whose expectations can be unrealistic. Having unrealistic and unreasonable expectations is actually a very common occurrence in all of us. Some of the more common unrealistic expectations held by complaint handlers include that:

- **Complainants will have realistic and reasonable expectations.**
 - In practice some complainants are looking for vindication, retribution, revenge, or for someone to be punished for the wrong they have suffered – things that a complaint handling system is not designed to deliver. Other complainants may also insist on outcomes that are completely inappropriate, impossible or unattainable.
- **They can bring all complainants around to their way of thinking if they explain things well enough.**
 - In practice, explaining and logical reasoning will not always work – especially when a complainant has not arrived at their point of view through logical reasoning or has reasoned well, but from a false premise. Also, some complainants are so emotionally committed to a particular position that no amount of reasoning will lead them to change their views, acknowledge other more reasonable views, or admit to changing their views if they have indeed done so.
- **They can resolve all complaints to a complainant's satisfaction and maintain good relationships with all complainants.**
 - In practice, some complainants will never be satisfied despite your best efforts to resolve their issue. Also some problems may never be fixed. The fact that a complainant is unsatisfied with a decision you have made or the outcome of their complaint does not always mean you have failed or have been unsuccessful in the way you handled their complaint. Provided you have done your job properly – including acting fairly, reasonably and impartially – and have reached an outcome that you and your organisation consider to be reasonable and appropriate in the circumstances, the complainant's satisfaction will not be an appropriate measure of your performance or how well you handled the matter.
- **They can help complainants who appear to be spiralling out of control over a relatively insignificant issue.**
 - In practice, some complainants cannot be helped out of this situation. They get so consumed and invest so much time and energy into pursuing their issue that they lose perspective and allow their issue to dominate everything in their lives – when it should not. In these cases often the best way to help a complainant is to deal with their issue as promptly as possible – giving it due consideration, of course. Otherwise, you may just fuel them and their issue unnecessarily.

Chapter 7 – Dealing with anger through effective communication

Recognising and understanding complainant anger

In complaint handling, anger is an understandable, and to some degree acceptable, emotion among frustrated and disappointed complainants. In itself, it is not a problem and to be shocked and unprepared when it occurs is generally unrealistic.

However, anger does become problematic and unacceptable when it escalates into verbal abuse, hostility, threatening behaviour or violence. When it is expressed in these ways, it must be dealt with swiftly and decisively using the suggested management strategies in Chapter 13 – Strategies and script ideas for managing unreasonable behaviours (page 77).

As complaint handlers, it is essential that we understand and recognise the signs of anger in complainants (and within ourselves) so that we can respond in the most effective and productive ways possible.

Some of the more common signs and expressions of complainant anger include:¹⁵

- raised voices, yelling, slurred speech or chanting
- accusatory, dominating or even sexually explicit language
- loaded words that are intended to intimidate or to achieve a particular result
- harsh or overly sarcastic humour
- combative or inflexible behaviour
- irritability, anxiety or short temperedness
- redness in the face or flushed appearance
- intimidating expressions including lowered eye brows, stares, eye rolling or flared nostrils
- tension in the face, neck, hands, scalp or back – eg clenched fists or jaws, grinding teeth etc.
- intrusive behaviour such as violating your personal space or entering areas of the office that are either off-limits or that they have not been invited into etc.
- exaggerated gestures including thrashing their arms around and pointing or waving their finger
- repetitive and agitated movements – including pacing around, tapping their feet continually, constant repositioning in a chair or standing up frequently
- physical aggression including throwing and shoving things around, such as paper, pounding the table etc.

You will note that a number of these 'signs' of anger are physiological. This is because anger is one of the most physically arousing emotions that human beings experience. It can block our judgement and affect our ability to reason, problem solve and process information making it very difficult to communicate in productive ways.¹⁶

In a complaint handling context this means that complainants who are experiencing the physiological effects of anger may be incapable of processing the information that you are attempting to give them or even working towards a resolution of their complaint. As a result, you will need to use your judgement to decide whether to continue an interaction with a complainant who is displaying signs of anger or end the interaction and return to it sometime later – when they have had time to calm down which can take up to 24 hours.

In addition, as a complaint handler it is likely that you will have to deal with a complainant's anger by acknowledging and addressing that anger first, before you can effectively deal with their substantive complaint.

Ultimately, it is your responses to a complainant's anger and your communication style that will be the significant determinant in whether your interaction with an angry complainant escalates.

For more information on the physiology of anger see: www.optimus.com.



¹⁵ Department of Human Services (Vic) 2005, *Staff safety in the workplace: Guidelines for the protection and management of occupational violence for Victorian Child Protection and community-based Juvenile Justice staff*, Victoria, pp 25. Copyright © State of Victoria, Australia. Reproduced with permission of the Secretary to the Department of Human Services. Unauthorised reproduction and other uses comprised in the copyright are prohibited without permission.

¹⁶ Mills, H (Dr), 'Physiology of Anger', viewed 21 September 2011, <http://www.mentalhelp.net/poc/view_doc.php?type=doc&id=5805&cn=116>.

Using the CARP method to defuse complainant anger

CARP is an acronym developed by Robert Bacal to describe a sequence of actions that you can take to deal with complainant anger. CARP can help you to organise and time how you defuse a complainant's anger and refocus their attention onto resolving their issue. It stands for:

- **Control** – controlling your interaction with the complainant, as well as your own anger.
- **Acknowledge** – acknowledging the complainant's anger and giving them an opportunity to 'let off steam'.
- **Refocus** – refocusing the conversation onto the substantive issues.
- **Problem solve** – finding solutions to the issues and problems that you've identified.

The order of CARP is very important, in particular leaving the problem solving to the end. If you try to problem solve or refocus too quickly you are likely to find yourself explaining the same thing over and over again – because the complainant will persist in wanting to explain their story. If this happens, go back to acknowledging their feelings and emotions and work your way back down the sequence.¹⁷

For more information on CARP see: www.darncustomers.com/course/ch4defusingprocess.htm.

An explanation of the CARP method is also provided in Appendix 4 – Defusing complainant anger with CARP.

Communication strategies for avoiding or minimising the triggers for anger, conflict and UCC

In addition to the CARP method, the suggestions in Table 5 are designed to promote optimum communication and lessen the triggers for conflicts with complainants as well as UCC. They are the result of our years of experience and are divided into two columns:

Do – Things that you can do to facilitate non-confrontational communication and build your relationships with complainants.

Don't – Things that tend to lead to conflict and UCC and that you should avoid during interactions with complainants.

These suggestions should be used in your interactions with all complainants, not just those whose behaviour you find difficult.

Table 5 – Effective communication strategies for avoiding or minimising the triggers for anger, conflict and UCC

Do	Don't
... acknowledge their emotions and give them an opportunity to 'let off steam' by venting their anger. You might say: <ul style="list-style-type: none">• <i>I've got a sense of how strongly you feel about this.</i>• <i>It sounds like you are very upset/angry about this.</i>	... allow venting if it is going to encourage UCC or is going to last for more than 2-5 minutes because continued venting can do more harm than good – having the effect of reviving the complainant's negative feelings and emotions about their experience.
... control your emotions.	...respond to fighting words. By not responding, you avoid giving the complainant ammunition to use against you. You might say: <ul style="list-style-type: none">• <i>Yes, I know some people believe this.</i>• <i>You are entitled to your opinion.</i>• <i>I see or mmm.</i>

¹⁷ Bacal, R 2011, 'Chapter 4 – The Defusing Process and the CARP Model' Darn Customers Guide to Angry Customers – Free Online Course on Customer Service Challenges, viewed 16 April 2012, <http://www.darncustomers.com/course/ch4defusingprocess.htm>. Also see Bacal, *Defusing Hostile Customer Workbook*, pp. 24, 28.

Do	Don't
<p>... show empathy for the stress and anger they are feeling. You might say:</p> <ul style="list-style-type: none"> <i>I understand how you might feel that way.</i> 	<p>... allow your empathy to affect your objectivity. Also, avoid saying '<i>I understand what you're going through</i>' – chances are you do not.</p>
<p>... echo what they say. This shows that you are listening and usually involves repeating the last few words or the key words they have said. You might say:</p> <ul style="list-style-type: none"> <i>So you are saying...</i> <i>Am I correct in my understanding that ...?</i> 	<p>... echo unless you clearly understand what the complainant has said. Do not put words in their mouth.</p> <p>Also, avoid echoing swear words and highly offensive language if it may escalate the situation.</p>
<p>... acknowledge their point of view without agreeing with it. You might say:</p> <ul style="list-style-type: none"> <i>I can see that you believe We have come to a different conclusion.</i> <i>I do understand that your position is Our position is a little different.</i> 	<p>... disregard their point of view as being outrageous, incorrect or inaccurate. There can be alternative valid viewpoints, interpretations, perceptions and recollections of the same issue/event.</p>
<p>... anticipate likely counter arguments/valid objections that the complainant will make and address them up front. You might say:</p> <ul style="list-style-type: none"> <i>At this point you may well say that... Let me explain why things have happened this way.</i> 	<p>... present counter arguments unfairly or in a way that might be perceived as confrontational or disrespectful.</p>
<p>... find things to agree on with the complainant, without necessarily agreeing with their point of view. You might say:</p> <ul style="list-style-type: none"> <i>I agree that \$2,000 is a lot of money to lose.</i> <i>I agree that not hearing back from the department for over a month would be frustrating.</i> <i>You're right! Two weeks does seem like a long time to wait...</i> 	<p>... make promises or agree to something that you will need to retract later – stick to the small stuff.</p>
<p>... use 'I' and 'we' messages. 'I' messages are about sharing your concerns and taking ownership and responsibility.</p> <p>'We' messages are about cooperation and inclusion and give the impression that you are on the same side. You might say:</p> <ul style="list-style-type: none"> <i>We could look at it this way ...</i> <i>How can we resolve this?</i> 	<p>... use 'you' messages in a way that might be perceived as being confrontational or accusatory.</p> <p>Also avoid using 'I' messages if they might be perceived as critical, condescending, condemning or demanding.</p>
<p>... ask questions to maintain control of the interaction. This way the complainant is forced to respond to you, rather than the other way round.</p> <p>Use 'when', 'what', 'where' or 'how'. These types of questions can be effective when responding to accusations by a complainant because they deflect the issue back onto the complainant without being confrontational. You might say:</p> <ul style="list-style-type: none"> <i>What has led you to believe that I'm not taking you seriously?</i> <i>When did you start thinking that I don't care about your complaint?</i> 	<p>... use 'why' questions – if you can avoid them. 'Why' can be perceived as being confrontational and can lead to more defensive and combative responses.</p>

Do	Don't
... keep your verbal and non-verbal cues non-threatening. Be aware of your tone of voice, facial expressions and gestures.	... display confrontational gestures – eg folding arms, rolling eyes, sighing, or doing things that might give the impression that you are not interested in the complainant or their matter.
... seek equality in your conversations with the complainant. Avoid jargon and use a communication style that is suited to them.	... say things to make the complainant feel inferior – it is likely to make them feel like they need to assert their dominance and regain control of their issue – in circumstances where they probably already feel disempowered and victimised.
... listen actively – be engaged and pay attention without interrupting unnecessarily. Clarify, repeat, paraphrase, summarise and check understandings.	... just listen to what is being said, but also listen for what is not being said. What facts/topics is the complainant avoiding/not giving you? This information may be important to your analysis into the matter.
... clarify the issues in dispute and their impact on the complainant. This may be necessary to be able to show appropriate sympathy/empathy, and will be necessary to identify the needs (and therefore the objectives) of the complainant.	... forget to clarify your personal boundaries especially if the complainant's behaviour is escalating. State what you expect from them and the things you can and cannot do for them.
<p>... admit ignorance and seek clarification if you are unsure or unclear about the complainant's issues or something they have said. You might say:</p> <ul style="list-style-type: none"> • <i>As I understand it, the situation is ... Is this correct?</i> • <i>From what you tell me it seems ... Is this the case?</i> 	... assume anything. Encourage explanation by asking questions and giving the complainant a chance to explain their issues in their own words.
<p>... explain the reasons behind certain processes, procedures and policies and/or why you can or cannot do something. You might say:</p> <ul style="list-style-type: none"> • <i>Let me explain why our agency does it this way...</i> • <i>Perhaps I can tell you a bit about how our organisation works and why this has happened.</i> 	<p>... respond in an overly formal or bureaucratic way as this may make the complainant feel inferior of that they cannot identify with you – eg</p> <ul style="list-style-type: none"> • <i>That's the policy.</i> • <i>I just follow the policies/laws.</i>
... be personable and build rapport with the complainant.	... be too informal by joking around. Jokes can be interpreted as trivialising a complainant's issue. Therefore, in difficult situations with complainants the only safe form of humour will be self-deprecating.
... express a willingness to help them and to appropriately resolve their issue.	... suggest that they need psychological help or counselling. This is unlikely to achieve anything positive.
<p>... allow space and time to think through an issue and regain self-control. Remember: anger can affect judgement and problem solving skills.</p> <p>Some reasons for taking a break during an interview can include to:</p> <ul style="list-style-type: none"> • consult a colleague or supervisor • check a policy, piece of legislation or other document • check a file or something on the computer • get/offer a cup of tea or water. 	... say to the complainant you need <i>time to cool off</i> . This is unlikely to be well received.

Do	Don't
<p>... admit mistakes and apologise if a problem, delay or omission has been caused (in whole or part) by you or your organisation. An apology may be all the complainant wants.</p> <p>See Chapter 8 – Apologies (page 35).</p>	<p>... give excuses, argue, defend or deny. Keep your ego out of it and try to neutralise the situation. The general principle behind non-confrontational language is that when someone pushes you don't push back!</p>
<p>... respect personal space.</p>	<p>... invade the complainant's personal space. Bear in mind that the average personal distance varies from one culture to the next. Some complainants may consider it acceptable to stand very close to you, almost to the point of touching, while others may refuse to touch you including shaking your hand – none of which is done with any intention of disrespecting you or your personal space.</p>

Drafting final letters and review letters

Communicating effectively is also important when you are drafting correspondence to complainants, in particular final letters and review letters. Complainants tend to place a lot of importance on these documents so time should be taken to draft them carefully.

We suggest that final letters should be drafted as 'stand-alone' documents that clearly explain for the complainant, and any third parties that they might show it to, the:

- issues of complaint
- issues that were inquired into/ investigated and explanations for any that were not
- factors that were considered during the inquiries/investigation
- methodology and actions taken during the inquiries/investigation
- reasons for the decisions/outcomes reached.

Where a complainant has behaved unreasonably in their dealings with you/your organisation, the final letter should also:

- identify the nature and/or number of interactions between them and the organisation – including if those interactions were excessive or unreasonable
- identify and explain the nature of the unreasonable conduct engaged in by the complainant and any formal warnings that were given to them about their conduct.

This type of approach can be effective in cases where you know or suspect that a complainant:

- will be very unsatisfied with the contents of the letter
- has or will attempt to escalate their complaint up the hierarchy – say to a CEO or a Minister – or externally to the media for sympathy or for a more favourable outcome. In these cases, a comprehensive final letter could also be used as the basis for (or attached to) a briefing note response to a Minister.

It is also best to give the decision at the end of the final letter rather than the beginning to encourage the complainant to read the reasoning underpinning the decision. This may increase the likelihood of the decision being understood. Also some complainants, when faced with an adverse decision at the beginning, do not bother to read the letter in its entirety before getting on the phone to express their dissatisfaction or demand a review. This unnecessarily takes up more time and resources. See Chapter 6 – Effectively managing complaints and expectations from the outset.

On the other hand, review letters should be short and concise. Long and detailed review decisions sometimes encourage a complainant to argue about specific details while ignoring the substance of the decision.

Review letters should also be signed by a senior manager, preferably the CEO, to make it clear to the complainant the matter has been escalated and considered at the highest level and there is nowhere else to go within the organisation. The letter could also include a statement and explanation about how further communications relating to their complaint will be dealt with – i.e. further correspondence about this issue will be read and filed without acknowledgement, unless the organisation decides it requires further action.

Knowing your triggers

As the section on understanding and recognising anger (above) suggests, anger can significantly affect our judgement, and our ability to reason and problem solve. As a result, as complaint handlers it is important that we recognise the things that trigger us to become angry in our dealings with complainants.

Triggers are the things that complainants say and do that push our buttons and cause us to become angry or frustrated. It may be their choice of words or their tone of voice. Whatever it is, it can provoke us and can cause us to lose control.¹⁸ It is important for us to be able to identify our triggers so that we can develop ways to deal with them – so they do not negatively influence how we deal with complainants or their complaints.

What are your triggers?¹⁹

When you have a moment, take time to figure out your triggers. Ask yourself:

- What things do complainants say or do that push my buttons?
- How do I normally react when that happens – eg Do I respond with confrontation? Do I give in? Do I become dismissive? Or am I unaffected?
- Can I respond more usefully in these situations? If so, how?
- What types of customer interactions cause me the most concern – eg face-to-face interviews, home visits, phone calls, etc? Why?
- What can I do to ease that concern?
- What do I perceive as aggressive or violent behaviour?
- How do I deal with such situations? How does this compare to the suggestions in this manual?

Using self-talk to manage your own anger and stress

One way to manage your own anger and emotional triggers is self-talk. Self-talk is your thoughts (what you say to yourself) when you are dealing with a negative situation. Done appropriately, self-talk can help you to put difficult complainant interactions into perspective and deal with them objectively rather than taking them to heart.

For example, if you are on the phone with a complainant who is ranting about their issue and won't let you get a word in edgewise, you might try saying to yourself: 'Wow! This guy is really angry about what has happened to him' rather than 'Who does this guy think he is, talking to me this way?' – which is only likely to stir you up. Positive self talk can be a powerful tool for gaining control of your anger and emotions and can help you gain control of the situation, for example by giving you a plan of action. It can also help you to put things into perspective and recognise that the complainant's anger is likely due to their circumstances rather than anything you've done.

Examples of positive self-talk:

- I will let him/her vent for another X minutes and then I will either refocus on the issues or end the conversation.
- Take a deep breath, stay calm, I can handle this.
- I'm not going to let this ruin my day.
- It's not worth getting angry over this.
- This clearly has nothing to do with me.
- This person really needs some help.

Examples of negative self-talk to avoid:

- I'm not going to take this crap.
- I don't get paid enough to deal with this
- I'm not letting this idiot talk to me this way.
- One more word and I'm going to explode.
- Why do I get all the crazies?
- I don't know what to do.
- You rude...!
- Is this guy for real?
- It's not my problem.
- Get lost!
- I hope no one can hear this.

Note how most of the negative self talk is reflective of someone who has taken a complainant's comments and anger personally – which you should generally avoid doing in your interactions with complainants.

For other examples of self talk, see: Robert Bacal, *Defusing Hostile Customers Workbook (Third Edition)*.²⁰

¹⁸ Bacal, *Defusing Hostile Customer Workbook*, pp. 40.

¹⁹ Department of Human Services (Vic), *Staff safety in the workplace*, pp 25. (See also footnote 15 (p.29) for additional copyright information.)

²⁰ Bacal, *Defusing hostile customers workbook*, pp. 42.

Chapter 8 – Apologies

Apologies – how they can help you to minimise the likelihood for UCC

Despite all the information in this manual about UCC, there is no denying that as complaint handlers (and public organisations) we sometimes get it wrong. Mistakes, delays, omissions and misunderstandings happen, complaints can be mismanaged, and our processes and procedures can be unresponsive to the needs of certain complainants. When these things happen we must rectify them as soon as possible – including providing a complainant with a full apology.



A full apology is one of the most effective ways to defuse a situation with a complainant and prevent it from escalating. It is also essential in any circumstance where we have contributed to UCC. A full apology, given at the right time, can:

- restore dignity, face and reputation
- provide an acknowledgement that the recipient was indeed right
- assure the recipient that they are not at fault
- prevent escalation of the matter and the associated costs in terms of time, resources and stress.

The dilemma, however, is that most of us don't like confrontation – particularly with an angry complainant. Some of us are afraid that if we apologise and admit fault we will make an angry complainant even angrier or give them ammunition to use against us. As a result, instead of apologising we wait and hope the situation or problem will 'blow over'. Unfortunately this rarely happens and these situations often escalate unnecessarily and for extended periods of time.

Giving an apology

An apology needs to be done properly. Apologies should also be given at the earliest practical opportunity – eg once responsibility for a wrong is apparent or immediately following an investigation into the issue giving rise to the apology. If an apology is made too late, it can be interpreted as 'damage control' rather than a sincere expression of regret.

Apologies must also be given by the right person – the one who is responsible for the wrong, or the person who is clearly perceived as speaking on behalf of the agency responsible for the wrong. Otherwise, it may be perceived as being insincere.

Apologies should also be given to the right person, the one who was harmed. Apologising to a third party is generally not appropriate.

What should an apology include?

The most appropriate form and method of communicating an apology will depend on the circumstances of a particular case. Nevertheless, the most effective apologies generally incorporate the following key elements:

1. Recognition

- An explicit acknowledgment and recognition of the act or omission (the wrong) to which the apology applies.
- Acknowledgment of the harm caused by the wrong – eg the complainant suffered embarrassment, hurt, pain, damage or loss.

2. Responsibility

- An express acceptance of responsibility or fault for the wrong that caused the harm.

3. Reasons

- A simple plain English explanation of why the wrong happened.

4. Regret

- A statement of apology that expresses sincere regret and/or sympathy, sorrow or remorse as appropriate.
- Communication with sincerity – an important indicator of the level of regret of the person or organisation doing the apologising.

5. Redress

- A proposed or actual action taken to address the problem.
- An express promise not to repeat the wrong.

6. Release

- A request for forgiveness – an optional extra to a full and complete apology.

Although it cannot be guaranteed to work in every case, the more that an apology addresses the elements listed above, the greater the likelihood that it will be effective in reducing anger, restoring a damaged relationship with a complainant, and helping all parties to 'move on'.

Note: A partial or an otherwise inappropriate apology will often do more harm than good.

What if a complainant refuses my apology?

If your apology fails – for example, because a complainant is so angry that they cannot find it in themselves to forgive you or they want to punish you (in which case no amount of apologising will resolve the situation) – then it may be appropriate to step back from the situation and give the complainant some time to calm down and let go of their issue.

If this also fails – and your organisation is required to maintain an ongoing relationship with the complainant – you may, in consultation with your supervisor, attempt to re-assign the complainant to another case officer if this will defuse the situation. Alternatively, your organisation may need to attempt remediation or alternative dispute resolution strategies such as conciliation and mediation to resolve and/or manage the conflict. See Chapter 20 – When restricting access is not possible: Using alternative dispute resolution strategies (page 105).

That said – regardless of the error you made, if you have made an appropriate apology and sufficient remediation has been offered to the complainant, they will not be justified in engaging in UCC and action will need to be taken to manage their conduct.

See Part 5 – Responding to and managing UCC (page 37), or Part 7 – Supervisors and senior managers, depending on which is more appropriate at this stage (page 98).

Will I get myself (or my employer) in trouble if I admit fault?

Next to the confrontation issue, the most difficult thing about apologising for most professionals is the fear that if we apologise the complainant will use that admission against us. We worry that by apologising we are accepting legal liability or blame, or providing evidence for complainants to use against us with our employer, in a public forum or even the courts. However, in Australia, people are generally protected from liability when they apologise.

There are three different types of protections in Australia:

- In NSW, the ACT and Qld citizens are generally protected from incurring civil liability for 'full apologies' – that is, apologies that include an admission of fault or responsibility.
- In the other states and territories citizens are protected from incurring civil liability for 'partial apologies' – that is, apologies that do not include such an admission.
- All states and territories in Australia have legislated to protect 'full' apologies from incurring liability in defamation.

Case law also states that even if a person makes an apology that includes an acceptance or admission of fault or responsibility, this will not necessarily be regarded as an admission that creates legal liability in civil proceedings by the court (*Dovuro Pty Ltd v Wilkins* [2003] HCA 51 (11 September 2003)).

What this means in practice is that – at least in NSW, the ACT and Qld – you can let go of your fears about incurring legal liability if you apologise, and accept that making an apology is often the right thing to do and serves a good purpose. You will, however, need to consult your relevant supervisors or senior managers about the circumstances when it will be appropriate for you to make an apology.

For more details see *Apologies – A practical guide*, published by the NSW Ombudsman, and available at www.ombo.nsw.gov.au.

Also, for guidance on the various options for redress that you may use as a public official or agency to respond to people who have been detrimentally affected by maladministration, see: Complaint Handler's Toolkit (2nd edition), Chapter 5 – Options for Redress at: <http://www.ombo.nsw.gov.au>.

PART 5

Responding to and
managing UCC

Explanations and caveats

Tables 6, 8, 10, 12 and 14 set out the five categories of UCC as identified in our framework for managing UCC (see page 14) and provide corresponding strategies for managing each category and behaviour listed under each one.

Tables 7, 9, 11, 13 and 15 set out the more common verbal attacks and remarks that complainants make when they engage in the types of behaviours identified in the tables above and provide possible and acceptable scripted responses for each.

These strategies and scripts are intended to be used as a 'ready reference', particularly when dealing with complainants over the phone.

It is important to note that the information and script ideas provided in the tables are only intended to be a guide and should be applied flexibly to suit the context that you are operating in and the circumstances of the complainant and the complaint that you are dealing with. Not all of the suggested strategies and scripts will work in all situations, and you will need to rely on your own judgement and experience to gauge the most appropriate response in each case. For example, the language used in the scripts may need to be altered depending upon a complainant's literacy, cultural and linguistic background, and your own communication style.

Also, tables 6, 8, 10, 12 and 14 only provide frontline strategies for dealing with UCC. Strategies that modify and/or restrict complainant contact for extended periods of time are provided in Chapter 18 – Modifying or restricting access: A management responsibility. These options must always be considered and consented to at a senior level and therefore do not fall within the scope of the other frontline strategies provided in this section.

Chapter 9 – Strategies and script ideas for managing unreasonable persistence

Unreasonable persistence

The principle underlying the strategies and script ideas for managing unreasonable persistence is saying 'no'. Done properly, 'no' should be firm but polite. It should not be defensive or overly apologetic and should make it clear to the complainant that no amount of pressure will change the decision/position that has been reached.

Table 6 – Strategies for managing unreasonable persistence

Complainant conduct	Suggested strategies
Interrupts the case officer or does not allow the case officer to speak.	<p>There are three different options for dealing with this type of conduct:</p> <p>1. The silent approach²¹ – for moderately persistent complainants</p> <ul style="list-style-type: none"> • Say nothing – do not speak at all. • Let the complainant tell their story and 'let off some steam' – any attempts to interrupt them will likely get them more riled-up and keep them talking. • Eventually, the complainant will stop and ask if you are still there. This will give you the opportunity to interject and attempt to regain control of the conversation. You can: <ul style="list-style-type: none"> – <i>let them keep talking</i> – <i>ask them a specific question (so you can guide where the conversation goes next)</i> – <i>take over the conversation?</i> • If you allow the complainant to keep talking, you may try to break their monologue by repeating their name, a key word or the last word they said: <ul style="list-style-type: none"> – <i>I can tell you are upset, but for me to be able to help you...</i> – <i>Let me make sure I've got it right so we can figure out what to do next.</i> • Don't back down when they try to interrupt again. <p>2. The broken record approach²² – for very persistent complainants</p> <ul style="list-style-type: none"> • Repeat the same word or short phrase over and over until the complainant hears and processes your message (remember: anger can affect our ability to process information) • At some point the complainant will stop and you will have an opportunity to regain control of the conversation

²¹ *ibid*, pp. 72.

²² *ibid*, pp. 71.

Complainant conduct	Suggested strategies
Interrupts the case officer (cont.)	<p>3. The ‘stop’ approach – for complainants who you know from experience to be extremely persistent</p> <ul style="list-style-type: none"> Interrupt the complainant's monologue at the outset and assert control by saying, for example: <ul style="list-style-type: none"> <i>Before I can help you with ..., I need to get some information from you. Is it okay if I ask you a few questions about...?</i> <i>Unfortunately, I can't really help you until you tell me about ... So can you tell me about ...</i> If this does not work you might: <ul style="list-style-type: none"> try to give the complainant a time limit the duration of the phone call by saying, for example: <p><i>[Mr/Ms...], I only have [minutes] for this conversation. In this time I need you to answer [list questions]. Once you've answered these questions, we can discuss the problem that you're having further. So beginning with....</i></p> <p>At the end of the designated time period you should end the call. If necessary, re-schedule and remind the complainant of the information you need to cover before you can deal with anything else.</p> reschedule and terminate the call – preferably for 24-48 hours or sooner if the issue needs your immediate attention.
Bombards the organisation with phone calls, visits or written correspondence when it is not warranted.	<ul style="list-style-type: none"> Firmly ask the complainant to ‘stop’ the behaviour and tell them that they will be contacted, as necessary. Limit phone calls to short intervals – eg five minutes. Advise them that they have to book an appointment through the main reception if they want to meet with you (or another officer), and limit the frequency and length of those meetings, as appropriate. Wait to respond to written communications until you receive a number of them (eg three or four) if the complainant is sending them regularly. The communications should, however, all be acknowledged either by telephone or email unless they are unreasonable in number, in which case additional limitations may be needed. See Part 7 – Supervisors and senior managers (page 98).
Contacts different people within the organisation in the hope of getting a different outcome or more sympathetic response. (Internal forum shopping)	<ul style="list-style-type: none"> Avoid having extended conversations with complainants that are/ have already had their complaint dealt with by another case officer. Expressly ask complainants at the outset if they have already talked to someone about their issue. If so, identify the relevant person and refer them to that person to ensure consistency. Also, identify all complainants immediately on contact so you can check for their personal information in your case management system to see if their complaint is/has already been dealt with. Make sure you keep accurate and contemporaneous records of all communications and interactions with complainants to minimise the likelihood of ‘forum shopping’ behaviour. <p>See Chapter 15 – Recording and reporting incidents (page 92).</p>

Complainant conduct	Suggested strategies
<p>Sends their complaint to multiple people/ organisations in an effort to get a different, often inappropriate, outcome – includes cc'd emails and letters.</p> <p>(external forum shopping)</p>	<ul style="list-style-type: none"> • Do not take up complaints that have already been dealt with fairly, reasonably and comprehensively by another organisation – unless they raise issues that specifically require further action by your organisation. • Treat cc'd communications as being 'fyi' rather than a complaint, unless it clearly indicates that it is intended to be a complaint for your organisation or raises an issue that your organisation decides requires further action. • Ask complainants early on if they have already raised their issue with another organisation. <ul style="list-style-type: none"> – If yes, ask for copies of any final correspondence from that organisation to help you better understand their issues and decide if additional action is needed by your organisation. However, this information should not be used in a way that would affect your ability to impartially assess the complaint. • Draft final letters as standalone documents that can be used to brief any third party/organisation that the complainant takes their issue to next – eg the media or the Minister. See Chapter 7 – Dealing with anger through effective communication (Drafting the final letter).
<p>Demands a review simply because they disagree with the decision and without making a case for one.</p>	<ul style="list-style-type: none"> • Clearly explain that your organisation has a one review policy and stick to it. • Advise them that to receive a review they have to make clear arguments for one. For example, they need to: <ul style="list-style-type: none"> – explain how or why you/your organisation has made an error in handling their complaint – explain how or why the decision or outcome reached is inappropriate in the circumstances – otherwise provide new information or evidence that would justify a review. • Have final review letters signed by an appropriate senior officer or the CEO to show that your decision has been affirmed at the highest level and therefore cannot be escalated further.

Complainant conduct	Suggested strategies
<p>Refuses to accept a final decision after all avenues of review have been exhausted.</p>	<ul style="list-style-type: none"> • Maintain a 'no means no' stance following a review. • Avoid arguments or extended discussions with complainants who refuse to listen or accept your explanations about decisions or actions taken in relation to their complaint – particularly if their complaint has been dealt with comprehensively. • Refer them back to the original case officer/case reviewer who dealt with their complaint to ensure consistency in the information given and the approach taken towards managing their conduct. • Refer them back to the final letter or review letter and advise that the letter speaks for itself. If they have additional concerns, they should put them in writing which will only be responded to if it raises a valid issue or provides substantial new evidence that affects the decision or outcome reached. Failing this, their correspondence will be 'read and filed without acknowledgement or response'. • End phone calls or interviews that are unproductive. <p>See Table 7 – Scripted responses to statements and conduct associated with unreasonable persistence (Unproductive/stressful phone call or interview) (page 48).</p>
<p>Reframes their complaint in an attempt to get it taken up again.</p>	<ul style="list-style-type: none"> • Do not allow complainants to reframe their complaints, particularly if they have already received a review. • Identify complainants at the start of a phone call to determine whether their issue has already been raised or dealt with by your organisation. If so, refer them to the case officer who previously dealt with their complaint. • Advise them that their issue will not be re-visited unless: <ul style="list-style-type: none"> – the circumstances of their case have changed substantially and are likely to affect the organisation's decision/the outcome – they provide new and substantial information or evidence that is likely to affect the appropriateness of the decision made/outcome. • Make sure you keep accurate and contemporaneous records of all communications and interactions with complainants to minimise the likelihood of the same complaint being re-visited. <p>Note: You should always be careful not to disregard complaints that are sufficiently different from other similar complaints and that require further action by you/your organisation.</p>

Complainant conduct	Suggested strategies
<p>Makes an issue out of anything when things don't go their way, including complaining about how their matter was handled or someone's skills or competence.</p>	<ul style="list-style-type: none"> • Decline complaints that are not supported with clear evidence or for which there is no practical purpose in pursuing. • Provide complainants with clear information about the threshold(s) that their complaints must meet before they will be taken up. For example, the complaint should: <ul style="list-style-type: none"> – raise a substantial new issue – be supported by clear evidence that suggests that the event/issue they are complaining about happened. • Explain that clear evidence includes: <ul style="list-style-type: none"> – copies of official documents – photographs – videotapes – anything that shows or tends to show that what they are complaining about occurred. • Tell them clearly, firmly and transparently that complaints about you/your colleague/your organisation will not change the outcome of their original complaint, except in cases where there has been a clear error – which they will have to explain in writing. • If a complainant threatens to complain about you, confidently (but not arrogantly) provide them with the information they need to do so. <p>Note: Although it can be difficult, try not to take unfounded personal attacks or threats to complain about you personally. Often this is emotional blackmail – an attempt by the complainant to bully or coerce you to agree to their demands, or to take their frustrations out on you.</p>
<p>Persists in wanting to know where to go next, when it has been explained that there is nowhere else to go.</p>	<ul style="list-style-type: none"> • Do not suggest or refer the complainant to another organisation simply to appease them or 'get rid of them'. Referrals should only be made in cases where they are likely to be helpful to the complainant and will not contribute to their frustration or anger. • Be honest and upfront with a complainant if there is nowhere else for them to take their complaint. • Do not engage in extended discussions that are likely to give the complainant false hopes about their complaint or possibilities of success.

Table 7 – Scripted responses to statements and conduct associated with unreasonable persistence

Statement or conduct	Possible responses
You're not listening to me.	<ul style="list-style-type: none"> • <i>Well [name] I have been listening to you. I've been listening to you for [minutes] now and if you allow me to speak....</i> • <i>I'd like to help you, but before I can do that I need to ask you a few questions...</i> • <i>I can see you're concerned and I'd like to help, but I need to ... first.</i> • <i>Let's see what we can do to get things going/get you what you need.</i>
I have more proof/ information. or I still haven't told you about...	<ul style="list-style-type: none"> • <i>Can you please stop? (explain –eg sending me emails every day)</i> • <i>If/when I need more information I'll let you know. Until then, please stop....</i> • <i>I already asked you not to send any more information/emails /.... I ask again that you please stop.</i> • <i>You have emailed/phoned/met with us about this issue [number of times]. Unfortunately we have nothing new to tell you. When we do we'll let you know right away.</i> • <i>Your frequent emails/phone calls/meetings are taking me away from doing other important work relating to your complaint.... Please give me time to get them done because, until I do, I will not have anything new to tell you/I won't be able to read anything new that you sent to me until...</i> • <i>I can't deal with your complaint properly while you're sending all of this information. You'll have to decide whether you want to withdraw your complaint while you get your information together, or let us move forward with what I have and the issues we've identified. What's happening now simply isn't working.</i> • <i>Because I've already asked you [number of times] to stop..., I'll be following this discussion up with a written request that you stop....I'd appreciate it if you'd agree to stop.</i>
Suspected or actual internal forum shopping.	<ul style="list-style-type: none"> • <i>Have you been in contact with anyone else in the office about this issue?</i> <ul style="list-style-type: none"> – <i>If yes, find out whom and redirect them as appropriate.</i> – <i>If no, get their name (with correct spelling) and check the system anyway. Otherwise, log their personal details and complaint/inquiry information as appropriate.</i> • <i>It seems [person] is dealing with your complaint. Because they are more familiar with the details of your complaint, I'll need to forward your phone call to them.</i> • <i>It looks like [person] has spoken to you about this. One minute, while I check if they are available to speak to you right now.</i> • <i>Our system shows that you've tried to speak with a number of people about this issue. I should remind you that [person] is responsible for handling your complaint. I can get them to call you back if you like? Do you have their phone number?</i> • <i>A lot of work goes into allocating complaints to the right officers and making sure that we use our resources in the best way possible. [Name of person] is responsible for handling your complaint and is very capable of doing so.</i> • <i>[Name of person] is responsible for handling your complaint and will do so exclusively, unless we think this needs to change. Would you like me to transfer you over to them now?</i>

Statement or conduct	Possible responses
<p>Be advised that I have notified /cc'd the Ombudsman/Minister/third party.</p>	<ul style="list-style-type: none"> <i>Our policy is to treat cc'd letters and emails as general information and not as a complaint.</i> <i>We generally don't respond to cc'd letters and emails, unless...</i> <i>If you want your letter/email to be dealt with as a complaint you will need to clearly indicate this and identify the specific issues you want us to look at.</i> <i>For us to deal with your complaint appropriately, we need you to clearly identify the issues you want us to look at and explain how the information you've sent supports each issue.</i> <i>Have you raised this with another organisation?</i> <ul style="list-style-type: none"> <i>– (If yes) It would be useful if you included copies of the correspondence that you've received from them about this issue.</i> <i>It's clear that this has been dealt with by ... organisation(s)/people. Because we haven't found any outstanding issues that we can help you with/it's unlikely we'll get a different outcome for you, we've decided not to pursue this further.</i> <i>It seems your complaint is being handled by more than one organisation right now. We generally wait until other organisations have finished their investigations before we consider taking up a complaint to minimise repetition. Feel free to contact us again once these investigations are finished if you're still unsatisfied. We'll see if it's something we can help you with then.</i> <p>Note: Care should be taken to avoid situations where a complainant's issue is declined by all relevant organisations, simply because the complainant has admitted to sending it to other organisations. Communication between organisations can be useful so long as it doesn't breach any privacy or confidentiality obligations.</p>
<p>I want this reviewed/ someone else to handle my complaint.</p>	<ul style="list-style-type: none"> <i>Our office doesn't just provide a review automatically. If you want one, you'll have to put your request in writing and explain why it's needed. We will then consider it and get back to you.</i> <i>Before we can review your complaint, you'll have to write in and explain why and how you think we have made an error either in the way we handled your complaint or in the decision we have made...</i> <i>Simply disagreeing with our decision isn't a reason for us to provide a review/get another officer involved with your complaint. You'll have to make a case for one by ... (explain).</i> <i>I suggest that you take time to re-read the decision that we sent you and carefully consider if we have made an error or if you simply disagree with the decision. Disagreeing with our decision isn't a reason for us to provide a review.</i> <i>We can review your complaint if you wish, but I must warn you that we have a one review policy at this office – this means ... (provide relevant details of policy and what it means for the complainant).</i>

Statement or conduct	Possible responses
<p>You call that a review? You clearly don't understand what I'm complaining about. or You've made the wrong finding – after a review.</p>	<ul style="list-style-type: none"> • <i>When someone asks for a review their complaint is given to another case officer, usually a more senior officer, who makes a fresh assessment of the case. In your case that officer found... Our office stands by this finding.</i> • <i>I appreciate that this issue is very important to you, but we won't be taking any further action on it.</i> • <i>Simply disagreeing with our decision isn't a sufficient reason for us to revisit this issue again. We've explained to you in detail (refer to any relevant correspondence here) how and why we made the decision we have. This hasn't changed.</i> • <i>You've had an opportunity to have your complaint reviewed under our one review policy and we are satisfied with the outcome of that review. Any other correspondence that you send to us about this issue will be read and filed without acknowledgement, unless we decide that it requires our attention.</i> • <i>As we explained to you before, we only review decisions once. Because of this we make sure that all reviews are very thorough. Your complaint was thoroughly considered and unfortunately we do not agree with you on the appropriate outcome.</i> • <i>We'll only reconsider a review decision in highly exceptional cases (explain).</i> • <i>To make sure we distribute our resources fairly to everyone who complains to our office we only provide one review. This has been explained to you in the past.</i>
<p>You can't be finished with my complaint. You haven't looked at/considered/answered...</p>	<ul style="list-style-type: none"> • <i>It's unfortunate, but our office is unable to help you with this issue because ... This has already been explained to you in some detail.</i> • <i>It seems that you've contacted us before about this issue and were told that.... There is nothing else that our office can do for you about this issue.</i> • <i>It seems this issue/a similar issue may have already been brought to our attention. I'll have to look into it and call you back if that's okay?</i> • <i>This issue has already been considered by our office. You were sent a letter on ... explaining our position on it with reasons. Unless you have substantial new evidence or information that is likely to affect our decision we won't re-visit it again.</i> • <i>I think that the correspondence we've already sent to you about this clearly explains why we are unable to deal with it any further. Unfortunately, I have nothing else to add to this.</i>

Statement or conduct	Possible responses
<p>It's your fault. How could you let this happen?</p> <p>or</p> <p>You're incompetent. Who can I complain to about you etc?</p> <p>or</p> <p>What are you/your organisation good for anyway?</p>	<ul style="list-style-type: none"> <i>I can see that you're upset and I'd like to help, but I won't accept you telling me that I am incompetent.</i> <i>I understand that your complaint is important to you and that you are disappointed with the decision that I've made/what I'm telling you. However, making personal attacks against me is not productive. I'll have to end this conversation if this continues.</i> <i>I'll have to end this call if we can't keep to the issues.</i> <i>I'm sorry we weren't able to do what you wanted us to do/had hoped we could do. The fact is (explain the case details) ...</i> <i>I appreciate that you would have liked us to take up your case. The fact is we are impartial investigators, not advocates for complainants. In this case we have decided ...</i> <i>I'm not sure how you want/expect me to respond to this.</i> <i>I appreciate your disappointment/frustration at my decision and why you may ask this question. You may wish to read our annual reports which explain what we have achieved over the years.</i> <i>You can put your concerns in writing and we'll consider them. If we don't think that they raise a substantial issue that requires our attention, your letter will be read and filed without acknowledgement.</i> <i>We won't review the decision that has been made about your complaint because ... However, if you wish you can make a complaint about me and you are free to do so.</i> <i>One thing I should clarify for you now is that we won't be reviewing our decision about ... because... However if you believe that I/another officer have done something wrong, you are welcome to complain about it. A senior manager would look into your complaint and if it is substantiated will decide on the appropriate course of action to take.</i> <i>I'm sorry you feel that way. My intention was to deal with your complaint impartially. I believe I have done this. If you're unsatisfied with what I've done you can put your complaint in writing and someone else in the office will consider that complaint.</i>

Statement or conduct	Possible responses
Unproductive/stressful phone call or interview.	<ul style="list-style-type: none"> <i>I understand that you're unhappy and I've tried to explain to you how I came to make the decision that I have. But I'm unable to spend any more time explaining it to you. Perhaps you want to put any additional concerns you have in writing and we may try to respond to them.</i> <i>I feel that I've given you all the information I can about this and our conversation seems to be unproductive/circular. Because I have other things to attend to, I'll need to end our discussion here. If you still have questions, you can put them in writing and if they require further action by our office we'll let you know.</i> <i>We've been discussing this for ... minutes now and it's clear that we don't agree on this issue. Unfortunately, I can't spend any more time explaining why I've taken the view that I have, but you can put your concerns in writing if you wish. We would then decide on what action, if any, our office will take.</i> <i>I don't think this conversation is productive for either of us now and I'll have to end our call/interview. You have my full reasons in the letter I sent you.</i> <i>I see what you mean, but as I've explained that isn't something that we can help you with.</i> <i>It seems you want me to say something that I can't. I think it will be best to end our discussion here.</i>
Where can I go where my complaint will be taken seriously?	<ul style="list-style-type: none"> <i>I'm not aware of any other avenues of redress that may be available to you.</i> <i>It seems you've exhausted all avenues I can think of.</i> <i>Outside of the organisations you've already contacted, I can't think of anywhere else for you to take your complaint.</i> <i>I don't want to waste your time by sending you to another organisation that I don't think can help you.</i> <i>I can't think of another organisation that can help you with this.</i> <i>Sometimes there are problems that can't be sorted out by any government organisation.</i>
I'm going to the media/Minister/Ombudsman etc.	<ul style="list-style-type: none"> <i>You're free to contact anyone that might be able to help you.</i> <i>That's for you to decide.</i> <i>You're free to take your matter to any forum you choose.</i> <i>That option is certainly open to you.</i> <i>It's for you to decide if you want to bring it to the media's attention...</i> <i>I have no opinion about whether you should go to the Minister/the media /... about this. This is really for you to decide.</i> <i>That's certainly your right. We would have hoped that you would be satisfied with this outcome/our decision because.... but, it's really up to you which path you want to take.</i> <i>It's up to you to do what you consider appropriate now.</i> <i>As I said, that's completely up to you. If that's the case, then I guess we don't have anything else to discuss.</i>

Chapter 10 – Strategies and script ideas for managing unreasonable demands

Unreasonable demands

The principle underlying the strategies and script ideas for managing unreasonable demands is 'setting limits'. When setting limits, you should:

- identify the unreasonable demand
- expressly tell the complainant that the demand will not/cannot be met
- state why they must stop making the demand (identify the limits)
- offer the complainant a choice, if possible
- enforce the limits, as appropriate.

For example:

You've asked that I read your complaint right away because you want to come in and discuss it with me this afternoon. Unfortunately this isn't possible because I have other equally pressing complaints that I need to tend to first. If you like, I can make time to discuss your complaint with you on Thursday. By that time I will have had an opportunity to read through your complaint and think about the issues that you've raised.

A word on emotional blackmail and manipulation

In an attempt to influence you/your organisation to agree to their demands, some complainants will resort to emotional blackmail and manipulation. Emotional blackmail and manipulation can include:

- Threats of self-harm and/or harm to others.
- Threats to harass or otherwise create difficulties for you/your organisation.
- Threats to embarrass you/your organisation by taking their complaint to an oversight body or third party like the media.
- Statements about you/your organisation:
 - being powerless
 - not doing your job or performing your duty
 - being biased or colluding with other public servants and agencies
 - protecting yourselves by not taking on perceived powerful interests
 - being a waste of time and/or money – usually 'tax-payer' money.
- Pleading with you/your organisation to act in a certain way/help them because you are their last resort – that they have nowhere else to go.

This type of behaviour should be recognised for what it is – an attempt by a complainant to bully or coerce you to comply with their demands about how their complaint should be dealt with. As a consequence, although it is generally important for you to be able to empathise with complainants, you should avoid doing so if they are being emotionally manipulative. In these situations, showing anything that could be perceived as weakness will only reinforce their behaviour. You should also recognise that in these situations you are actually in a position of control as the complainant is trying to get you to do something.

Table 8 – Strategies for managing unreasonable demands

Complainant conduct	Suggested strategies
Makes demands about how their complaint should be handled, including insisting on an immediate response.	<ul style="list-style-type: none"> • Inform the complainant that it is you/your organisation and not them that decides how the complaint will be handled, by whom, and the amount of resources to be dedicated to it. • Tell them clearly, transparently and firmly from the outset how the organisation intends to deal with the complaint. • Be honest and upfront about what will and will not happen and what is and is not possible. • If applicable, explain that an immediate response is not possible because: <ul style="list-style-type: none"> – there are other demands on your/your organisation's time and resources that make it impossible to respond immediately – there are processes that must be followed that do take time – to be fair to everyone, you/your organisation deal with complaints on a first come first served basis – and there are other complaints that came in before their own.
Insists that you/your organisation respond to every point in their complaint, including trivial or irrelevant issues.	<ul style="list-style-type: none"> • Clarify the central issues of complaint with the complainant early on and make it clear that these are the only issues that you/your organisation intend to address. • Tell the complainant that not every single issue raised in their complaint will be responded to and, if appropriate, that there is no legal obligation on you or your organisation to respond to every point that they have raised. (eg <i>KO and KP Commissioner of Police, NSW (GD)</i> [2005] NSW ADTAP 56).
Insists on talking to a supervisor or senior manager personally, because they disagree with you/your decision.	<ul style="list-style-type: none"> • Tell the complainant clearly and firmly that if they want to make a complaint about you or to request a review of your decision they should do it in writing and provide clear reasons to support their claims/request. • Tell them that the advice you've given them/the decision that's been made will not change by talking to a supervisor/senior manager because they have already approved of the advice, if applicable. • Refer the complainant back to the original case officer or reviewer who dealt with their complaint to ensure consistency. • End phone calls or interviews that are unproductive. <p>Note: Some complainants tend to be more aggressive towards frontline staff because they perceive them as having less authority or power than senior managers. This can result in demands to talk to others with 'more authority'. We generally suggest that you do not escalate such calls/demands if they are solely motivated by a disagreement with the advice you have given.</p> <p>See Chapter 3 – Understanding the approach and framework (page 10).</p>

Complainant conduct	Suggested strategies
<p>Wants regular and/or lengthy phone calls or face-to-face contact when it is not warranted.</p>	<ul style="list-style-type: none"> • Avoid spending inordinate amounts of time talking to complainants early on in the complaints process because they may expect similar treatment later on – when it is not warranted. • Limit the length and frequency of interactions with the complainant, if necessary – eg you may attempt to limit interactions to previously agreed appointment days and times when either the complainant can call you or you will call them with an update on the progress of their complaint – even if there has been no progress. If the complainant agrees to this arrangement you should attempt to enforce it to the extent possible (eg if they try to contact you outside of the agreed days and times), unless they are raising an issue or providing evidence that requires your immediate attention. • Make sure that conversations are focused on the central issues/tasks at hand. If not, terminate unproductive phone calls. • Slow down the communication process, when possible, by responding to emails or phone messages by letter or suggesting that the complainant put their concerns in writing. The complainant should also be firmly advised that any documentation they send should be summarised and a clear explanation provided about how it relates to their core issues of complaint. • End phone calls and face-to-face interviews as soon as it becomes apparent that the complainant has no new or substantial information or issues to discuss. • Make sure that you keep accurate and contemporaneous records of all communications and interactions with complainants so you can identify whether a particular complainant's demands on resources are excessive or unreasonable. <p>Note: A careful and cautious assessment (with a supervisor) will need to be made to determine whether or not a complainant's interactions with you/your organisation have become so excessive that they are unreasonable in the circumstances.</p> <p>See Chapter 5 – When does conduct become unreasonable? (page 21)</p>
<p>Emotional blackmail and manipulation with the intention to guilt trip, intimidate, harass, shame, seduce or portray themselves as innocent victims – when this is not the case.</p>	<ul style="list-style-type: none"> • Avoid showing any weakness in these situations and do not attempt to negotiate with the complainant. • Stay focused on the central issues of complaint. If the complainant is not able to keep focused on the central issues after some time, terminate the call or interview and re-schedule for another time. • Do not respond to overly complimentary remarks. It is extremely unlikely that the complainant knows you well enough to make an assessment about your character or skill – good or bad. • If appropriate, consider referring the complainant to an advocacy or support service that is better suited to help them – particularly if they have multiple and complex needs that extend beyond the scope of what you/your organisation can do for them.

Complainant conduct	Suggested strategies
Wants to discuss your personal life or makes unwanted sexual advances.	<ul style="list-style-type: none"> • Maintain clear personal and professional boundaries and avoid idle 'chit chat' about yourself or the complainant. • Only discuss things that are relevant to the issues of complaint and deflect any personal questions. • If necessary, tell the complainant that you're not allowed to discuss your personal life. • Explain that you only have a limited time to talk and therefore need to focus on their issues. • If the complainant is persistent, re-schedule the discussion for another time. Alternatively, you might consider putting your questions for the complainant in writing and send to them for response. • You may also consider having the complainant re-assigned to another complaint handler who they are less likely to engage in this type of behaviour with (male or female).
Contacts you outside of office hours to discuss their complaint – eg attempts to contact you on your personal email or through social media.	<ul style="list-style-type: none"> • Politely refuse to respond to any complaint related questions outside of work and always maintain clear personal and professional boundaries. • Invite the complainant to book an appointment or call you during regular office hours. • If they have called you on your home phone, hang up. Notify your relevant supervisor or senior manager about the phone call and consider having your phone number changed or unlisted, in particular if this is provided for in your organisation's security policy. • If they have contacted you through your personal email account or through social media do not respond. Forward it electronically or make a copy of the email and give it to your relevant supervisor or senior manager who will discuss possible options for dealing with the issue. You may also wish to take personal steps to block the email account that the complainant used to send you their email communication. You should also avoid socialising with or 'befriending' complainants online. <p>See also Chapter 14 – Assessing risks (page 89).</p>
Demands answers to questions that have already been responded to comprehensively and/or repeatedly, when they are clearly capable of understanding these responses.	<ul style="list-style-type: none"> • End unproductive discussions/arguments about issues that have been comprehensively responded to. • Refer the complainant back to the earlier correspondence/conversation and invite them to contact you again after they have read/reconsidered it – only if they have specific and outstanding questions or issues. • Acknowledge that they are unhappy with your/your organisation's response, but explain that their issue has been comprehensively considered and responded to and will not be revisited. • If necessary, explain the circumstances where their issue might be reviewed and clearly and firmly advise them that simply disagreeing with the organisation's finding is an insufficient basis for doing so. <p>Note: Special care should be taken when responding to complainants who may have literacy or other language difficulties to explain the contents of any written correspondence sent to them. If this is unsuccessful over time, suggest that they ask someone else such as, a family member or support person to explain the letter/written communication to them.</p>

Complainant conduct	Suggested strategies
Demands information that you are not permitted to disclose/ provide – eg copies of sensitive documents, names and personal contact details of staff etc.	<ul style="list-style-type: none"> • Maintain a 'no means no' stance no matter how much the complainant tries to convince you otherwise. • Provide clear reasons why the information will not be disclosed. • Advise that they can request certain information from public agencies under relevant access to information legislation (eg under the <i>NSW Government Information (Public Access) Act 2009</i> (Cth)) and explain the process for doing so/where they can access such information. • End unproductive phone calls.
Changes their issues or desired outcome(s) while their complaint is being dealt with – moving the goal posts.	<ul style="list-style-type: none"> • Clarify the central issues of complaint with the complainant early on in case they change focus later on. • Make it clear that the focus of your investigation will only be on the central issues of complaint. • Stick to the initial issues or outcomes agreed to by the complainant/you/your organisation, unless: <ul style="list-style-type: none"> – the circumstances of the case change and give rise to new and substantial issues – there is new and substantial information or evidence that affects the appropriateness of the outcome achieved or proposed – the new and desired outcomes are substantially different from the one achieved or proposed and are more suitable in the circumstances. • Ask the complainant to wait until their matter is resolved and they receive a final letter before raising their dissatisfaction. See Chapter 7 – Dealing with anger through effective communication (Drafting the final letter). • Make records of topics discussed and outcomes of phone calls and face-to-face interviews and have the complainant sign the record (if during a face to face interview). Alternatively, you can follow up phone calls with a letter to the complainant affirming everything that was discussed and agreed to. <p>Note: You should be careful not to disregard new issues that are substantially different from the original complaint and warrant further action by you/your organisation.</p>

Complainant conduct	Suggested strategies
<p>Insists on outcomes that are unattainable or inappropriate or that they are not ‘entitled to’.</p>	<ul style="list-style-type: none"> • Clarify the limitations of your complaint handling system and tell them clearly and transparently if something is not possible/not going to happen. • Tell them that you can only base your assessment and investigation on the facts and not their emotions – no matter how valid they are. • Manage their expectations early on by letting them know in advance: <ul style="list-style-type: none"> – what can and can’t be done – how you/your organisation intend to deal with their matter – the likelihood that they will achieve the outcome they are looking for. <p>See Table 4 – Testing and managing complainant expectations.</p> <ul style="list-style-type: none"> • Consider giving them a list of reasonable outcomes that you/your organisation may be able to achieve for them and that they can think about – be careful not to lead them on or give them false hope. • Avoid the ‘I’m entitled to’ argument as it rarely ends positively and often only escalates the situation. • ‘Agree to disagree’ about which outcome (the one they want versus the one that you/your organisation have proposed) is the most appropriate one without making them feel that their views are invalid. • Make records of topics discussed and outcomes of phone calls and face-to-face interviews. Write to the complainant outlining them and request their assent with a signature – this provides a written record in case the complainant changes their mind later on.

Table 9 – Scripted responses to statements and conduct associated with unreasonable demands

Statement or conduct	Possible responses
Call me back immediately. or If I don't hear back from you right away, I'll call back again. or I want this fixed now.	<ul style="list-style-type: none"> • <i>Perhaps no-one has taken the time to explain the complaints process to you. Let me.</i> • <i>I appreciate that you want this dealt with right away. But I'm sure that you can also understand that I do have several other complaints that I have to deal with in addition to yours and which were brought to my attention first.</i> • <i>We deal with complaints on a first come first served basis, and as you can imagine there are files that came in before yours. I'll be in contact with you in [days/weeks] or sooner if I need more information from you.</i> • <i>Most people who complain to us think that their complaint is the most important one and want us to deal with it right away or ahead of other complaints. That's not possible in practice.</i> • <i>It's clear this is important to you and you want it handled a certain way, but there is a process that I must follow to make sure that it's dealt with appropriately and fairly for everyone involved.</i> • <i>We are dealing with your complaint in the way we consider to be appropriate. It's unfortunate that you don't see things the same way.</i> • <i>I know you feel your complaint is urgent. I've assessed it and have decided I should call the officer/organisation concerned. I'll be able to do this sometime this week/I'll need some time to do this and then to receive a response from them. How about you call me [days/weeks] and hopefully I'll have some information for you then?</i> • <i>Ultimately, if you are unhappy with the way we are handling your complaint you are free to raise it with another organisation.</i>
You've contacted the person/organisation I'm having problems with. or I told you not to contact them. They're liars.	<ul style="list-style-type: none"> • <i>I'm aware of your views of this person. I find it helpful to contact the person most involved in the matter first, unless I consider it inappropriate. If I'm not satisfied with their response, I will go further up the line until I'm satisfied.</i> • <i>You have given us your side of the story. We have also given the [other party] involved the opportunity to put their side of the story.</i> • <i>In the interest of fairness, I need to hear how the other party sees the issue. I'm sure you can appreciate that I need to get both sides of the story if the matter is to be resolved.</i> • <i>I can understand that you're concerned about that. It is usually the case that it is fair and relevant to get versions from both sides of a complaint. You've presented your side and we need to get their side too.</i> • <i>If the complaint is about the conduct of a member of staff, we would make enquiries at a higher level.</i>

Statement or conduct	Possible responses
<p>You should have interviewed me/contacted me/allowed me to give you more information before you made your decision.</p>	<ul style="list-style-type: none"> <i>I have carefully considered the information you sent us with your complaint and I have made my decision based on that. If you have any further information that is relevant to this case, you can write to us and let us know that information.</i> <i>Yes, that's correct. The information you provided in your written complaint was enough for me to consider the matter and make a decision.</i> <i>I have assessed all the material – your submission as well as the documents I requested from the [the other party]. If I had concluded that an investigation was required, I would have contacted you. In the end, my decision is that there appears to be no evidence that something went wrong.</i> <i>I think the organisation's reply adequately addressed your concerns. If you are dissatisfied with it, we can talk about it now. Discuss - point out any review option if still dissatisfied.</i>
<p>You haven't answered everything in my complaint.</p>	<ul style="list-style-type: none"> <i>We decided that the central issues in your complaint were.... and these will be the focus of our response to you/our investigation.</i> <i>We've considered all the information in your complaint, but we don't intend to respond to every point you've raised.</i> <i>Our organisation can look at whether... In our letter to you we addressed ... issues. We didn't look at ... because....</i> <i>Given the many complaints we receive, we try our best to distribute our resources as fairly as possible across all of them. To do this we focus our attention and resources on the central/more substantial issues raised in these complaints. In your case, we decided that the central issues were ... and we have responded/will respond to them accordingly.</i> <i>There is no legal obligation on us to respond to every point in your complaint.</i> <i>We're satisfied that we've dealt with your complaint adequately and will not be responding to the issues you're now raising/the other issues you've raised.</i>
<p>I want to speak to your supervisor/manager.</p>	<ul style="list-style-type: none"> <i>I'm in a position to respond to your concerns and to help you, without the need to get another case officer involved.</i> <i>My supervisor could call you back, but from what you've said it seems you're raising an issue that I can help you with. All we have to do is....</i> <i>Why don't you tell me what your concern is so I can get a better sense of which officer/supervisor would be most suited to help you with it?</i> <i>I'm happy to put you through if you want to complain about me. But if you're looking to dispute my decision, you should put your concerns in writing. My supervisor doesn't have the detailed knowledge of your case to discuss it with you now.</i> <i>I know you're unhappy about ... If you think it's best to talk to my supervisor about it then I can certainly help with that, but you should know that talking to them is not going to change my decision. Do you want me to help you arrange to talk to them?</i> <i>If you'd like to have ... done by today, then I'm the person who is available to help you with it. So it's up to you what you want to do.</i>

Statement or conduct	Possible responses
	<ul style="list-style-type: none"> <i>I'm authorised to deal with this issue and would be happy for us to work together to find a solution that's appropriate for everyone. If you're not satisfied with my solution and you still want to speak with a supervisor, I can get them to call you back.</i> <i>My supervisor has reviewed your file and agrees with my decision (if this is indeed the case).</i> <i>They can't take your call right away, but I can get them to call you back. It would help if I could tell them what you'd like to speak to them about.</i> <i>You may. Can I take your telephone number and I'll arrange for them to call you?</i>
I want to speak with/meet with the director/CEO.	<ul style="list-style-type: none"> <i>For practical reasons the Director/CEO doesn't generally meet or speak directly with complainants, but they have given me a delegation to deal with complaints like yours.</i> <i>I'm authorised to act on the Director's behalf. You can speak to me now and we can see how we go.</i> <i>Unfortunately the Director/CEO isn't able to speak with you, but I'm happy to discuss this with you and attempt to find a solution if you wish/but here's what I can do....</i> <i>I'm sure you can appreciate that the Director/CEO, as head of the organisation, is a very busy person. That is why they have delegated authority to their staff to deal with matters like yours.</i> <i>I understand your frustration/that you're angry/that you disagree with me on this issue and you would like to speak with the Director/CEO about it. However, I can't meet that request. What I can do is...</i> <i>I understand that you disagree with me on this issue, but I'm unable to arrange a meeting with the Director/CEO for you. The usual procedure in this office is for complaints to be submitted in writing, as this is the only way to lodge a formal complaint (apply to suit circumstances of your particular organisation).</i> <i>If it's necessary, I can arrange a meeting with the officer handling your complaint. Would you like me to do this for you now?</i> <i>I've already spoken with you at length. A face-to-face meeting won't change the advice I've given you. You can send us additional information in writing and we'll then decide if another meeting is necessary.</i>
I want to come and meet with you – when it's not necessary.	<ul style="list-style-type: none"> <i>I can see that you really want to come in/discuss this in greater detail, but I don't think that a meeting/this is necessary right now, because ...</i> <i>I don't think a meeting would help. If you have additional documents, you can send them to me with a covering letter explaining how they relate to the central issues in your complaint. If I need to, I'll call to discuss them with you. I believe this is a much better use of our time.</i> <i>If I need more information, I'll contact you. Otherwise, the summary of issues you've provided is adequate.</i> <i>I don't have any new information to give you about your complaint. I'll be in touch with you when I do.</i> <i>There are no new developments in your complaint. However, you can call me after [date] if you'd like to check in with me.</i>

Statement or conduct	Possible responses
	<ul style="list-style-type: none"> • <i>Can you please send me copies of these documents? I'll review them to decide if a meeting is necessary/would be useful.</i> • <i>It is generally better for us to look at the documents first, before we decide whether a meeting with you would be useful. In the end, we have to rely on documentary evidence anyway. Say-so evidence isn't enough</i>
<p>Emotional blackmail and manipulation.</p> <p>If you don't do [x] then I'll do [y].</p> <p>or</p> <p>I've had such a hard time. I've just lost all my money and my wife has left me ...</p> <p>or</p> <p>You're my last hope. If you don't help me I don't know what I'll do.</p>	<ul style="list-style-type: none"> • <i>That would certainly be a difficult thing to deal with, but unfortunately I can't help you with it. Why don't we focus on what I can help you with which is...</i> • <i>You're right. It is hard to have to worry about these things. Let me explain what your options are...</i> • <i>I understand that you really want our organisation to solve this problem for you. As I've already explained to you, we can't.</i> • <i>I understand that this complaint is really important to you and that you've spent a significant amount of time trying to ...Unfortunately, this doesn't change the fact that...</i> • <i>I can only imagine how distressing this process has been for you and I'm sorry that the outcome of your complaint couldn't be more positive....</i> • <i>I'm aware that this problem has cost you a lot of money/caused a lot of stress for you and your family and in your position I would feel upset too. From an organisational standpoint though we aren't able to do anything to help you.</i> • <i>I agree that pursuing a complaint for ... years without a satisfactory outcome would be devastating. However, I need to be upfront in letting you know that I don't believe that our office/department will be able to achieve the outcome that you're looking for either.</i> • <i>I recognise that you've had a difficult time and I don't want to add to this by giving you false hope that we can help you to ...</i> • <i>I can't imagine how hard it would be for you to deal with that. It certainly wouldn't be easy. But for me to be able to deal with your complaint as quickly and effectively as possible, I need you to focus on telling me about...</i> • <i>Unfortunately, I can't respond to that. It is clearly a difficult situation to have to deal with. I can help you with... if we can focus on that...</i> • <i>No I'm sorry, I'm not qualified to help you with that. All I can do is...</i> • <i>I apologise, but I'm not the person to speak with about you're feeling about this – though I'm sure it's valid. I can help you with your complaint though if you want to focus on that for a moment?</i>

Statement or conduct	Possible responses
<p>Well, I didn't really expect you to do anything anyway.</p> <p>or</p> <p>I knew you wouldn't want to help me.</p> <p>or</p> <p>I'm a taxpayer you know.</p>	<ul style="list-style-type: none"> <i>I'm sorry you feel that way. If you'd like, I can take a few minutes to discuss our role.</i> <i>I'm sorry you're disappointed with the outcome of my assessment. I've explained the reasons for my decision in my letter. You may care to read through it again.</i> <i>It appears in this case you're right (explain reasons for not doing anything).</i> <i>I've considered your complaint and made enquiries. I appreciate my actions didn't result in the outcome you were hoping for.</i> <i>We've fully assessed your complaint and we don't consider there is evidence that ... acted wrongly/unlawfully/corruptly.</i> <i>When did you start thinking that we wouldn't do anything about your complaint? I imagine it wouldn't have been when you brought it to our attention?</i> <i>I'm not sure what else you were expecting in this situation. When we spoke ... I explained to you that ...</i> <i>It's unfortunate that you feel this way, because a lot of time was spent making inquiries into/investigating and responding to the questions/issues you raised.</i> <i>We've satisfied ourselves that this outcome it is the most appropriate one in the circumstances.</i> <i>I'm sure you can appreciate that I'm a taxpayer too and pay my taxes just like you do. So how about we focus on what I can help you with...</i>
<p>You're racist/sexist. You wouldn't treat me like this if I was/wasn't....</p> <p>or</p> <p>I'm not stupid you know.</p> <p>or</p> <p>Your organisation isn't interested in helping the little guys/people like me.</p>	<ul style="list-style-type: none"> <i>Your race/gender/social status has not affected the way I have treated/ I am treating you. We deal with lots of people who are ...</i> <i>Your race/gender/social status has not affected any of the work I have done in relation to your complaint. We deal with people from all walks of life.</i> <i>Your race/gender/social status has played no part in the decision I've made.</i> <i>I haven't said anything about your race/gender/social status because it simply isn't relevant to.... and it's unclear to me why you would raise such issues.</i> <i>When did you start thinking that you were being treated differently based on your race/gender/social status?</i> <i>When did you start thinking that we'd allow your race/gender/social status to influence our behaviour?</i> <i>I'm sorry you got that impression.</i>

Statement or conduct	Possible responses
Asking personal questions that cross your personal boundaries – eg questions about your marital status, where you live, your kids etc.	<ul style="list-style-type: none"> <i>I don't consider this to be relevant to the issue of.... What I do need information on is...</i> <i>I don't need information about that right now. If I do, I'll let you know. What I need you to tell me about however right now is...</i> <i>I'm sorry my organisation doesn't allow me to discuss my personal life with complainants. So why don't we get back to ...</i> <i>[Mr/Ms name] I have a limited amount of time to talk to you/meet with you and there is specific information that I need from you before our time runs out. So tell me about...(regain control of the conversation)</i> <i>The information that you're giving me is making me uncomfortable and I don't believe that it relates in any way to the questions I'm asking you. I need you to focus on these issues/questions (restate them).</i> <i>I'll have to end this call if we can't keep to the issues.</i> <i>I find this information inappropriate and I've asked that you stop telling me about it, because it doesn't relate to the immediate issue that I'm dealing with. If you continue to talk to me like this, I'll end this call.</i> <i>I provided you with the information you require and, if you have no new questions, I'll have to end the call here to respond to other people who are waiting.</i> <i>I'll have to hang up now, because we are not getting the things we need to get done. I'll call you back tomorrow in [minutes/hours/days/next week]...</i> <i>I'll have to end the call here, but I'll put my questions in writing for you and send them through Australia Post. You can read them, answer them, and send them back to me either by email or in the mail.</i> <i>I've told you that I'll hang up if you continued this behaviour. Goodbye.</i>
Wanting to talk about their complaint outside of office hours.	<ul style="list-style-type: none"> <i>I'm not able to comment on your file right now. You can call the office during normal business hours and I can discuss the complaint with you then.</i> <i>I can't comment on your file without having it in front of me.</i>
Why wasn't I told about this before? – when they have.	<ul style="list-style-type: none"> <i>If you recall, we talked about this on [date] and I told you then that ... This has not changed and I do not see any reason to rehash it now. If you have other concerns I suggest you put them in writing.</i> <i>I sent you a letter/email on [day/date] that explains our position on this in detail. I don't have time to revisit it right now, but I suggest that you take time to read that letter/email again. If you still have specific questions that you want answered, I'll set aside [minutes] for you on [day/date] to discuss them. Do you need me to send you another copy of that email/letter?</i> <i>A lot of time was spent making inquiries into/investigating and responding to the issues that you're raising with me now. I'd appreciate it if you could take the time to go over the letter/email I sent to you again. If you still have specific questions after reading it, you may call me back.</i> <i>I don't think this conversation is productive for either of us because we keep on coming back to the same issue...</i>

Statement or conduct	Possible responses
<p>I have a right to see/ access those documents.</p> <p>or</p> <p>This is urgent and can't wait until tomorrow. Give me [person's] direct/home line.</p>	<ul style="list-style-type: none"> <i>It seems you want me to say something that I can't. I've tried to explain several times how we reached the conclusion we have. Because I don't think this conversation is productive for either of us, I'll have to end our discussion here. You can put your concerns in writing if you wish and we'll decide whether or not further action is needed by our office.</i> <i>I don't have authority to give this information to you. You can put your request in writing and the appropriate senior officer/manager will decide whether it will be given to you.</i> <i>I can't give you this information, because ...</i> <i>We rarely disclose this type of information, except in extremely rare cases where ... and where there are clear and substantial reasons for doing so.</i> <i>We consider requests for information on a case by case basis, so you'll need to put your request in writing and clearly explain why this information should be disclosed to you. We'll provide you with a response shortly after that.</i> <i>Our usual practice is not to disclose the information you've asked for because ...</i> <i>There is an expectation by the people/organisations that interact with our office that this information won't be disclosed, except in exceptional circumstances. Your case isn't one of these exceptions.</i> <i>You always have the option of making an application for disclosure under the [title of access to information/FOI legislation]. You can find information about making a GIPA application on the Office of the Information Commissioner's website at www.oic.gov.au.</i> <i>I understand that you think this is an urgent matter, but I can't call ... at home and I can't provide you with person's home phone number/ personal contact details. What I can do is arrange for you to talk to someone else who is available right now and who might be able to respond to some of your concerns.</i>
<p>That's not what I'm complaining about. You've got it all wrong.</p>	<ul style="list-style-type: none"> <i>We agreed that the central issues in your complaint were ... and these will be the focus of our response to you/our investigation.</i> <i>We prefer that you wait for us to complete our investigations/inquiries before raising additional issues, as things often can and do change as our investigations and inquiries progress.</i> <i>I understand that you've several concerns that you want to raise about... However, we've decided to limit our investigation to the following issues...</i> <i>Our organisation can look at whether ... In our letter to you we addressed those issues. We won't be looking at ... because...</i> <i>By changing the issues in your complaint, you are affecting our ability to resolve them. Please give us time to complete our inquiries/ investigation/etc.</i>

Statement or conduct	Possible responses
	<ul style="list-style-type: none"> <i>I can't deal with your matter properly while you're changing the issues you want us to deal with/adding new issues of complaint. You'll have to decide whether you want to withdraw your complaint while you figure out what you want us to look at or let us move forward with what we have and the issues we have identified to date. What's happening now simply isn't working.</i> <i>Given the many complaints we receive, we try our best to distribute our resources as fairly as possible across all of them. To do this we focus our attention and resources on the central issues/more substantial issues raised in these complaints. In your case, we agreed that the central issues were ... We'll not be looking at anything else, unless there are clear reasons for doing so.</i>
That (outcome) isn't good enough. It's not what I wanted.	<ul style="list-style-type: none"> <i>It's clear that you aren't satisfied with the outcome that we've achieved for you. We, on the other hand, are satisfied with it and have decided not to take any further action.</i> <i>The outcome you're asking for isn't very different from the one we've already achieved for you. We won't spend more time and resources pursuing this issue.</i> <i>To make sure that we distribute our resources fairly and evenly across all complaints, we must think about whether there is a practical purpose in pursuing a different outcome in your case. Our view is that the outcome you're now seeking is not very different from what we've already achieved, and it therefore would not be practical or fair for us to spend any more time and resources on it.</i> <i>If you recall, on ... [date] we discussed the types of outcomes we would be aiming for. We decided that we would try to ... This is what we've achieved and I don't see any practical purpose in pursuing...</i> <i>You're welcome to write to us and explain why you think this outcome is the wrong one/inappropriate/unsatisfactory. If we agree with you, we'll notify you accordingly. Otherwise we'll read and file your correspondence without acknowledgement.</i>
They/you owe me a refund/compensation/an apology, etc.	<ul style="list-style-type: none"> <i>It seems to me that you're hoping we can do... I have to tell you right now that this will not be possible because....</i> <i>What you're asking for isn't possible. Perhaps we can think about other possible options/outcomes like (give example) which are more likely to happen.</i> <i>I accept that you want to see ... happen. We do not believe this is an appropriate solution/isn't likely to happen because.... I think it would be more productive for us to start thinking start thinking about other more appropriate/likely outcomes like</i> <i>I understand ... is what you'd like to see happen in this case, but we don't consider this to be an appropriate outcome because.... We think ... is more appropriate and more likely.</i> <i>Sometimes people have a different view on the same issue. You and I clearly have a different view on ... As I've explained we think that the more appropriate/more likely outcome in this situation is....</i>

Statement or conduct	Possible responses
	<ul style="list-style-type: none"> <i>I understand that you're quite angry about what has happened, but we can't make a decision based on your emotions alone. We can only act on the facts which must also be supported by evidence. So the sooner we can focus on the facts and the evidence, the sooner we can resolve this issue.</i> <i>I don't want to give you false hope by telling you that ... might happen when it's quite clear that it won't. I suggest that we think about.... as possible solutions so that you're not disappointed later on.</i> <i>Our complaints system isn't designed to provide revenge/vindication/ retribution. The kinds of outcomes that we can normally achieve are.... In your case it is possible that ... might happen.</i> <i>It's unlikely that you will get the compensation you're looking for.</i>
He/she/you should be fired.	<ul style="list-style-type: none"> <i>I accept that you believe ... should be sacked over this. We, however, view things a little differently.</i> <i>You are entitled to your opinion.</i> <i>No one will be fired over this issue.</i>

Chapter 11 – Strategies and script ideas for managing unreasonable lack of cooperation

Unreasonable lack of cooperation

The principle underlying the strategies and script ideas for managing unreasonable lack of cooperation is 'setting conditions'. This involves requiring something of the complainant as a precondition to taking any action on their complaint or performing a particular service/action. For example, a complainant may be required to organise and summarise unreasonably disorganised and lengthy documentation as a condition to it being accepted and read.

Table 10 – Strategies for managing unreasonable lack of cooperation

Complainant conduct	Suggested strategies
Sends a constant stream of comprehensive, disorganised information or an unclear/undefined complaint – when they are capable of doing so.	<ul style="list-style-type: none"> • Get the complainant to organise and summarise the information they have provided as a condition of accepting/proceeding with their complaint. • Expressly ask them to stop sending information, and advise them that if you/your organisation need further information they will be notified immediately. • Do not accept cc'd communications/emails or copies of press articles as complaints, unless the complainant expressly indicates that they are intended to be a complaint for your organisation and clearly identifies specific issues of complaint – that can be appropriately dealt with by your organisation. • Advise them that every time they send you information you have to take time to read it – taking you away from doing other important work in relation to their complaint. <p>See Table 6 – Strategies for managing unreasonable persistence (Bombarding the organisation or its staff with phone calls, visits or written communications when it is not warranted) (page 39).</p>
Provides little or no detail with their complaint or presents information in 'drips and drabs'.	<ul style="list-style-type: none"> • Inform the complainant verbally and in writing that you/your organisation will not look at their complaint until all relevant information has been presented. • Describe the types of information that they should provide – eg copies of official documents, photographs, videotapes or other materials that clearly show that the events or actions complained about occurred. • Identify a timeframe for compliance for the complainant to provide the requested information, after which time no further action will be taken on the complaint or no additional information will be accepted in relation to their complaint – if it was intentionally withheld by the complainant.
Provides irrelevant information, including documentation with sexually explicit content.	<ul style="list-style-type: none"> • Return correspondence that contains inappropriate content and require the complainant to remove the inappropriate material before the correspondence will be considered – after making a copy of it for your records. • Inform the complainant that only the central issues in their complaint will be dealt with/responded to, and re-state what those issues are for clarity and agreement.

Complainant conduct	Suggested strategies
Refuses to follow instructions or accept suggestions and advice.	<ul style="list-style-type: none"> • Provide your advice/instruction and stick to it – do, however, acknowledge any reasons why the complainant may be resistant to the instruction or advice – eg they have previously relied on advice to their detriment. • Explain your responsibilities and theirs and your goals/intentions in pursuing their issue. See Chapter 4 – Effectively managing complaints and expectations from the outset (Establishing the ground rules). • Make sure to summarise instructions to ensure understanding. • Follow up any verbal instructions or advice in writing and clearly indicate a timeframe for compliance/action, if relevant. • End unproductive phone calls and interviews if the complainant is not receptive to instructions, advice or suggestions. • Record meeting your topics and outcomes and write to the complainant outlining the outcomes of the meeting.
Unreasonably argues that a particular solution is the correct one, disregarding other valid explanations and contrary arguments.	<ul style="list-style-type: none"> • Clearly state that a particular outcome is not possible. • Assert your position clearly, transparently and firmly and stick to it – but do acknowledge their viewpoint. • Avoid arguments or trying to reason with complainants who are unwilling to consider other logical and reasonable points of view. No amount of reasoning is likely to convince these complainants to calm down or to accept your point of view or decision. • Advise them of their one review option and, if they have already exercised that option, firmly advise them that the issue will not be reconsidered, unless exceptional circumstances exist. • End unproductive phone calls and interviews if the complainant is not receptive to your explanation or point of view. <p>See Table 13 – Scripted responses to statements and conduct associated with unreasonable arguments (Resistance to explanation) (page 72).</p>
Displays unhelpful behaviour – eg withholds information, is dishonest, acts illegally, is unethical, misleading or otherwise misquotes others.	<ul style="list-style-type: none"> • Terminate you/your organisation's involvement with the complaint if you discover that the complainant has purposely and significantly misled you or has been untruthful about their matter. • Specifically identify the problematic behaviour and ask that they stop it if they wish to have their complaint pursued further. • Re-state the ground rules 'rules of engagement' and emphasise that they must comply with them if they wish to have their matter dealt with further. See Chapter 6 – Effectively managing complaints and expectations from the outset (Establishing the ground rules). • Record meeting topics and outcomes and write to the complainant outlining the outcomes of the meeting. • Refer the behaviour to the relevant authority if necessary – eg unlawful conduct such as fraud.

Table 11 – Scripted responses to statements and conduct associated with unreasonable lack of cooperation

Statement or conduct	Possible responses
See attached/the attached speaks for itself.	<ul style="list-style-type: none"> • <i>So we can deal with your complaint properly, we need you to summarise the information that you've sent and explain how it relates to the central issues in your complaint. As it stands, we're having difficulty understanding how they are related.</i> • <i>I've had a chance to look at the information you sent and I'm finding it difficult to see how it relates to the issues that you've complained about. Can you summarise this information and clearly explain how it relates to the central issues in your complaint? I would need you to do this in the next [days/weeks] if you want us to proceed with your complaint.</i> • <i>For the moment, I don't need this level of detail... (explain).</i> • <i>As you can imagine we receive a lot of complaints at this office, so to make sure we deal with all of them fairly we ask complainants to clearly identify their issues of complaint and explain how their supporting documentation relates to these issues...</i> • <i>You've sent [number of emails/documents] to our office about your complaint. We don't need this much information right now. If we need it, I'll let you know. Until then, please stop sending this information as it is taking me away from doing other important tasks in relation to your complaint.</i> • <i>I previously asked you not to send any more information/emails because it is affecting my ability to deal with your complaint effectively. Again, I don't need this level of detail from you at the moment. I'd appreciate it if you would comply with this request.</i>
I've told you everything/given you all the documents that you asked for – when they haven't.	<ul style="list-style-type: none"> • <i>I know you probably feel like you've talked about this enough, but could I ask you a few more questions that will help us to deal with it as quickly as possible? Proceed by asking open-ended questions.</i> • <i>I understand that you're unhappy with the system, but I still need you to provide this information.</i> • <i>(Restate what they've said) sounds really important. Can we go over it in a little more detail?</i> • <i>We need you to send all the information you have that relates to your complaint within days/weeks. Otherwise, we may have to close your complaint file until we receive it from you.</i> • <i>It's essential that you send us documentation/information that relates to your complaint. Otherwise, we won't be able to deal with your complaint appropriately.</i> • <i>It's a very inefficient use of our time and resources to change the course of our investigation/undertake another investigation because you did not provide us with this information earlier/when you were asked.</i> • <i>We've asked you a number of times to send ... and you haven't. If we don't receive it by ... we won't accept it later on if you decide to send it to us. I suggest that you get it to us right away.</i> • <i>By not sending the information that we've asked for we haven't been able to....We need you to send this to us right away if you want ... Otherwise, we may have to close your complaint /decide on the outcome of your complaint without it.</i>

Statement or conduct	Possible responses
	<ul style="list-style-type: none"> <i>We can't resolve your complaint without ... I'm sure you wouldn't like to see us close your complaint file because of this.</i> <i>You've come to us because you want us to... For us to do this we need you to cooperate fully, by providing us with any information that is likely to influence how we deal with your complaint and any solutions that we might suggest...</i>
It's vital to my complaint. You must look at it.	<ul style="list-style-type: none"> <i>I don't consider this to be relevant to whether..... I do, however, need you to tell me about...</i> <i>I don't need to know about ... to be able to determine whether... has occurred.</i> <i>It appears to me the central issues you're complaining about are... I don't believe you need to tell me about ... for me to deal with those issues.</i> <i>I apologise, but I'm not the person to speak to about.... I can help you with ... To ensure that we don't waste time, why don't you tell me about that.</i> <i>I don't want to take up time by talking about...Perhaps we can get back to discussing...</i> <i>I find this information to be inappropriate and irrelevant to.... I'll have to end our call if you continue to raise it with me.</i> <i>I'll have to end this call if we can't keep to the issues of...</i> <i>I understand that you want to share all the details of what has happened with me. However, I don't need that level of detail because I can't help you with.... How about you tell me about...?</i> <i>If I need to know about it I'll let you know, but for the moment let's focus on...</i> <i>Can I ask why you're bringing this to my attention? (let them respond) As I've tried to explain to you, my role is to (explain). Unfortunately the information that you're sharing is not anything we can use at this office/our office can do anything about.</i> <i>You've already been informed that our office doesn't consider it appropriate for you to talk to us/me about (explain). I have nothing else to add to this issue.</i> <i>I'll have to hang up now, because we aren't getting the things we need to get done. I'll call you back in [hours/days] when I'll have more time to discuss them further/we can have a more focused discussion.</i> <i>I'll send you an email/letter with my questions later this afternoon and you can respond in writing and send them back to me....</i> <i>I told you that I would hang up if you continued to discuss.... Goodbye.</i>
Who the hell makes these stupid policies?	<ul style="list-style-type: none"> <i>I know you disagree with the policy. If you want to have your say about this, the best thing to do is contact agency/person. Would you like me to give you their name and number?</i> <i>If the complainant has already contacted that person/agency, then you might use the 'end of the line' responses suggested above.</i> <p>Alternative responses to 'that's our policy' or 'it's a matter of policy' are:</p> <ul style="list-style-type: none"> <i>Let me explain how we usually do things/why we do things this way....</i> <i>We ask/expect that</i> <i>Our usual practice is...</i>

Statement or conduct	Possible responses
I can't/won't do that.	<ul style="list-style-type: none"> <i>I feel I've explained your options to you as best as I can. You might want to choose a different path and that is absolutely your decision.</i> <i>It's my role to explain your options to you, but any decision on what you do is clearly yours.</i> <i>Perhaps you'd like to think about what I've just explained to you. We can discuss it again next week if you need me to clarify anything further.</i> <i>So, let me recap. I'm going to do ... and you're going to do ...Is that how you understand it?</i> <i>I understand that you're unhappy with the system, but I still need you to do....</i> <i>This is really the only advice I can give you. You'll have to decide from here what you want to do next.</i>
You're wrong/I disagree.	<ul style="list-style-type: none"> <i>I acknowledge that you view things differently. However on the information I have, I've formed the view that....</i> <i>I acknowledge that your view is ..., but we see it differently.</i> <i>I feel that I've given you as much information as I can about this. It seems you want me to say something that I can't. Because I have other serious complaints to tend to, I'll have to end the phone call here. You can write to our office if you have new and substantial issues that you want to raise.</i> <i>I don't think this conversation is productive for either of us now and I'll have to end it here. If you have any further concerns you can put them in writing and we'll assess them and decide whether or not they warrant any action by our office.</i> <i>I've given you all the information you need, and if you have no new questions I'll end the call to deal with other people who are waiting.</i> <i>I understand that you're dissatisfied with what I've told you. I've tried to explain to you how I/we came to this conclusion and can't spend any more time explaining it to you. If you wish, you can put your concerns in writing.</i> <i>I've explained how and why I've made the decision that I have. Unfortunately, there is nothing else I can add to this. Unless you have some other issues that you would like to raise with me, I'll have to end this conversation/interview here.</i> <i>Sometimes people have a different view on the same thing. You and I clearly have different views ... and as I've explained our office won't be taking any further action on your complaint.</i> <p>See Table 7 – Scripted responses to statements and conduct associated with unreasonable persistence (Unproductive/stressful phone call or interview) (page 44).</p>

Chapter 12 – Strategies and script ideas for managing unreasonable arguments

Unreasonable arguments

The principle underlying the strategies and script ideas for managing unreasonable arguments is 'declining or discontinuing' involvement with a complaint. This involves politely refusing to do something or stopping doing something for a complainant. As soon as it becomes apparent that a complaint is groundless, you should decline or discontinue service. If unreasonable arguments are mixed with reasonable arguments, the strategy should be to refuse to deal with the unreasonable portion.

Some words on mental illness

Unreasonable arguments are sometimes associated with mental illness. Dealing with people with a mental illness requires extra sensitivity, although their conduct can generally be dealt with in the same way as anyone else's.

When dealing with people with mental illness, it is important not to dismiss a valid issue as being delusional. A delusion (or psychosis) does not preclude a legitimate complaint. Staff who receive complaints that they suspect to be delusional should take time to ask the complainant specific questions about any evidence they have to support their claims. At the same time, extra care should be taken not to fuel or encourage complaints that are clearly delusional or complaints that have no legitimate basis, as this is likely to give the complainant false hope about what you can do for them.

A psychosis usually involves being out of touch with reality. Psychotic disorders such as schizophrenia may include delusions in which people believe that others are trying to harm them. This may lead to violent, usually self-protective, outbursts. Unprovoked violence may also be associated with hallucinations where 'voices' give orders for certain actions.

For information on mental health services in your area please contact or refer the complainant to the following:

Lifeline: 13 11 14 (www.lifeline.org.au)

Beyond Blue: 1300 22 4636 (www.beyondblue.org.au)

Mental Health Association of NSW: 1300 794 991 (www.mentalhealth.asn.au)

In emergency situations, contact your local mental health team or community health centre in the White Pages (search the 'Emergency, Health and Help' section).

Table 12 – Strategies for managing unreasonable arguments

Complainant conduct	Suggested strategies
Insists on the importance of an issue that is clearly trivial.	<ul style="list-style-type: none"> Do not take up/continue with issues that there is no practical purpose in pursuing. Explain that complaints are not taken up unless they are supported by evidence and are sufficiently serious. For example, the complaint should: <ul style="list-style-type: none"> raise a substantial new issue be supported by clear evidence that suggests that the event/issue they are complaining about happened. Explain that clear evidence could include: <ul style="list-style-type: none"> copies of official documents photographs videotapes other material that shows or tends to show that what they are complaining about occurred.

Complainant conduct	Suggested strategies
Insists on the importance of an issue that is clearly trivial. (cont.)	<ul style="list-style-type: none"> • Tell them firmly and confidently that it is the organisation and not them who decides on the importance of an issue – ie the resources it will dedicate to it. • Advise that any further correspondence about the particular issue is likely to be read and filed without acknowledgment, unless it meets the threshold above. <p>Note: You should be careful not to disregard new issues that are substantially different from the original complaint and that do warrant further action.</p>
Invents allegations from the smallest piece of unsupported information or sees cause and effect links where there are clearly none.	<ul style="list-style-type: none"> • Avoid being drawn into hypothesising, catastrophising, conspiracy theories, unproductive arguments and personal attacks. • Acknowledge the complainant's point of view, but assert that you have reached a different but equally valid viewpoint and are sticking to it. • Make firm and final statements so that there is no more room for continued arguments or 'ammunition' for the complainant to raise more issues and prolong the discussion unnecessarily. • Make sure your responses are brief, yet polite. • Ask that they provide clear evidence to support any allegations – otherwise they will not be considered. • Describe the type of evidence that your organisation will accept and consider – try to identify things that relate to their particular issue. • Be upfront and honest from the outset and do not say or do anything that will give them false hope about whether their issue will be taken up or their likelihood for success. • After you close the complaint, do not respond to further communications about that issue – unless it raises a substantial new issue or evidence or provides new information that warrants further action.
Raises bizarre or incomprehensible issues – eg they are being followed or recorded by the CIA when there is no evidence to support their allegations.	<ul style="list-style-type: none"> • Speak to them in the same tone as you would to anyone else and treat them with respect. • Listen carefully to what they are saying and avoid arguments. • Ask questions and check for evidence. Sometimes a complainant may be delusional, but may still have a legitimate complaint. The ability to provide evidence or point to factual information will be the key. You might say: <ul style="list-style-type: none"> – <i>To take this further, we would need clear evidence like photos, documents or medical certificates....</i> – <i>Sometimes people think something wrong has happened, but there isn't any evidence. I can only suggest that if you do get some evidence you send it to me.</i> – <i>You're explaining your concerns well, but without any clear evidence I can't follow this matter up.</i> • Reflect back to them what they are saying without agreeing: <ul style="list-style-type: none"> – <i>So you believe aliens are following you.</i>

Complainant conduct	Suggested strategies
Raises bizarre or incomprehensible issues. (cont.)	<ul style="list-style-type: none"> • Acknowledge emotions, both theirs and yours. <ul style="list-style-type: none"> – <i>I'm feeling frustrated listening to you, so I can only imagine how frustrated you must be feeling about this.</i> • Empathise with both their lows and highs. <ul style="list-style-type: none"> – <i>I can see you're feeling really bad about this/you're feeling really happy about this.</i> • If it appears that your organisation can assist them, explain what can and can't be done to help them – without fuelling their bizarre arguments. • If it appears unlikely that your organisation can take up the issue, check whether the person may be able to come up with a solution of their own. <ul style="list-style-type: none"> – <i>Is there any other way you may be able to achieve this/make sure this doesn't happen again...?</i> <p>See Chapter 12 above – Some words on mental illness (page 69).</p>
Interprets facts or law in ways that are clearly irrational or unreasonable and insists their interpretation is the correct one.	<ul style="list-style-type: none"> • Acknowledge their point of view, but clearly state your own and stick to it. • If reasoning with the complainant doesn't work, refer them to another forum where they can raise their issues – such as the courts if it is a matter of legal interpretation or a Minister or MP if it is a policy or political issue, if appropriate. <p>See Table 13 – Scripted responses to complainant statements and conduct associated with unreasonable arguments (Resistance to explanation) (page 61).</p>
Makes false or unsubstantiated accusations of biased, unethical, illegal, inconsistent, or partial decision making when things don't go their way.	<ul style="list-style-type: none"> • Advise them that they must provide clear and verifiable evidence to support their claims. • Tell them clearly, firmly and transparently that complaints about you/your colleagues will not lead to a change the decision that has been made or the outcome reached in their matter, unless there are clear and substantial grounds for it. • Keep records of all contacts and communications with the complainant for future reference, including conversations where they argue bias.
Demonstrates an inability to accept personal responsibility, and instead blames others for things that they bear no responsibility for – eg the case officer/organisation.	<ul style="list-style-type: none"> • Never accept responsibility for things that you/your organisation are not responsible for. • Do not get caught up in conversations about what other people/organisations have done, unless this is the subject of a complaint that is within jurisdiction. • Avoid asking questions that are focused on the past – keep it in the present and talk about the task at hand and things that need to be accomplished in the future.

Table 13 – Scripted responses to statements and conduct associated with unreasonable arguments

Statement or conduct	Possible responses
This is a very serious issue. So you think my complaint isn't important enough?	<ul style="list-style-type: none"> • <i>It may well seem that way ... (followed by an appropriate explanation).</i> • <i>It's not an issue of your complaint being unimportant. It's a question of whether our organisation can achieve a substantial outcome in this situation/whether your complaint is one that our office can help you with. From our perspective, we can't/it isn't.</i> • <i>Unfortunately we don't share your view that this issue needs to be investigated further by our office.</i> • <i>All complaints are carefully assessed according to our policies and procedures. Sometimes we receive complaints we can't/don't have the powers to take up.</i> • <i>It's clear that this issue is important to you, however we do have certain requirements that complaints must meet before they are taken on by our office. These include that the complaint is... Unfortunately your complaint doesn't meet this threshold.</i> • <i>We've considered the information relating to your complaint and we don't believe that there is a practical purpose in pursuing it further.</i> • <i>As we've explained, we don't think that there are clear reasons for us to take action on this issue. Perhaps you should consider raising it in another more appropriate forum.</i> • <i>When did you start thinking that we weren't/I wasn't taking you seriously?</i> • <i>When did you start thinking that I/we don't give a damn?</i> • <i>When did you starting thinking that we aren't concerned about your situation?</i>
Why are you are discouraging me from pursuing my complaint?	<ul style="list-style-type: none"> • <i>My intention isn't to discourage you. I'm trying to be as realistic as possible with you now so that you are not disappointed later on...</i> • <i>It's unfortunate that you feel that way. I simply don't want to see you spending even more time pursuing this when there may not be any organisation that can help you with this issue.</i> • <i>It would be very easy for me to pass you on to another organisation/ person and let you think that they can help you, even though they probably can't. But I don't want to give you false hope.</i> • <i>The reality of the situation is that our office is unable to help you with your complaint because ... I'm not discouraging you from taking your complaint elsewhere if you think another organisation can help you.</i>

Statement or conduct	Possible responses
They're corrupt.	<ul style="list-style-type: none"> • <i>People often feel that a certain person/organisation have caused a problem for them. We need clear evidence to support what you're saying before we can follow it up. Examples of clear evidence include...</i> • <i>I'd really like to help you, because it's clear that your complaint is important to you. But for me to be able to do this I need you to provide us with solid evidence that supports what you're saying – for example.... Until we get this type of evidence we won't be able to move ahead with your complaint.</i> • <i>I accept that your opinion is that... We have a different view. We can't do what you're asking because ...</i> • <i>I can see that you think this is the worst thing that could happen. Perhaps we could have a closer look at how it is....</i> • <i>Sometimes people have a different view on the same situation/ issue. You and I clearly have a different view on...</i> • <i>I accept that ... is your view. I've taken a different view. My view is ... For these reasons I won't be taking any further action on your complaint/will take the following action....</i> • <i>I understand that ... is your view. However, on assessing the information that has been submitted to this office, our view is that...</i> • <i>Your view is ... Is there any possibility that there could be another/ different view?</i>
The police are listening to my thoughts/recording me/ following me.	<ul style="list-style-type: none"> • <i>Is it possible there might be an innocent explanation for...?</i> • <i>You must be worried about being followed/recorded by the police. I can't help you with that, but if you can tell me about... then I can help you with that.</i> • <i>I can't do anything about an event that hasn't yet happened.</i> • <i>Some of the things you're asking about are hypothetical. I can only respond in detail to an actual event.</i> • <i>If ... happens in the future, you can ring me then.</i> • <i>I know you will understand that we can't act on a complaint without evidence.</i> • <i>I appreciate that you've put a lot of thought into this issue and you have a lot to say about it. However, discussing [irrelevant issue] won't help us to focus on those things that our office can deal with which are...</i> • <i>I'd really like to help you, but what's lacking in your complaint is the evidence to support what you're saying. Without it I won't be able to follow up your complaint.</i> • <i>Ask a series of questions – What would make the situation better? What are you hoping to achieve by contacting us? What did you hope we could do for you? – and then manage expectations.</i>

Statement or conduct	Possible responses
The legislation says that your office must.../ I'm entitled to...	<ul style="list-style-type: none"> <i>I appreciate that you have a certain opinion about how legislation/document is to be interpreted. We take the position that it should be applied like this.</i> <i>It's obvious that we have different opinions about how this policy/legislation should be interpreted and applied. We've/I've explained our/my position to you and there is nothing else that we can add to it.</i> <i>Sometimes people have different opinions about the same situation/issue. You and I clearly have different opinions on...</i> <i>I accept that ... is your point of view. I have a different point of view. I think ... For these reasons I won't be taking any further action on your complaint/will take the following action....</i> <i>I understand that ... is your position. However on assessing the information that has been submitted to us, we have formed a different position – which is that...</i> <i>Your opinion/position is ... Is there any possibility that there could be another opinion/position?</i>
You/your organisation/they are biased/corrupt....	<ul style="list-style-type: none"> <i>Do you have evidence to support this allegation?</i> <i>Organisation/person has made a professional judgment and we have seen documentation explaining the reasons for their decision.</i> <i>I understand you're annoyed/sceptical/angry about ... The evidence we've gathered suggests the conduct is not unreasonable/so unreasonable as to warrant action on our part.</i> <i>I need to give organisation/person a chance to explain their side of the story. If I'm not satisfied, I'll take it further.</i> <i>Simply because you disagree with my/our/their decision doesn't necessarily mean that we've been biased towards you. Do you have evidence to support your allegation?</i> <i>I understand that you think that there has been bias in this situation. I've made my own assessment of these claims and, after looking at your concerns and checking the information that has been provided to me, I don't consider that there has been bias.</i> <i>You may believe this to be the case, but we are satisfied that....</i> <i>I appreciate that this is your view. The evidence in this case suggests...</i> <i>We rely on good documentary evidence to make our decisions. Any biases, misconduct, shortcomings or other discrepancies usually become apparent during our enquiries and reviews of documents. So far, we haven't found any evidence to support that ... has occurred in this situation.</i> <i>Often there can be many reasons why a person/organisation doesn't disclose the type of information that you've requested other than bias like you suggest. There may be confidentiality or privacy issues that they are required by legislation to observe.</i>

Statement or conduct	Possible responses
<p>You're taking their word for it.</p> <p>or</p> <p>You're colluding with them.</p>	<ul style="list-style-type: none"> <i>No, that's not correct. I have sought documentation reports/files notes/correspondence to assess the decision making process and reasons for the organisation's/staff member's conclusions.</i> <i>It seems you think that, because I haven't agreed with your complaint, I'm simply accepting their word. In fact, my job is to hear and consider both sides of a story and then to decide whether there is any/sufficient evidence that something has gone wrong.</i> <i>I'm independent of both parties and I'm not here to take sides.</i> <i>The fact is we are impartial/independent investigators and don't advocate for either side and cannot do what you asked for. I explained this to you before.</i> <i>That's not the case. I have looked at the documentation and I can't see any evidence to contradict our position.</i> <i>I've asked them to explain the situation and I'm satisfied with their explanation.</i> <i>You may think that. I have to make my own assessment of the matter. After looking at your concerns/checking out the relevant policies/seeking information from the department I consider there is nothing for us to take up.</i> <i>The fact that you disagree with their decision doesn't mean they have been unreasonable.</i> <i>What do you base this claim on?</i> <i>I understand you're disappointed with my decision/view and I must say I'm sorry you see it this way. My role is to be impartial. Based on the evidence available to me, I can't see that the organisation has acted wrongly.</i>
<p>Why won't you do it for me?</p> <p>You did it for my friend/ someone I know.</p>	<ul style="list-style-type: none"> <i>Each case is different. Perhaps we can get back to your situation.</i> <i>I'm not sure how your friend's situation applies here. Let me explain how we came to our conclusions about your situation.</i>
<p>I thought your organisation was interested in fairness.</p>	<ul style="list-style-type: none"> <i>You're right. We are very interested in what is fair and reasonable.</i> <i>We have carefully looked at your complaint and we have decided that there does not appear to have been any unfairness in your case.</i>
<p>They're lying to you/ manipulating you/pulling the wool over your eyes and you can't see through them.</p>	<ul style="list-style-type: none"> <i>You may believe this. However, I'm satisfied with their response. Unless you can prove that they've deliberately misled or misinformed me, my decision stands.</i> <i>I'm very aware of the way responses are made to me. I can assure you that I get copies of reports and documents to substantiate what I'm being told.</i> <i>I appreciate that is your view. The evidence in this case is ...</i> <i>So far I have no reason to believe this. I certainly welcome any evidence you can give me that supports your assertion.</i> <i>I have considered your evidence as well as the evidence provided to us by the organisation/their staff and I can't agree with your assertion, though I do acknowledge that this is your view.</i>

Statement or conduct	Possible responses
<p>They think they can get away with anything.</p> <p>or</p> <p>So the law doesn't apply to them/they're above the law?</p>	<ul style="list-style-type: none"> <i>They are required to abide by the law/policy/procedure that is relevant to them. They have had to explain their actions to us. I consider that they have reasonably explained their conduct.</i> <i>Well no, they're not. The issue here is about a complaint you have brought to our organisation. Our role is to see whether there may be any evidence that something went wrong. Having looked at your complaint, I have formed the opinion that there isn't any evidence there.</i> <i>The organisation has to conduct their business and has legitimate authority to make their decisions. We haven't found evidence that they are acting unreasonably in doing this.</i>
<p>It's all your/their fault. How could you let this happen?</p>	<ul style="list-style-type: none"> <i>I can't take responsibility for what has happened in the past. However, I would like to help you with.... Can you tell me about...?</i> <i>I understand that your experience with ... was/has been difficult for you and that you're still quite upset. However for me to be able to help you with your current complaint, we need to focus on....</i> <i>I'm sure that you can understand that I'm not to blame for ... So why don't we focus on what I can help you with now....</i> <i>I recognise that you believe ... is responsible for... But perhaps there is another explanation...</i> <i>Is it possible that there might be some other reason why ... has occurred?</i> <i>For me to do, you will need to do ... otherwise, we'll have to close your file</i> <i>I'm sorry you've had trouble, but I can help you with (explain).</i>
<p>Resistance to explanation</p>	<p>Some complainants are resistant to explanation and are unwilling to consider views other than their own. To determine if a complainant will be receptive to your explanations/point of view you may ask the following types of questions as they may give you an indication of whether it will be productive to continue on with your discussion with them:</p> <ul style="list-style-type: none"> <i>Your view is ... Is there any possibility that there could be another/different view?</i> <i>You say ... is the case. Is this necessarily so?</i> <i>You seem to be saying ... is the case. How is this true?</i> <i>To manifestly illogical conspiracy allegations – Is it possible there might be an innocent explanation for ...?</i>

Chapter 13 – Strategies and script ideas for managing unreasonable behaviours

Unreasonable behaviours

The principles underlying the strategies and script ideas for managing unreasonable behaviours are 'setting limits' and 'setting conditions'. Setting conditions is about requiring something of the complainant as a precondition to taking any action on their complaint or performing a particular service/action. Setting limits is about establishing clear boundaries and placing limits on services, if necessary. When setting limits, you should:

- identify the unreasonable behaviour
- ask the complainant to change their behaviour
- state the consequences if the behaviour continues (identify the limits)
- offer the complainant a choice, if possible
- enforce the limits, if necessary.

For example:

I cannot continue with this interview if you are going to continue to bang the table. Please stop otherwise I will end the interview. Would you like to continue or would you like to do this some other time? It's your choice.

Important caveat

The suggested strategies in Table 14 below must always be considered in the context of your organisations security protocols and procedures. In cases where any of the suggestions conflict with those protocols and procedures the latter should always take priority, unless you are otherwise instructed by a supervisor or senior manager.

See also, Chapter 14 – Assessing Risks (page 89), Appendix 6 – Risk assessment worksheet (page 125), and Appendix 7 – Ten steps for responding to threats, hostility and aggression (page 127).

Also for information on things you can take to protect your personal safety – in addition to the systems and protocols that your organisation has in place – see *Staff safety in the workplace: Guidelines for the protection and management of occupational violence for Victorian Child Protection and community – based Juvenile Justice staff*. It is available at: www.dhs.vic.gov.au.

Table 14 – Strategies for managing unreasonable behaviours

Complainant conduct	Suggested strategies
Low risk	<ul style="list-style-type: none"> • Attempt to calm the complainant.
Foul language and swearing that is part of their normal communication style or an expression of distress, but still makes you feel uncomfortable.	<ul style="list-style-type: none"> • Tell them that you are uncomfortable with their choice of words and politely ask that they change them. • If it continues, ask them to stop and warn that you will have to end the call if they continue. • If it continues, end the call and make a note of the conversation. • You may also wish to invite the complainant to call back when they are prepared to use more appropriate language. Avoid saying: <i>We need time out here so we can calm down</i>, as this is likely to escalate the situation. • If you do tell the complainant to call back, make sure to give them clear instructions about who they can contact, when, how (method of communication) etc.

Complainant conduct	Suggested strategies
<p>Low risk</p> <p>Foul language and swearing (cont.).</p>	<ul style="list-style-type: none"> • With a supervisor/senior manager, you may also consider whether: <ul style="list-style-type: none"> – to take further calls from the complainant and, if so, who should take them – further calls should be automatically put through to voicemail, if possible – to inform reception about what they can do with any further calls. <p>Note: Whether or not this behaviour is unreasonable will depend on the circumstances of the case.</p>
<p>Low risk</p> <p>Acting up in the presence of others/ at public functions to create a scene.</p>	<ul style="list-style-type: none"> • Attempt to calm the complainant. • Remove the audience as quickly as possible, by either taking the complainant to another room or removing others from the immediate area where the complainant is located. • Do not discuss any issues relating to their complaint or any sensitive issues in front of others, no matter how much they try to taunt you. • If the complainant calms down, get them to agree to go to another room and get a colleague to assist you with the interview. • If a colleague is not available, leave the door open and sit closest to the exit so you can make a swift and easy escape if an incident arises. This ensures that staff in the immediate vicinity can be quickly alerted to what's happening. • If the complainant refuses your requests to calm down and the situation persists, tell them that security may be contacted if they cannot calm down. Give them time to cool off, but follow through as appropriate. <p>See below – Refuses to leave the premises or move when asked (page 79).</p>
<p>Low risk</p> <p>Confronting comments or threats in written communications.</p>	<ul style="list-style-type: none"> • Make a copy of the communication, file and return the original to the complainant, advising that it will not be considered until the inappropriate content is removed. • Notify your relevant supervisor or senior manager immediately if any actual or suggested threats have been made in the communication so a decision can be made about the appropriate course of action. • If the complainant continues to send communications with inappropriate content, in particular by email, consider talking to your supervisor or senior manager about restricting the complainant's access to your direct email and only allowing contact to be made through your organisation's general email portal.
<p>Low risk</p> <p>Uses communication technologies like social media and the internet to vilify, defame, harass, intimidate or threaten.</p>	<ul style="list-style-type: none"> • You should not respond to personalised or negative online comments. Make a copy and take it to your designated communications officer/ manager who can decide on the appropriate course of action. • Warn the complainant that this type of conduct will not be tolerated and action may be taken to restrict their contact with the organisation. • If you think the comment may give rise to criminal or civil liability, you should immediately consult your relevant supervisors/senior manager so they can decide whether legal action will be taken to address the situation. • Report the content immediately to your relevant supervisor or communications officer for consideration and possible action. <p>See Chapter 21 – Dealing with misuses of electronic communications, the internet and social media (page 107).</p>

Complainant conduct	Suggested strategies
<p>Low risk</p> <p>Audio or video recording interviews or phone calls without prior consent.</p>	<ul style="list-style-type: none"> Expressly ask the complainant if they are recording the conversation or interview and clearly and firmly tell them that you do not consent to being recorded. If the complainant says they are not recording but you still suspect they are, you may inform them that: <ul style="list-style-type: none"> they are required by law to warn any and all other parties to the discussion/interview of the recording and obtain prior consent from each – otherwise they may be committing a criminal offence they may also be violating confidentiality and privacy laws and your organisation will take legal action against them, if necessary. You may also consider terminating the call immediately and discussing with your supervisor/senior manager about changing how you communicate with the complainant in the future – eg contact in writing only. <p>Note: You will need to seek appropriate direction on the laws in your jurisdiction to determine the most appropriate approach for dealing with such situations.</p>
<p>Low risk</p> <p>Refuses to leave the premises or move when asked.</p>	<ul style="list-style-type: none"> Politely ask the complainant to leave and move towards the exit. If the complainant follows you walk them out to ensure that they have left the building. If the complainant does not leave, you should leave the room or area where they are located, as soon as possible. Immediately inform other relevant staff/supervisors that the complainant refuses to leave and make sure that no one approaches the area where the complainant is located unnecessarily. Tell the complainant that you will give them 10 minutes to leave, after which time security or the police will be contacted and they will be escorted from the building. Allow the time to pass and contact security as advised if they are still there. If security is not available and you need to contact the police, at the end of the 10 minutes, tell the complainant that the 10 minutes has passed and that the police are in the process of being contacted – this will give the complainant a final opportunity to leave before you follow through with that action. Allow security/police to address the issue. Make a detailed record of the incident, including the time and wording of all instructions/requests that you (and others) made to the complainant to leave the premises, the reasons why the complainant was directed to leave, and the complainant's responses to each request/instruction. See Chapter 15 –Recording and reporting incidents (page 92). With a supervisor/senior manager, you may also consider whether the complainant's access to your organisation's premises should be restricted, for example, by notification under the <i>Inclosed Lands Protection Act 1901</i> (NSW) or equivalent trespass legislation in your jurisdiction. See Chapter 19 – Using legal mechanisms to deal with extreme cases of UCC (page 103). <p>See also – Aggressive, abusive, harassing or otherwise confronting behaviour face-to-face (below).</p>

Complainant conduct	Suggested strategies
<p>Medium risk</p>	<ul style="list-style-type: none"> • Attempt to calm the complainant down and stay calm yourself. • If the complainant does not calm down, explain that you consider their language/aggressive behaviour to be unacceptable and ask them to stop. • If it continues, warn the complainant that you will end the call (you may mute the phone and seek assistance, if necessary) – but do not hang up. • If it continues, tell the complainant that the call is being terminated and follow through, unless the call should be traced – in this case you should mute your phone, but do not hang up. • Report the incident to reception/inquiries staff immediately in case the complainant rings back. • With a supervisor/senior manager, you may also consider whether: <ul style="list-style-type: none"> – to take further calls from the complainant and, if so, who should take them – further calls should be automatically put through to voicemail, if possible – to inform reception about what they can do with any further calls. • Make a file/case note of the discussion, fill out a security incident form, and direct it to the appropriate supervisor/senior manager. • Seek support either through formal or informal debriefing. See Chapter 16 – Managing stress (Debriefing) (page 93). <p>Note: If the abusive complainant has been previously told only to contact the office in writing, you should immediately remind them of this and terminate the call.</p>
<p>Medium risk</p> <p>Targeted threats towards the case officer – overt or covert – during phone calls.</p>	<ul style="list-style-type: none"> • Make the threat overt by naming it – repeat their statements as close to verbatim as possible so the complainant takes ownership of their threats/comments. • Take comprehensive notes of everything that is being said. • Tell the complainant the possible consequences of making such threat and ask that they calm down. • If the threats continue, ask the complainant to stop and clearly restate what the consequences will be if they do not – eg the phone call will be ended, police or mental health crisis team will be contacted etc. • Attempt to redirect the conversation onto their substantive issues of complaint, being careful not to reward their behaviour. • If it continues, tell the complainant that the call is being terminated and follow through, unless the call should be traced – in this case you should mute your phone without hanging up. • Report the incident to the receptionist/inquiries staff in case the complainant rings back. • Immediately inform your supervisor/senior manager of the call and seek advice about any further action – eg disclosing information about the call to police or mental health professionals – if this will lessen or prevent harm to the complainant, yourself or other third parties. • Make a file/case note of the discussion, fill out a security incident form, and direct it to the appropriate supervisor/senior manager. • Seek support either through formal or informal debriefing. See Chapter 16 – Managing stress (Debriefing) (page 93).

Complainant conduct	Suggested strategies
<p>Medium risk</p> <p>Attends the premises while under the influence of drugs, alcohol or other substances.</p>	<p>Drugs and alcohol increase aggression and reduce impulse control. Therefore, aggression among these complainants can be very unpredictable and they are more likely to be easily provoked or frustrated. When dealing with such complainants you should:</p> <ul style="list-style-type: none"> • Stay calm. • Be assertive and firm. • Use non-threatening words and tone – avoid using words like ‘drunk’ in their presence. • Not argue – as it is usually pointless when a complainant is intoxicated and could lead to physical violence. • Ignore abusive words. • Keep your distance and do not touch the complainant, if possible. • Show concern for their safety and comfort – you might offer them a cup of water or food. • Repeat statements like a ‘broken record’. • Seek assistance including calling a colleague, security or police as appropriate. • Look for a workable compromise, if possible – eg if they are insisting on meeting with you immediately suggest that you will meet with them in a day or two when you have more time to discuss their concerns. • If you make arrangements to meet with the complainant another time (ie when they are sober) you should consider talking to your supervisor/senior manager about having another staff member or security or police officer present during that meeting – if you have any apprehensions about it. <p>Note: Depending on the circumstances, one or more of the other suggested approaches in this section may be applicable.</p>
<p>High risk</p> <p>Aggressive, abusive, harassing or otherwise confronting behaviour face-to-face.</p> <p>For example – leaning towards you, moving around the room, invading your personal space.</p>	<p>You do not have to tolerate aggressive behaviour. If you feel threatened or distressed end the interview immediately.</p> <p>If you believe you are in imminent danger:</p> <ul style="list-style-type: none"> • Immediately press your portable duress alarm or the closest alarm. • Leave the interview room or immediate area and go into a more secure area of the office. • If leaving is not possible, you may need to defend yourself by using ‘reasonable force’ – that is, the amount of force necessary to stop an attack or prevent personal injury – nothing more. • Seek support from a more senior officer. • Make a file/case note of the discussion, fill out a security incident form, and direct it to the appropriate supervisor/senior manager. • Seek support either through formal or informal debriefing. See Chapter 16 – Managing stress (Debriefing) (page 93). <p>In all other circumstances you should:</p> <ul style="list-style-type: none"> • Continually assess the possibility of the situation becoming violent – Is the complainant’s conduct improving or getting worse? • Ask a colleague or relevant supervisor for support. • Keep a safe distance and preferably get the complainant to sit down • Create space if there are any signs of physical aggression – get something like a desk, between you and the complainant.

Complainant conduct	Suggested strategies
Aggressive behaviour (cont.)	<ul style="list-style-type: none"> • Provide alternatives to the aggression by making it clear to the complainant that aggression will not achieve their goal and that the interview will be terminated if it continues. • Maintain non-confrontational verbal and non-verbal communication and avoid any 'jargon' and or language that will confuse the complainant and increase their frustration. • Be careful not to get into a fight and do not attempt to physically restrain the complainant or physically intervene between other people who are behaving aggressively towards each other – do not try to be a hero. • If the complainant continues, end the interview. It is better to withdraw earlier rather than later. You may offer to hold the interview another time or suggest an alternate form of communication. • Make a file/case note of the discussion, fill out a security incident form, and direct it to the appropriate supervisor/senior manager. • Seek support either through formal or informal debriefing. See Chapter 16 – Managing stress (Debriefing) (page 93).
<div data-bbox="153 819 507 875"> High risk </div> <div data-bbox="153 875 507 2089"> Makes threats of suicide or self-harm (overt or covert). </div>	<p>Dealing with threats of self-harm or suicide can be a very difficult thing to deal with. If you do not feel that you are competent or emotionally capable of dealing with such calls you should transfer them to another staff member who can. We advocate that you always react to such calls and make explicit any threats of self-harm by naming them. If the complainant confirms the threat, then attempt to keep them on the phone for as long as possible to get as many details as possible about what they intend to do. Report the threat immediately to your supervisor/senior manager and complete an incident form.</p> <p>In accordance with the ASIST model developed by Livingworks, you should:</p> <ul style="list-style-type: none"> • Notice invitations – recognise when the complainant may be thinking about suicide. Listen for statements like: <ul style="list-style-type: none"> – <i>I can't take it anymore or I can't cope.</i> – <i>What's the point?</i> – <i>I'm going to off myself.</i> – <i>I'm sitting in my car and I just don't know what to do anymore.</i> • Explore invitations – respond in ways that clarify and address the suicide risk. Ask: <ul style="list-style-type: none"> – <i>Do you have thoughts of suicide/are you thinking of killing yourself?</i> – <i>It sounds like you're very upset. If yes I'm concerned and do take this seriously.</i> <p>Note: you can't put ideas into their heads by asking. However, you should avoid responding in ways that might be perceived as being authoritative or unsympathetic. You should also try to calm the complainant down.</p> • Listen – try to understand why they want to commit suicide – the reasons for dying, the reasons for living. There is usually some hesitation once they start speaking about it. • Review – the risk factors and take comprehensive notes: <ul style="list-style-type: none"> – <i>How? When? Where are you?</i> – <i>Is there anyone else with you?</i> – <i>How are you going to do it?</i>

Complainant conduct	Suggested strategies
Makes threats of suicide or self-harm (cont.)	<ul style="list-style-type: none"> • Disable their plan – this might involve telling them that a Mental Health Team will be asked to go and check up on them. • Make a safe plan – get a commitment from them – eg that they will make an appointment with their GP right away etc. • Remain on the phone and seek assistance – While on the phone alert those around you/your supervisor about the complainant's threats so that they can take steps to obtain appropriate assistance for the caller – eg getting a local Mental Health Team to go to their location. Try to keep the caller on the phone until they arrive. Do not hang up. If the caller does hang up the call do not hang up the call. The caller's location may be capable of being traced so that a Mental Health Team or the Police can be sent to that location to assist them. Also, immediately discuss the situation with a supervisor to decide on the appropriate course of action in the circumstances. <p>Note: This brief summary doesn't constitute training. All staff should be appropriately trained on how to deal with threats of self-harm and harm to others – for example see www.livingworks.org.au.</p>
<div data-bbox="188 853 544 907">Extreme risk</div> <div data-bbox="188 907 544 1982">Aggressive, abusive, harassing or otherwise confronting behaviour during home visits.</div>	<ul style="list-style-type: none"> • If you are subjected to harassment or aggression, you should leave the complainant's home immediately. • If you are physically attacked, press your duress alarm immediately if possible. You are also entitled to use such force as is reasonable to defend yourself. • Contact police immediately on leaving the premises and follow appropriate security procedures. <p>Otherwise you may follow the following guidelines from the Department of Human Services (Vic).²³ Make sure that at all times you:</p> <ul style="list-style-type: none"> • Respect the complainant's wishes – for example, in terms of taking off shoes before entering the home etc. • Continually assess your surroundings while conducting the interview. • Observe the exits in the house and stay close to exits in rooms. • Do not allow yourself to be blocked or locked in. • Sit in a position that allows easy access to the front door. • Interview the complainant in the closest suitable room to the front door. • Avoid the kitchen (potential weapons) and bedrooms (personal space, firearms). • Scan the environment for dangerous items or drug paraphernalia. • Face the complainant during the interview. • Attempt to monitor what the complainant is doing at all times. • Stay alert to anything out of the ordinary. • Monitor the presence of threatening pets and request they be secured in another area of the premises if you feel unsafe. <p>See: <i>Staff safety in the workplace: Guidelines for the protection and management of occupational violence for Victorian Child Protection and community – based Juvenile Justice staff (2005)</i>.</p>

²³ Department of Human Services (Vic), *Staff safety in the workplace*, pp.17. (See also footnote 15 (p.29) for additional copyright information.)

Complainant conduct	Suggested strategies
<p data-bbox="245 217 411 246">Extreme risk</p> <p data-bbox="164 271 491 367">Threats to damage property, including bomb threats –overt or covert.</p>	<ul data-bbox="523 217 1385 913" style="list-style-type: none"> • Make the threat overt by naming it. • Take comprehensive notes about the threatened action. • Let the complainant finish their sentences without interruption. • Try to keep them talking and obtain as much information as possible, including: <ul data-bbox="560 434 1326 779" style="list-style-type: none"> – When the bomb will explode/action take place – What the bomb looks like – Where the bomb is located/where will it happen – What kind of bomb it is/what are they going to do – Why the bomb was placed there/why do they want to do it – Who their intended target is, if any – The complainant's personal details (their name, where they are located etc.). • Note the exact time of the call and its duration. • Do not hang up the phone if the complainant terminates the call. • Immediately report the threat to a relevant supervisor or security officer. <p data-bbox="523 927 1385 956">If the bomb threat is believed to be genuine, the supervisor should:</p> <ul data-bbox="523 976 1374 1348" style="list-style-type: none"> • Inform a designated senior manager or security officer, any security committee and the head of building security so appropriate action can be taken – for example, contacting the police or an evacuation. • Monitor the staff member involved, especially if support options like debriefing or counselling have not been used. • Liaise with the relevant senior manager/security officer who is responsible for making decisions about support services to determine whether counselling and/or an operational debrief is needed. • Make sure the staff member has completed a bomb threat checklist within 24 hours of receiving the phone call, if possible.
<p data-bbox="245 1370 411 1400">Extreme risk</p> <p data-bbox="164 1424 491 1485">Threats with a weapon face-to-face.</p> <p data-bbox="164 1505 485 1637">For example – producing a weapon or statements that the person is in possession of a weapon.</p>	<ul data-bbox="523 1370 1382 2067" style="list-style-type: none"> • Avoid doing anything that might incite the complainant – do not try to be a hero. • Remain calm and assess the situation. • Activate the duress alarm or call for help, if it is safe to do so. • Obey the complainant's instructions, but only do what you're told and nothing more – do not volunteer any information. • Move slowly and avoid eye contact. • Advise the complainant of any movements you may have to make which could appear sudden or unexpected, such as opening a drawer. • Do not invade their personal space. • Keep your hands in view. • If required, contact a first aid officer to provide first aid to staff and/or others as soon as is safe for them to do so. • Once the threat is over, fill out a security incident form and direct it to the appropriate supervisor/senior manager. • Seek support either through formal or informal debriefing. See Chapter 16 – Managing stress (Debriefing) (page 93).

Complainant conduct	Suggested strategies
<p>Extreme risk</p> <p>Threats with a weapon face-to-face (cont.)</p>	<p>Senior staff responding to the duress alarm should try to isolate the incident by evacuating the area and preventing others from entering it – for example, stand by the lifts or ask building management to close off the lifts to the floor.</p> <p>The most senior staff member present, or the office security adviser, should:</p> <ul style="list-style-type: none"> • override the duress alarm, if it has been activated • ring 000 for urgent assistance or check that the police have been called • if it is safe to do so, ensure communication is maintained with the aggressor until the police arrive. • Liaise with the relevant senior manager/security officer who is responsible for making decisions about support services to determine whether counselling and/or an operational debrief is needed.
<p>Extreme risk</p> <p>Stalking behaviour online or in person.</p>	<p>Stalking includes a complainant for no justifiable reason:</p> <ul style="list-style-type: none"> • following, telephoning, sending messages or otherwise contacting you or another person • giving you offensive material or leaving it where you will find it • walking or frequently being in your vicinity • approaching your home, place of work or any place that you frequent. <p>If you suspect you are being stalked, you should immediately report it to your supervisor or relevant senior manager. Together you can discuss the possibility and appropriateness of:</p> <ul style="list-style-type: none"> • getting escorts home • contacting police • obtaining a legal order – such as an apprehended violence order or an order for trespass.

Table 15 – Scripted responses to statements and conduct associated with unreasonable behaviours

Statement or conduct	Possible responses
F#\$%! F#\$%*! F#\$%! S@*! – that is part of their normal communication style or a consequence of being distressed.	<ul style="list-style-type: none"> <i>I want to hear your side of the story. Please stick to the facts to help me understand what happened.</i> <i>I can hear/see that you're upset/angry. However, I'm uncomfortable with you swearing. Please stop swearing.</i> <i>[Mr/Ms/name] I'll try to do what I can to resolve this situation, but can you please avoid using swear words. They are distracting us from ...</i> <i>I'll have to end this conversation if you don't stop using swear words.</i> <i>I've asked you at least [number of times] to stop using swear words. I'm going to end the call here and may have another officer call you back.</i>
Are you people stupid or something? or Shove it up your a**.	<ul style="list-style-type: none"> <i>I'm willing to help you with ..., provided that you stop... If it continues I'm going to end this conversation. It's up to you, but I need your agreement now before we continue.</i> <i>I'm happy to talk to you about this issue, but not while you're yelling at me/but I won't accept you calling me....</i> <i>I hear that you're upset/angry, which is making it difficult for us to focus on the task at hand. Perhaps I should call you back in 5 minutes? (make sure to call them back as promised)</i> <i>It's quite difficult for us to focus on the issues that we need to when you're [name behaviour]. I'm happy to continue the conversation with you, but you will have to stop [name behaviour]. Otherwise, I'll have to hang up and call you back in 5 minutes.</i> <i>I understand that your complaint is important to you and that you're disappointed with the decision that I've made/what I'm telling you. However, making personal attacks towards me is not productive. I'll have to end this conversation if this continues.</i> <i>I'm sorry we weren't able to do what you wanted us to do/had hoped we could do. The fact is ...</i> <i>Did you call me a [#\$%]? I can't talk to you if you're going to call me that. I'll end this call now and when you feel you're able to speak to me politely/in more moderate language, you can call me back.</i> <p>Note: only repeat the swear word if you feel comfortable repeating them and/or will not escalate the conversation.</p> <ul style="list-style-type: none"> <i>(After warning) – It seems like you've made your choice, so I'm ending this conversation. If and when you're willing to talk without negative remarks, I'm willing to help. But right now, this conversation is over.</i> <i>I warned you that I would end this call if you continued to speak to me like this. I'm now ending the call.</i> <i>I'm going to hang up now. I invite you to call me back when you're ready to use more appropriate language.</i>

Statement or conduct	Possible responses
Aggressive behaviour face to face.	<ul style="list-style-type: none"> • <i>When you get too close to me, I feel trapped. I'd like you to step back or I'm going to have to ask you to leave.</i> • <i>I've said all that I can about this. I'll have to end our interview here to deal with other people who are waiting.</i> • <i>I'm happy to talk with you about your complaint, but not while you're swearing at me. I'll have to end this interview if you don't stop.</i> • <i>I'm a bit thirsty. Would you like me to get you a drink while I get one for myself?</i> (leave the room and seek assistance, if necessary or just take a short time out). • <i>It's clear that you're upset/angry ...</i> • <i>It's quite difficult for us to focus on the issues that we need to when you're [state conduct]. I'm happy to continue with the interview so long as you stop...</i> • <i>I'm afraid I have to ask you to leave now. If you've any outstanding concerns you can put them in writing.</i> • <i>I'm going to leave the room now. You can call me when you're ready to use more appropriate language.</i>
Escalated behaviour in the presence of others.	<ul style="list-style-type: none"> • <i>I'm sure you prefer that your privacy is protected so let's go to the office and we can continue there.</i> • <i>That sounds like very personal information you're telling me. This isn't a private place and I think it would be better if we talked about this in the next room.</i> • <i>Why don't we go and sit down in ...room where we can discuss this in more detail and I can get my ... file?</i> • <i>So what I hear you saying is that you're upset/frustrated/ angry about Why don't we go into the next room and you can tell me more about that feeling and we can see what we can do about it?</i> • <i>There's a lot of background noise here, perhaps we should go into another room and talk more privately?</i> If the complainant agrees take them to the room. If you think you may need support, you might say: <i>If you'd like to take a seat, I'm sure we can wrap this up quickly. Let me just go and get your file/other object and I will be right back</i> (go and get support).
Threats	<ul style="list-style-type: none"> • <i>When you say....it sounds like you're threatening to.... Is that what you mean?</i> • <i>It seems to me you're saying that you're going to do something to hurt me/other person. Is this correct?</i> • <i>So what I hear you saying is that you're going to ...?</i> • <i>Did you just say you were going to follow me home and hurt me and my family?</i> • <i>If this is what you said, I'll have to report your threat to my supervisor. I may also have to report it to the police</i> (or refer to relevant part of your organisation's risk management protocol). <i>Go on to report it immediately.</i>

Statement or conduct	Possible responses
I'm going to come over there and...	<ul style="list-style-type: none"> <i>It seems to me that you're saying you'll do something to damage our offices. Is this correct?</i> <i>If this is correct, I'll have to report your threat to my supervisor. It may also have to be reported to the police.</i> <i>So what I hear you saying is that you're going to ...?</i> <i>Did you just say you were going to throw a brick through our door?</i> <i>If this is what you said, I'll have to end this phone call/interview right now and report your threat to my supervisor. We'll also have to call the police (or refer to relevant part of your organisation's risk management protocol). Go on to report the threat immediately.</i>
I'm not leaving. You'll have to carry me out of here.	<ul style="list-style-type: none"> <i>I'm not going to force you to leave. It's really up to you what happens next. I'm going to leave and if you want to stay here a little while to think, then that's fine. But if you aren't gone in twenty minutes, we'll have to contact security/the police to escort you out of the office. It's up to you.</i>
Inappropriate online conduct.	<ul style="list-style-type: none"> <i>We can't stop you from posting something online. However, you should be aware that if we are alerted to any online content that either defames, harasses, intimidates or threatens any officer at this organisation or the organisation as a whole, then we may take legal action through the police and/or the courts.</i> <i>I should warn you that our office takes such conduct seriously and will take legal action if necessary.</i> <i>We treat inappropriate online behaviour the same way we do inappropriate behaviour generally. If it requires legal action, then we'll do that.</i>
Recording the interview/ phone call.	<ul style="list-style-type: none"> <i>Are you using a recording device? If you are, you should know that ... legislation/Act requires that you have my permission to record me. I don't consent to you doing this.</i> <i>Are you using a recording device? If you are, I'll have to terminate this 'phone call/interview and will send ... in writing instead. I don't agree to being recorded.</i> <i>You should know that if you are recording me you are violating my rights to privacy and confidentiality...</i> <i>As you are recording this discussion, I'll have to terminate this phone call/interview here. Goodbye.</i>

Chapter 14 – Assessing risks

Assessing the risks posed by a complainant's behaviour

An important part of deciding how you will respond to a UCC incident is the level of risk associated with that incident – either for yourself, the complainant or third parties.

All UCC incidents carry risks. While some incidents carry lower and more acceptable levels of risk, others pose significant and unacceptable levels of risk and warrant urgent action, including at the management level.

The following risk assessment matrix has been developed to help you determine whether a complainant's conduct poses an acceptable or unacceptable level of risk, as well as the appropriate response to that risk (and by whom). The risk assessment matrix is based on a rating system from 'low risk' to 'extremely high risk'. As the seriousness of the complainant's conduct rises so will its rating, as well as the response needed to deal with it.

Note – Although the matrices below will be relevant throughout the complaints process, using them when the warning signs of UCC first become apparent will allow you/your organisation to take a swift and decisive response and apply the strategies when they can best minimise identified risks. Also the matrices will be particularly relevant when dealing with the types of behaviours listed in Table 14 – Strategies for managing unreasonable behaviours (page 77). It has been colour coded to illustrate how the risk assessment rating system can be applied.

Table 16 – Risk assessment matrix

Likelihood	Seriousness			
	Very serious May result in death or serious injury.	Serious May result in minor injury, major property damage, or have a significant impact on time and resources.	Moderate Intimidation, threats or abuse (face to face) – resulting in stress/fear, property damage, or measurable impact on time and resources.	Minor Verbal threats or abuse (over the phone), resulting in some degree of stress experienced by staff, possible property damage and impact on time and resources.
Almost certain Most likely to occur immediately or in a short period of time. Has happened in the past or happens frequently.	Extremely high risk	High risk	Medium risk	Medium risk
Likely Quite likely to occur. Has happened in the past.	Extremely high risk	High risk	Medium risk	Medium risk
Possible May occur – no immediate threat of harm.	Extremely high risk	High risk	Medium risk	Low risk
Unlikely Unlikely to occur – is a 'one off' incident.	High risk	Medium risk	Low risk	Low risk

Table 17 – Level of action required based on level of risk

Level of risk (based on assessment in Table 16)	Required action/response
Extremely high risk	<p>Conduct falling under this category poses an unacceptable level of risk. It is likely to include things like physical violence, threats with a weapon, bomb threats, stalking, etc.</p> <p>You should take immediate and urgent action to eliminate or mitigate the risks posed by the behaviour.</p> <p>You should also immediately notify your supervisor and/or nominated senior manager and make appropriate records of the incident.</p> <p>Management action is required in these situations.</p>
High risk	<p>Conduct falling under this category poses a serious level of risk. It is likely to include things like confronting behaviour during face-to-face interviews and threats of self-harm and suicide.</p> <p>You should take immediate and urgent action to mitigate or eliminate the risks posed by the behaviour.</p> <p>You should also immediately notify your supervisor and/or nominated senior manager and make appropriate records of the incident.</p> <p>Management action is required in these situations.</p>
Medium risk	<p>Conduct falling under this category poses some level of risk. It is likely to include things like aggression, targeted threats or harassing phone calls, and coming to your offices while under the influence of drugs or alcohol.</p> <p>You should take reasonable steps to try to mitigate or eliminate the risks posed by the behaviour.</p> <p>You should also notify you supervisor and/or nominated senior manager and make appropriate records of the incident.</p>
Low risk	<p>Conduct under this category poses a minimal (acceptable) level of risk. It is likely to include things like swearing or confrontational language in written communications.</p> <p>Although management action may not be needed in these circumstances, you should take steps to manage or reduce any risks posed by the behaviour by using the frontline strategies provided in Part 5 – Responding to and managing UCC (starting on page 37). You should also make a record of the conduct involved so that recurrent behaviour can be promptly identified, monitored and dealt with.</p>

See Chapter 15 – Recording and reporting incidents (page 92).

A risk assessment worksheet is also provided in Appendix 6. It is designed to help you work through incidents involving UCC to decide on the most appropriate response. It can also be used to draft a plan with your supervisor when deciding on a response to a particular UCC incident. See Chapter 17 – Management roles and responsibilities (page 98).

PART 6



Post incident issues and
responsibilities



Chapter 15 – Recording and reporting UCC incidents

The importance of record keeping

Managing UCC will only be effective if you keep accurate and contemporaneous records of your interactions with complainants. Good record keeping will ensure that all incidents of UCC (and UCC trends) are promptly identified and dealt with. It can also ensure transparency and accountability in any actions taken or decisions made to modify or restrict complainant's contact as a consequence of their conduct. As a result it is essential for organisations and complaint handling staff to be clear about how and where interactions with complainants will be recorded.



As a general rule, records should accurately reflect things as they transpire with a complainant and should include the following details:

- the name of the complainant
- your name
- the location of the interaction (if done face-to-face) as well as details of who was present
- start and finish time of the interaction and the date
- a summary of the issues discussed – including questions asked, advice given, verbatim records of any threats or abusive words (if applicable) and any agreed outcomes
- any other relevant details.

Records should never include statements of opinion about a complainant or speculate about what they may be thinking or doing. They should only include statements of fact about what was said and what you observed.

Also, all serious incidents involving personal abuse, harassment, threats and actual violence must be recorded. Correspondence containing inappropriate or offensive content should be copied and placed on the complainant's paper and/or electronic file and should be reported to the relevant security officer or senior manager.

Where possible, and if it will not lead to conflict with the complainant, you may also try to get the complainant to sign and approve the accuracy of your record. This can be particularly useful for face-to-face interviews where they committed to taking a particular action – so the signed record can be referred to later on, if necessary.

Reporting incidents of UCC

Reporting all UCC incidents to appropriate managers and supervisors is also important to effectively managing of such incidents – both individually and across the board. Reporting ensures that incidents are dealt with appropriately and in a timely manner to minimise any actual or potential risks for yourself, your colleagues, third parties and the complainant. Reporting can be done verbally or in writing, though you should consult your organisation's relevant protocols on this issue.

See Unreasonable Complainant Conduct Model Policy – available at: www.ombo.nsw.gov.au.

Monitoring further UCC incidents

Also, once a complainant's contact has been modified or restricted, all staff members are responsible for observing and monitoring their conduct during interactions with the organisation – including noting any attempts by the complainant to circumvent the restrictions that have been imposed on their access. Any unauthorised behaviour should be acted on immediately by enforcing the restriction and notifying the nominated senior officer who will decide on the appropriate course of action in the situation.

Chapter 16 – Managing stress

UCC and critical incident stress

Dealing with complainants, in particular those who engage in UCC, can be extremely stressful – and at times distressing or frightening. It is perfectly normal to get upset or experience stress when dealing with difficult situations, particularly following a critical incident. The approach advocated in this manual, when systematically applied, can go a long way towards reducing this stress and fear.

A critical incident is an event that disrupts your office's normal functions. It is an incident that you, your colleagues or staff perceive as being a significant personal or professional danger or risk. Some examples of major critical incidents are:

- threats of harm to self or others
- serious injury
- actual or threatened death
- deprivation of liberty
- severe verbal aggression
- bomb or hostage threats.

In a complaint handling context, we are more likely to experience minor critical incidents, such as abusive phone calls – though more extreme situations do occur on occasion, as this manual illustrates.



Recognising the signs of stress

Everyone reacts to stressful situations differently and our reactions to stress can vary considerably. For example, some of us may be more susceptible to critical incident stress than others because of events in our personal lives, our personality type or our perception of an incident with a complainant. Some may react to a stressful incident immediately, while others may react sometime later – well after the incident has passed.

Also for some of us stress can be cumulative, often resulting in a strong reaction to a series of minor events. And in some cases, we can even be affected by a critical incident that we have not experienced firsthand – because we perceive the incident to be critical to us.

Because of these different possibilities in how we can respond to stress, it can be difficult to identify whether a colleague or a staff member is suffering from stress/or will experience stress after a critical incident.

As a result, the following list of the more common signs of stress experienced in the workplace, including following a critical incident may help you recognise stress in your staff, colleagues and yourself and take appropriate steps to manage that stress:

Physical signs

- shock
- nausea
- fainting immediately after the event
- chest pains
- headaches
- muscle soreness
- fatigue
- gastrointestinal problems
- elevated heart rate
- elevated blood pressure

Emotional responses

- anger
- fear
- depression
- feelings of isolation
- crying or feeling tearful
- feeling powerless

Intellectual signs

- difficulty thinking clearly
- difficulty making decisions
- difficulty concentrating on the job

Behavioural changes

- increased irritability
- withdrawing from people
- insomnia
- nightmares
- resorting to alcohol more frequently or in greater quantities
- interpersonal problems
- social withdrawal
- anxiety
- depression

Some common myths about critical incident stress are:

- If staff members are experiencing critical incident stress, they are not competent or not suited for the job.
- Experiencing critical incident stress is a sign of psychological weakness.
- Talking about the incident will only make the stress worse.

Self-care strategies to manage stress²⁴

Outside of any support services provided by your organisation, you can take the following proactive steps, developed by the the Queensland Ombudsman, to manage your own stress levels and maintain your mental and physical wellbeing. These personal care strategies include the following:

- Be aware of feelings of self-blame if things do not go to plan.
- Be proactive in managing feelings of frustration, anger or resentment.
- Set manageable goals, break them down into simple steps and identify priorities.
- Rather than focusing on what you cannot accomplish, think positively and focus on the things you can – and reward yourself when goals are achieved.
- Don't be afraid to ask for help if you need it and have the ability to say no without feeling guilty.
- Debrief with colleagues, a supervisor, manager or an external professional.
- Draw on your team/colleagues for support and to work through issues.
- Build a good working relationship with your direct supervisor and other senior staff and regularly report to them. Communicate openly and seek support.
- Ensure you take lunch breaks, annual leave and flexi-days and that you do not regularly take work home to complete.
- Make use of employee assistance programs and seek professional help, if required.
- Use humour in the workplace to help lighten emotional experiences and provide a broader perspective of a situation.
- Be part of social networks at work and at home for support and satisfying relationships.
- Take part in activities that you enjoy in your free time.
- Take part in regular physical activity to help you manage stress.
- Lead a healthy lifestyle.
- Trial relaxation methods to see what works for you.

Effects of critical incident stress on the workplace

Critical incident stress can significantly impact on the wider work environment and can affect team dynamics and functioning. Work effectiveness and productivity can become impaired and there may be a higher than usual rate of absenteeism or a sudden rise in staff turnover rates. Levels of morale may fall and group problem solving abilities may become compromised. Mistrust towards complainants may also take hold. For these reasons supervisors and senior managers should look for signs of stress in their staff and ensure that appropriate support services like debriefing and counselling is made available to them. This will also be important to meeting duty of care and WH&S obligations towards their staff.

Debriefing

Many of us 'debrief' after a difficult interaction with a complainant without realising that we are doing it. For example, after an abusive phone call we might turn to our neighbour(s) to tell them about the horrible things that the complainant said to us and seek reassurance that the complainant – not us – were being unreasonable. Doing this helps us to off-load the stress (and sometimes anger) that we feel when dealing with a challenging situation and gives us an opportunity to say all the things that we often want to (but cannot) say to a complainant – as professional complaint handlers.



²⁴ Queensland Ombudsman 2007, 'Manage your stress in the hotseat', *Frontline Perspective*, Issue no 2, August 2007 <http://www.ombudsman.qld.gov.au/Newsletters/FPIssue2August07/TipsandTraps.aspx>.

Debriefing is an important part of managing our stress levels. As the example above suggests, it is usually a voluntary process, with the exception of operational debriefs, and can occur in a number of different ways:

- **Professional debrief** – is provided by an external professional service on an 'as needs' basis.
- **Internal management debrief** – is provided by a supervisor or senior manager. Any supervisors or senior managers who provide debriefing to staff should be trained in debriefing techniques.
- **Informal peer debrief** – debriefing after a minor incident can be provided by peers. It is an immediate opportunity to express your thoughts and feelings and receive appropriate support from your peers, for example, over a coffee, a walk or a short break. If this method is used, management needs to make it clear that it is a legitimate component of the work of each staff member to assist a colleague to debrief if they are asked for this assistance.
- **Informal group debrief** – frontline staff meet together to discuss recent or a particular difficult incident.
- **Operational debrief** – this is to review operational issues following an incident. It is intended to deal with people's personal issues and usually occurs after people have worked through those issues via alternative means. What happened and whether things could have happened differently, or better, should be considered.

Key components of debriefing

Some key components and objectives of debriefing include the following:

- It aims to assist recovery from critical incident stress and avoid future problems such as post-traumatic stress syndrome.
- It generally needs to occur 24 to 72 hours after an incident, depending on the readiness of the affected staff member(s).
- Some people may display a delayed reaction, in which case, debriefing may occur weeks or even months after the event.
- Formal and operational sessions are always private and discussions are confidential.
- Participation is voluntary – although staff should be advised of the opportunity to debrief.
- Follow-up sessions may be necessary.
- It should also include an educational component about stress-related symptoms that may be experienced and how to manage them.
- The affected staff member(s) may need support for a period beyond debriefing – such as a lighter workload for a while, changed duties, part-time work or leave.

A debriefing report should be prepared at the end of each session. This is a confidential document that relates to the organisation's operation and should be kept separate from the affected staff member's personnel file.

Employee Assistance Programs and counselling services

Sometimes you may feel more comfortable talking to a person outside the office – to someone other than a colleague or senior manager. You may just want time to work through an incident, particularly if you are experiencing other stressful life events, or may need ongoing or additional support through a confidential counselling service like Employee Assistance Programs (EAP). EAP is a work-based intervention program designed to improve the emotional, mental and general psychological wellbeing of all employees and their immediate family members. It aims to provide preventive and proactive interventions for the early detection, identification and/or resolution of both work and personal problems that may adversely affect performance and wellbeing. These problems and issues may include health, trauma, substance abuse, depression, anxiety and psychiatric disorders, communication problems and coping with change.

Most public sector organisations will have information about EAP readily available. If not, you should consider asking your supervisor or senior manager about the availability of these services.

PART 7

Supervisors and
senior managers

Chapter 17 – Management roles and responsibilities

Understanding the role of supervision

As mentioned throughout this manual when it comes to UCC, supporting and protecting staff should be your key priority as a supervisor or senior manager. As a supervisor you need to make it clear to your staff that they have your full support in dealing with UCC, as well as using the strategies provided in this manual. This support will enable them to make confident and clear decisions when responding to and managing UCC.

When it becomes apparent that UCC is a factor in a particular case – and it seems that it will be ongoing, will use up an unreasonable amount of time and resources, and/or may escalate – it will be essential for you (as a supervisor) to discuss the matter with the staff member concerned. With them you should:

- make a plan about how the case and the complainant will be managed
- stick to the plan as closely as possible without being inflexible.

You should never leave a case officer to suffer in silence.

When deciding on a plan, it is important that you do not limit your assessment to the complainant's conduct. You should look to the conduct of the relevant case officer(s), your own conduct (if relevant), as well as your organisation's processes and procedures to determine if they have contributed to the complainant's conduct in any way. If so, you should ensure that appropriate steps are taken to immediately rectify the issue with the complainant. See Chapter 8 – Apologies (page 35).

Also, as a supervisor, you should ensure that as far as the complainant is concerned, supervision happens behind the scenes. You should avoid becoming visibly involved in a matter, except if it involves a complaint about a member of your staff, or a member of your staff asks you to be involved – eg because they think you can help to defuse the situation. Outside of these circumstances complaints should not be escalated to you simply because a complainant has demanded it, especially if the relevant staff member is capable of handling the situation. Complaints and phone calls that are escalated in this way tend to give complainants the perception that they can control how their issue is dealt with (and by whom) and do very little to manage their conduct.



Senior management responsibilities

Developing and implementing strategies to manage complainant aggression and violence is a management responsibility.

Under work health and safety legislation in each jurisdiction employers have a duty to take all reasonably practicable steps to protect the health and safety of their employees while they are at work.²⁵ This duty requires employers to take proactive steps to identify hazards with the potential to affect employee health and safety and implement measures to eliminate or control those hazards.²⁶ It also includes reducing their risk of exposure to violent and aggressive complainant conduct as well as ensuring they have the training and skills they require to deal with complainant aggression. Employers must also have appropriate policies and procedures in place for dealing with risks and should involve their staff in the development and review of these policies.²⁷

To meet these obligations (and for the approach in this manual to be effective) as a senior manager you should take steps to ensure that you create a safe and supportive workplace environment and culture for your staff. You should also ensure that you have systems in place for identifying, assessing and managing UCC related risks and should consider using environmental design strategies to maximise the safety of your staff members and other visitors to your offices.

²⁵ See *Work Health and Safety Act 2011* (Cth), *Work Health and Safety Act 2011* (ACT), *Work Health and Safety Act 2011* (NSW), *Workplace Health and Safety (National Uniform Legislation) Act 2011* (NT), *Workplace Health and Safety Act 2011* (QLD), *Work Health and Safety Bill 2011*, *Workplace Health and Safety Act 1995* (TAS), *Occupational Health and Safety Act 2004* (VIC), *Occupational Safety and Health Act 1984* (WA).

²⁶ Comcare 2010, *Preventing and managing bullying at work: A guide for employers*, OHS 65, Canberra, pp.11.

²⁷ Comcare 2009, *Prevention and management of customer aggression*, OHS 33, Canberra, pp.9.

Safe and supportive workplace culture

A safe and supportive workplace culture is one where:

- Staff safety is a foremost consideration. You must demonstrate a zero tolerance approach to violence against your staff.
- Both staff and senior managers openly and actively recognise the realities of dealing with UCC, in particular violent and aggressive complainants.²⁸
- The stressful nature of dealing with UCC and its impacts are recognised and staff are encouraged to learn and practice self-care techniques.²⁹ See Chapter 16 – Managing stress (page 93).
- Staff have access to support mechanisms such as EAP counselling and trauma services and each UCC incident is treated individually in terms of assessing staff support needs.
- A UCC policy and procedure is implemented and communicated across your organisation using various methods (eg intranet and internal newsletters) to ensure that staff are aware of them. If possible, staff at various levels of your organisation should be involved in the development of this document(s). See: Unreasonable Complainant Conduct Model Policy – available at: www.ombo.nsw.gov.au.
- All new and existing staff are trained to deal with UCC and the strategies that they are authorised to use to manage it.
- UCC related issues (including security procedures) are regularly discussed and staff feel comfortable raising any doubts, fears, uncertainties or concerns they may have about dealing with UCC.³⁰
- UCC incidents are used as learning opportunities that inform your organisation's policies, procedures and practices for dealing with UCC – as well as identifying new potential risks.
- It is recognised that when one staff member is involved in a UCC incident it can impact on their entire team and possibly even the entire office. As a result, mechanisms should be in place for debriefing and providing counselling services for all staff if needed.³¹

In addition, you should ensure that:

- There is a centralised case management system for recording information about complainants and incidents of UCC.
- Appropriate risk management processes are in place for identifying, assessing, controlling and reviewing actual and potential risks associated with UCC.
- Ground rules are drafted and made available to complainants. See also: Unreasonable Complainant Conduct Model Policy (Appendix 1 – Mutual Rights and Responsibilities of the Parties to a Complaint). It is available at: www.ombo.nsw.gov.au.
- The police are contacted in appropriate cases and that formal reporting requirements are met by frontline staff – critical incident reporting, appropriate record keeping, etc.³² See Chapter 15 – Recording and reporting UCC incidents (page 92).
- Staff use of the strategies in this manual is monitored and reviewed to ensure that they do not conflict with your internal protocols and procedures.
- There is overall consistency in how UCC is dealt with in your organisation.

Systems for identifying, assessing and managing UCC related risks

When the approach in this manual is systematically applied, it provides a robust risk management approach that goes some way to ensuring that you meet your WH&S obligations towards your staff – in relation to UCC. However, you should also ensure that in addition to anything in this manual, risk management occurs on an on-going basis within your organisation to identify, assess, control and review current and potential UCC related risks. Figure 2 below demonstrates how this process might be undertaken.

²⁸ Department of Human Services (Vic), *Staff safety in the workplace*, pp. 23. (See also footnote 15 (p.29) for additional copyright information.)

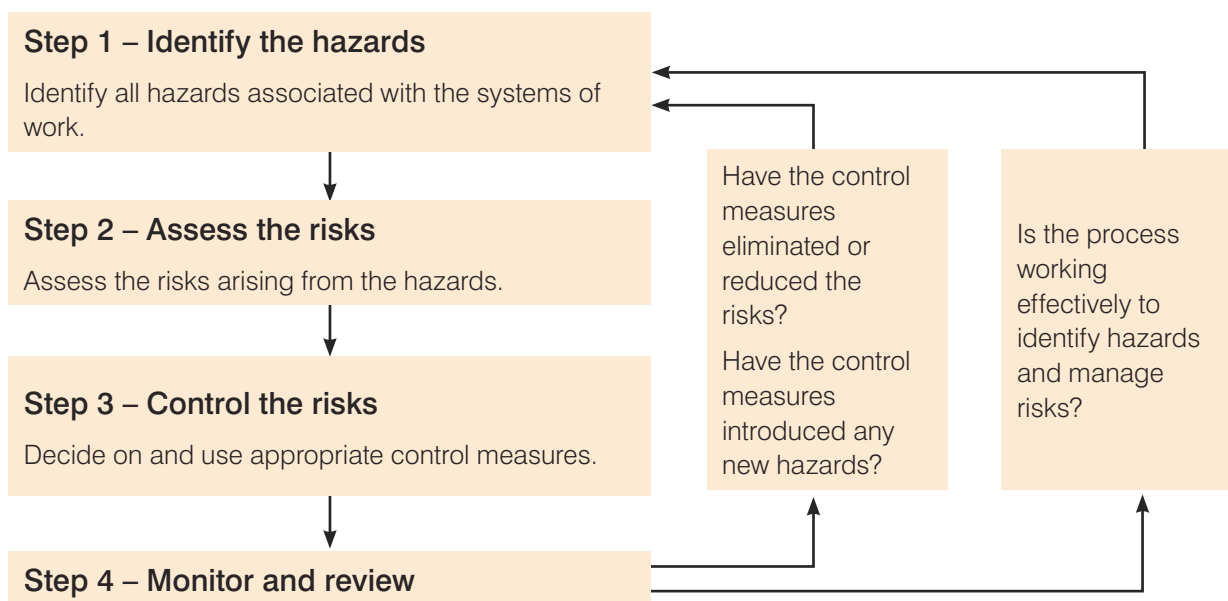
²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

Figure 2 – Risk management process³³



1. Identify the nature of the potential hazards

This includes assessing the workplace environment for any physical hazards that may be used by the complainant to cause harm to themselves or others. It also includes going through any records you have of incidents of UCC or workplace violence. This might reveal whether there are problem areas that need to be addressed, or if any patterns are emerging.

2. Assess the risks

This includes making a judgment about the seriousness of each hazard, and deciding which hazard requires the most urgent attention. It involves developing a list and ranking the hazards from highest to lowest priority based on the level of risk and regularly reviewing and updating the list as needed. It also requires continued monitoring of your workplace environment and assessing off-site visits to make sure that any potential new hazards are immediately identified – staff participation will be important in this regard.

3. Control the risks

This includes addressing the hazards and potential risks that have been identified. The primary goal will be to totally remove the risks. For example, if the risk involves a complainant throwing things like staplers around the interview room, then staplers should be removed from all interview rooms.

If it is not possible to completely remove a risk, you may manage it to the extent possible. For example, you might consider the design layout of your office to make interview rooms more visible to all staff members in the immediate vicinity – eg installing large or floor to ceiling windows in interview rooms. Alternatively, you might consider changing the ways certain jobs are done or have face-to-face interviews conducted by at least two staff members at a time.

Whatever your resources are you will find that there are usually a wide range of options for addressing many risks, with little or no expense in some cases. See Appendix 8 – Dealing with internal hazards through environmental design below (page 129).

4. Regularly review the risks

This includes continually monitoring your workplace environment and assessing off-site visits to make sure that any potential new hazards are immediately identified – staff participation will be important in this regard. Where necessary safety procedures may need to be changed and systems may need to evolve to ensure their effectiveness.

For more information on risk assessment processes see also: www.worksafe.vic.gov.au.

For information on how the design/layout of your workplace can help to prevent or minimise the potential risks associated with UCC, see Appendix 8 – Dealing with internal hazards through environmental design (page 129).

³³ Comcare 2005, *Identifying Hazards in the Workplace*, OHS 10, Canberra, pp. 4.

Chapter 18 – Modifying or restricting access to services: A management responsibility

Decisions to modify or restrict access

Decisions to restrict a complainant's access to services should be viewed as the exception rather than the rule.

There are times when the frontline strategies provided in Part 5 – Responding to and managing UCC – will not be effective or appropriate to manage a complainant's conduct. In these situations, it will be important to consider ways to modify or restrict contact with a complainant to protect the health and safety of your staff (or others) as well as ensuring equity and fairness in the distribution of your resources.

Decisions to modify or restrict a complainant's ability to access services are management responsibilities and should always be approved by a CEO (or a senior delegate). They should also be made with the greatest reluctance after careful consideration of factors like the complainant's personal circumstances and, where relevant, the role a case officer or organisation has played in exacerbating the unreasonable conduct.

Modifying or restricting access with alternative service arrangements

'Alternative service arrangement' is the common term used to describe the process of modifying or restricting usual service delivery methods to customers and complainants. In the UCC context, alternative service arrangements can be used to modify or restrict the ways in which you and your staff deliver services to a complainant to minimise the impacts and risks posed by their conduct. For example, they can be used to restrict:

Who – a complainant can make contact with within your organisation. A complainant may be limited to dealing with one staff member within your organisation if they have:

- engaged in persistent and otherwise unmanageable forum shopping
- reframed their complaint to get it taken up again
- repeatedly raised minor and/or irrelevant issues with your organisation
- made regular, frequent and unwarranted contact with your organisation.

What/the subject matter – your organisation will respond to. This solution may be used in situations where a complainant has:

- repeatedly raised the same complaint or issues with your organisation and appears to be incapable of letting go of their issues
- reframed their complaint to get it taken up again
- been persistent in wanting your organisation to pursue trivial issues
- made unreasonable and illogical arguments which they insist you should pursue.

When – a complainant can make contact with your organisation. This could include restricting them to a particular time, day or length of time, or curbing the frequency of their contact if they have:

- engaged in persistent and/or lengthy contact with staff when this is not warranted
- been aggressive, threatening or confrontational towards your staff.

Where – a complainant can interact with your staff face-to-face. This could include limiting the locations where contact occurs, for example to a secured facility on your premises, at a local police station, or a community centre. Situations where these strategies might be used include cases where a complainant has engaged in:

- extremely aggressive or confrontational behaviour
- threatening, violent or hostile conduct

How – a complainant can contact your organisation. This could include restricting their contact to writing only, prohibiting access to your premises, only allowing contact to be made through a representative, restricting access to direct staff emails and only allowing access through the organisation's general email portal, etc. These strategies might be applied in situations where a complainant has:

- engaged in persistent and otherwise unmanageable aggressive, confrontational, threatening or violent conduct
- sent a constant stream of written communications, called or visited your offices when it is not warranted and when they have been asked not to do so.

For more information on possible strategies for modifying or restricting a complainant's contact/access to services and procedures for doing so, see: Unreasonable Complainant Conduct Model Policy. It is available at: www.ombo.nsw.gov.au.

Withdrawing access to services

In our view, the only situations where an organisation should contemplate withdrawing a complainant's access to services are in cases where a complainant:

- is consistently abusive, harasses, stalks or intimidates a member of your organisation and/or their family members
- is physically violent and/or causes property damage while on your premises
- makes threats to staff or other members of the public using the services or at the agency's premises
- produces a weapon or makes bomb threats
- entraps a staff member in their home during a field visit or is otherwise violent during such visits
- engages in conduct that is otherwise unlawful.

In all other circumstances, it is probable that there are other alternative arrangements that can be used and that will be effective in managing a complainant's conduct.

Even in cases where a complainant exhibits the types of behaviours listed above, consideration should be given to a wide range of issues – not just the complainant's conduct – such as the complainant's personal circumstances and the impact that the restriction will have on them and their dependents. For example, if the services provided by your organisation are important or essential to the physical or mental wellbeing of the complainant, it may be preferable to modify the way that services are delivered to the complainant (using the types of alternative service arrangements suggested above) rather than withdrawing or withholding access completely. Alternative and possible solutions in these situations may include having security guards or police present during face-to-face interactions with the complainant, holding interviews at your local police station or other secured facility (either on your premises or elsewhere), or using specially trained staff for interviewing the complainant. You might also consider having relevant materials delivered to the complainant's home rather than having them collect them from your organisation.

Public interest considerations for withdrawing access to services

We strongly encourage any organisation that is considering withdrawing a complainant's access to their services, to do so with the following public interest considerations in mind:

- In the absence of very good reasons to the contrary members of the public have a right to access agencies to seek advice, help or the services the agency provides.
- In a democracy people have a right to complain. Criticism and complaints are a legitimate and necessary part of the relationship between agencies and their customers or communities, and may be dynamic forces for improvement within agencies.
- Nobody, no matter how much time and effort is taken up in responding to their complaints or concerns should be unconditionally deprived of the right to raise those concerns and have them addressed.

Chapter 19 – Using legal mechanisms to deal with extreme cases of UCC

Taking legal action

*'Public servants are employed to serve the public. As such, we should be seen to act with tolerance and reasonableness. We should only resort to legal sanctions against our customers as a last resort. Nonetheless, there will be times when such action is appropriate.'*³⁴

As a senior manager you may also come across cases where you consider it to be necessary and appropriate for your organisation to use legal mechanisms to restrict a complainant from your premises and/or to protect specific members of your staff. For example, if a staff member becomes a victim of assault or intimidation or is stalked by a complainant you may legitimately support them to pursue their legal rights including supporting them to obtain an order of protection or apprehended violence order (AVO).³⁵

An AVO is a legal order that is issued by the Local Court under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). It aims to protect people from personal violence, threats, harassment and intimidation by restricting the conduct and movements of their aggressor. An AVO may be effective in managing situations where a staff member requires protection while at work as well as when they are away from the office – eg at their home.

Another legal option that you might consider when dealing with incidents that are confined to your organisational premises and/or incidents that pose a general risk to staff members or visitors at your premises, is the *Inclosed Lands Protection Act 1901* (NSW).³⁶ The Act provides a basis for taking civil and/or criminal action in relation to trespass and empowers owners, occupiers, or people in charge of 'inclosed lands' to require a person (eg a complainant) to leave their premises in certain circumstances.

However, extreme caution must be used when contemplating the use of any legal options to manage UCC. In our view these options are options of last resort and should never be used to deal with a complainant who is merely difficult to manage or who your staff are uncomfortable with. Legal mechanisms should only be considered in situations where one or more members of your staff have a real and genuine fear of harm by a complainant. In all other circumstances, other reasonably available management strategies should be considered and/or attempted in the first instance.

For information on the circumstances when it may be appropriate to support a staff member to obtain an order of protection, see: *Orders to address violence, threats or intimidation and unauthorised entry onto agency premises*. It is available at: www.ombo.nsw.gov.au.

For information on the circumstances when it may be appropriate to use trespass legislation to restrict a complainant from your premises, see: *Applying the provisions of the Inclosed Lands Protection Act 1901* (NSW). It is also available at: www.ombo.nsw.gov.au.

³⁴ Efficiency Unit, Government of Hong Kong Special Administration Region, 2009, *A Guide to Complaints Handling and Public Enquiries*, pp. 23. http://www.eu.gov.hk/english/publication/pub_bp/files/A_Guide_to_Complaints_Handling_and_Public_Enquiries.pdf

³⁵ For more information on the circumstances when public officials can receive ex gratia legal assistance, see: M1999-11 Guidelines for the Provision of ex Gratia Legal Assistance for Ministers, Public Officials and Crown Employees, available at: http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/1999/m1999-11.

³⁶ See also Public Order (*Protection of Persons and Property*) Act 1971 (Cth); Trespass Act 1987 (NT); Land Act 1994 (Qld); Police Act 1892 (WA); Summary Offences Act 1953 (SA); Police Offences Act 1935 (Tas); Summary Offences Act 1966 (Vic); Enclosed Lands Protection Act 1943 (ACT).

Case study example – Situations where legal action may be required to deal with UCC

provided by the NSW Ombudsman



Mr D complained to our office in February 2009 and again in April 2009, January 2010 and February 2010 about his local council. His complaints generally concerned a local development application and the conduct of the General Manager of his local council.

Although none of our enquiries into Mr D's complaints uncovered any wrongdoing, he persisted in contacting our office about his complaints. In the period between his first formal complaint and his last (in February 2010) Mr D sent over 100 emails to our office and made more than 16 phone contacts with our staff – all about his local council. These emails included numerous copies of media articles about the council and copies of correspondence between him and the council, which were largely irrelevant to the work we had done on his complaint. That same month we blocked Mr D's email access and restricted him to sending correspondence via Australia Post.

Unfortunately, this did not stop Mr D. He repeatedly attempted to circumvent our restrictions by changing his email address on multiple occasions. We dealt with Mr D's conduct by not responding to any of his correspondence and blocking each new email address that he used to contact our office. To date at least 88 of Mr D's emails have been blocked.

We subsequently learned that the council Mr D had complained about had also placed similar restrictions on his email access. This action was taken after the council received more 300 emails from Mr D within a 6 month period. The council was also concerned about the impact that Mr D's conduct was having on their staff and their resources (they had to dedicate one senior staff member two days a week to deal with his matters). In addition the council was concerned about the contents of his emails which were very intrusive and threatening to staff – in particular threatening their jobs. In one incident, Mr D even managed to obtain the personal email address of a staff member at the council (which had not been disclosed to him) and began emailing her on her personal email account.

After several run-ins with members of the council, including the General Manager and the Mayor (and their families), AVOs were issued against Mr D for a period of 5 years by both parties.

In reasoning, the local magistrate who presided over the case made the following observations:

...The complaints relate to... voluminous correspondence both written and electronic which appears to have been sufficient to justify the installation of a duress alarm in [GM's] assistant's office, the back base home security at his own home and blocks on emails being received from the [complainant] to the Council. It is clear that there has been an attempt by [the complainant] to circumvent the processes to ... put himself in the company of [the GM] and [the Mayor] with a view to raising matters of council business....

These contacts have been made not only at the business premises [of the council] but attempts [also at the Mayor's home] and it would seem, attempts to unsettle [the GM] by being in the vicinity of his private residence and making it very clearly conspicuous to [the GM] that [he] was in fact there.

....

I have no doubt, even at the low standard of the civil standard but I would place it even sufficient to satisfy the criminal standard of beyond a reasonable doubt that [the complainant] has engaged in behaviour where he stalks and harasses these two public figures under the guise of legitimately pursuing issues which he says are relevant to council activities. The volume of the contact including in person, by phone and electronically is extraordinary to say the least.

With respect, I have formed the view that he is a person I believe possibly suffers from some form of mental disorder which has manifested itself in the form of persecution of two public figures for his own deluded gratification and to inflict elevated levels of concern not only on those two people directly, but also extending the concern to members of their respective families in the form of disturbing and unsolicited correspondence. Whilst those persons in public office must expect that their activities and performance of their various roles will be subject to the normal levels of scrutiny and review, what [the complainant] purports to do by presuming to be in a position to have the mayor and the general manager of the council respond to his voluminous requests and demands exceeds the broadest interpretation of reasonable accountability levels for public servants.

Chapter 20 – When restricting access is not possible: Using alternative dispute resolution

What if access cannot be restricted or we have contributed to the problem?

In circumstances where your organisation:

- cannot terminate their contact with a complainant
- has considered and/or attempted other reasonable and possible management strategies to manage the dispute, or
- bears some responsibility for causing or exacerbating a complainant's conduct

Alternative dispute resolution ('ADR') may help to resolve a conflict with a complainant and rebuild a relationship with them.

ADR is a term to describe a wide range of different processes that can assist people to settle their disputes and conflicts by means other than litigation. ADR can be facilitative, advisory, determinative or a hybrid of these approaches and can generally be selected to suit a particular conflict or dispute.

When using ADR in a UCC context, it is important to ensure that the ADR process is managed by an independent and impartial third party who can help you to reach a solution that is satisfactory to both parties. Having a third party can minimise the likelihood for negative perceptions and imputations about bias or collusion (by the complainant) and can help settle an escalating dispute.

The complainant should also be encouraged/supported to obtain a support person or representative who can assist them throughout the ADR process – as appropriate.

The pros and cons of ADR in a UCC context

In cases where UCC is an issue, ADR may be beneficial in the following ways:

- It can make the complainant feel that they are being listened to and understood and that their matter is being taken seriously.
- It can allow the complainant to vent their emotions about their complaint or issue.
- It can assist your organisation to obtain information about the complainant's issues, interests and position and help you understand the underlying factors contributing to the ongoing dispute.
- It can give your organisation the opportunity to change the complainant's perceptions/encourage them to consider a different perspective in a non-adversarial setting.
- It can assist your organisation to manage the complainant's expectations about the types of things that can be achieved and the possible/likely outcomes to be achieved – a message that may be better received from a 3rd party than from a member of your staff/organisation.
- It can may be less damaging to your relationship with the complainant, as compared to other alternatives, and/or may bring about a change in that relationship.
- It can potentially identify areas for improvement within your own organisation for example, in your service delivery, policies or procedures.
- It can be more cost and time effective than if you allowed the conflict to continue for years and/or negatively affect members of your staff – eg on productivity levels or staff/team morale, etc.
- It can push the complainant (and your organisation) to focus on the future and on achieving a solution rather than focussing on past conflicts or behaviours.
- It can solve the problem/conflict.

Conversely ADR can be ineffective in a UCC context for the following reasons:

- A complainant who is engaging in UCC may not be willing to participate in the ADR process in good faith. They may be resistant to compromise or unwilling to work towards a solution that is fair for all parties – making a resolution/conclusion unlikely.
- It can be an expensive process, in particular if an independent third party is obtained to facilitate the process.

- It can give a complainant false ideas about the importance of their issue (ie that it is given high level attention because it is valid or 'correct').
- It can be time consuming.

As a result, you will need to assess each case on its own facts to determine whether ADR might be effective in ending an ongoing dispute with a complainant.

That said – even in cases where you determine (at first glance) that ADR will not be a suitable approach, it may be worthwhile to review the case on a periodic basis to assess whether it might subsequently be submitted for ADR – eg if the conflict is ongoing and shows no signs of ending, is likely to lead to a litigation or is significantly affecting your resources, ability to carry out your functions or is affecting members of your staff.

What types of ADR could you use in a UCC context?

Some of the more common ADR strategies that may be used in a UCC context are:

- **Mediation** – mediation is a voluntary process where the parties to a dispute, with the assistance of a neutral third party (the 'mediator'), identify their disputed issues, develop options for resolving those issues, consider alternative options/arguments and endeavour to reach an agreement.

The mediator has no advisory or determinative role in the resolution of the dispute. Their role is to assist the parties to identify their interests, understand alternative viewpoints and arrive at a mutually acceptable solution. The mediator may also assist the parties to draft a mediation agreement.

- **Conciliation** – conciliation is a process where the parties to a dispute identify their disputed issues, develop options for dealing with those issues, consider alternatives and endeavour to reach an agreement – with the assistance of a conciliator.

The conciliator is responsible for managing the conciliation process. They will provide advice on the matters in dispute and/or options for resolution, but will not make a determination. They may also have professional expertise in the subject matter in dispute.

- **Facilitation** – facilitation is a process where the participants (usually a group) identify the problems that they need to solve and the steps they need to take to solve those problems.

Facilitation is done with the assistance of a facilitator. The facilitator does not have an advisory or determinative role in the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation.

- **Facilitated negotiation** – facilitated negotiation is a process where the parties to a dispute, who have identified the issues they want to negotiate, obtain the assistance of a facilitator to negotiate an outcome. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation.

- **Conferencing** – conferencing is a series of meetings conducted by a convenor in which the participants and/or their advocates discuss issues in dispute. Conferences are often used by organisations with a regulatory or statutory responsibility and the convenor may provide advice on the issues in dispute or possible options for its resolution.

- **Conflict coaching** – conflict coaching is a voluntary, confidential, forward-focused process in which a trained conflict coach supports and assists the client to understand and improve the way they manage their conflicts and disputes. The coach helps the client to reflect on and identify their goals, explore different ways for reaching those goals, develop practical methods for preventing unnecessary conflict and resolve their dispute. The process also allows the client to enhance their conflict management skills

The coach does not act as an advocate or a representative and does not make any determinations for the client.

Conflict coaching can be particularly useful if the complainant is an internal complainant, is consistently in conflict with others and/or will have an ongoing relationship with your organisation.

For more information on conflict coaching, see: www.cinergycoaching.com/ and also visit the Department of Defence website on: www.defence.gov.au (What are alternative resolutions: What is conflict coaching?).

For more information on alternative dispute resolution, see: <http://www.nadrac.gov.au>.

Chapter 21 – Dealing with misuses of electronic communications, the internet and social media

UCC in e-communications: a growing issue for public organisations and their staff

'Clearly some people are viewing social media as a bypass to the traditional routes of discussing dissatisfaction with the school.'³⁷

An emerging issue in UCC that has been raised throughout Stage 2 of the UCC project, in particular during focus group discussions,³⁸ is the growing tendency for certain complainants to use the internet and social media to attack, abuse, harass, vilify and defame the organisations and public officers they are interacting with. In increasing numbers organisations are being confronted with very public and very extreme online incidents involving their complainants and they are struggling to find effective ways to keep pace with and manage these situations.

For example, a recent UK study into online abuse found several instances where teachers had been targeted for abuse by parents and students on websites such as YouTube, Ratemyteacher.com and Facebook – where specific Facebook groups were being created to target teachers. One teacher who was targeted and victimised said of her experience: 'I eventually had a breakdown in the summer holiday needing an emergency doctor to be called out – as I had become suicidal.... I had intensive support from the mental health unit via my GP, a new telephone guidance service that really helped me, plus medication which was a great help, and still is.'³⁹

In a similar testimonial, another teacher who was falsely accused of behaving inappropriately towards a student said: 'I was questioned by the police on one single occasion and released without charge, caution or reprimand... I also ended up in the care of a psychologist to help me deal with the loss of self-worth, depression and the urge to commit suicide.'⁴⁰

And in March 2010 in NSW, the media widely reported that school principals had been formally advised that they can sue parents who defame and harass them through social networking sites and email.⁴¹ The Primary Principals Association President was reported to have said:

We felt that it would be appropriate for our principals to hear, directly, what course of action was open to them if they were subject to these sorts of allegations that were unfounded or malicious or vexatious.

...

It's obviously reached a serious degree to get beyond the normal complaints-handling process, and those principals at the time thought it was serious enough to seek some support and, maybe, to undertake action.'⁴²

However, this growing problem is not limited to teachers or the education sector – as our focus group discussions revealed. Public organisations everywhere are increasingly being confronted with this issue.

37 Professor Andy Phippen cited in BBC News Technology 2011, 'Study finds one third of teachers have been bullied online' *BBC News* 15 August, viewed 16 August 2011, <<http://www.bbc.co.uk/news/technology-14527103>>.

38 During stage 2 of the UCC project the NSW Ombudsman, with the support of each state and territory Ombudsman office held focus group discussions across Australia on UCC (except in Tasmania and the Northern Territory). In all, they held 25 focus groups involving 179 public servants between 3 March and 23 July 2010. For more information about the focus groups please see: Unreasonable Complainant Conduct Project Report (Stage 2), available at: www.ombo.nsw.gov.au.

39 BBC News Technology 2011, 'Study finds third of teachers have been bullied online' *BBC News*, 15 August, viewed 16 August, <<http://www.bbc.co.uk/news/technology-14527103>>.

40 *ibid.*

41 Labi, S 2010, 'Now schools can sue parents', *The Sunday Telegraph*, 28 March, viewed 27 May 2011, <<http://www.dailytelegraph.com.au/news/now-schools-can-sue-parents/story-e6frewt0-1225846360533>>.

42 *ibid.*

For example in NSW two council officials were reportedly granted apprehended violence orders against a complainant who harassed them (and their families) for years through electronic communications, over the phone and in person. One of the council officers said of the experience:

It is not just a financial burden for taxpayers. It also undermines our effectiveness as community leaders due to the mental and emotional strain. Simple pleasures such as attending community functions with my family became a worry because of the possible behaviour of this person.

...

*We were forced to seek legal protection, but if we had clear legislative distinctions regarding what is reasonable or excessive, we may not have had to endure this financial and emotional burden for over two years.*⁴³

And in a landmark decision in November 2009 a South Australian man pled guilty to criminal defamation after posting material on Facebook about a local police constable. The man created a Facebook group called '**Piss off [name of constable]**'. The page included posts that were incorrect, offensive and contained grossly defamatory statements about the Senior Constable. It identified him and his children in photographs, and disclosed the location of his house. Some of the posts also encouraged acts of violence and aggression towards the constable.⁴⁴

When asked about his experience, the Constable said:

It has caused considerable distress to my family ...

[I] was astounded at the savage nature of many of the interactions [on the page]...

I was angry ... As a local police officer I believe it is part of the territory that we have to take a little bit more than the average person. However, on this occasion it was quite a personal attack and it [the page] even had photographs of my children.... this was one step too far.

...

*My answer to (his critics) is if you are not happy about what I do, complain about it [through the appropriate channels] and have my activities scrutinised, and they will be...*⁴⁵

What all of these cases illustrate is that UCC that occurs online and in electronic media can have far reaching and devastating consequences for the staff members and organisations that have to deal with it. 'It is easier than ever for a single disgruntled [complainant] to permanently stain an [organisation's] image⁴⁶ or an individual's reputation, causing serious psychological injury because of its very public and often vicious nature. One single posting done intentionally or 'in the heat of the moment' has the potential to cause injury on a far greater scale.'⁴⁷

As a result, in our view organisations need to develop appropriate systems and processes for identifying and managing UCC that occurs online and in social media. This is not only important for the effective application of the UCC approach advocated in this manual, it may be viewed as a foreseeable work-related risk if a sufficient connection can be drawn between the professional work/services provided by a staff member and a complainant's online conduct – in which case an organisation may have a duty to act.

When does online conduct become unreasonable?

It is important to clarify that not all online behaviour is unreasonable and it is not the fact that complainants are using social media and the internet to air their grievances that is concerning. Complainants have a right to express their views or complain online in the same way that they can to our offices. The problem arises when reasonable complaining behaviour turns into inappropriate and/or unlawful attacks on organisations and their staff. This type of behaviour cannot be ignored and steps should be taken to evaluate and respond to it – in the same way as other forms of UCC.

43 Parker, S 2011, 'What is fair in public office?: Mayor and general manager forced to court by excessive and 'obsessive' tirade', *Manning River times*, 21 October, viewed 21 October 2011, <<http://www.manningrivertimes.com.au/news/local/news/general/whats-fair-in-public-office-mayor-and-general-manager-forced-to-court-by-excessive-and-obsessive-tirade/2331486.aspx?storypage=0>>.

44 Lim, P 2010, 'You have 3 friend requests and 1 criminal conviction: tackling defamation on Facebook', *Internet Law Bulletin*, vol 12, no. 10, March pp. 169.

45 Hunt, N 2009, 'Teen guilty of Facebook Slur', *Sunday Mail (SA)*, 22 November, viewed 10 July 2010, <<http://www.adelaidenow.com.au/news/south-australia/teen-guilty-of-facebook-slur/story-e6frea83-1225801651074>>.

46 Kerwin, M 2010, 'Six Tips for Responding to Blogger Attacks', *BulletProof Blog*, 17 August, viewed 21 April 2011, <<http://www.bulletproofblog.com/2010/08/17/six-six-tips-for-responding-to-blogger-attacks/#ixzz1VQXAEZSf>>.

47 Rooding, A 2009, 'Cyberbullying in the workplace: dealing with social networking sites', *Internet Law Bulletin*, vol. 12, no.1, March, pp. 14.

Some examples of inappropriate and unreasonable online conduct by complainants include the following:

- Vulgar and abusive language.
- Targeted, personal and obscene attacks.
- False allegations and lies with the intention to embarrass, humiliate, discredit or portray in a negative light.
- Offensive language and terms inappropriately targeting specific groups or individuals – eg racial slurs.
- Threats or defamatory statements – eg a case officer is corrupt or dishonest (without proof).
- Spamming and sending multiple successive and irrelevant emails or posts.
- Cyber-stalking or cyber-bullying.
- Conducting snide online polls about case officers – eg about their level of competence, etc.
- Posting personal information about case officers including their personal contact details or phone number, name, address, vehicle details etc. – so they can be targeted.
- Suggestions or encouragements to commit illegal activities or crimes.
- Posting inappropriate content/links to disreputable websites.
- Hacking or uploading viruses or other materials that are harmful to an organisation's website, blog, Facebook page, etc.
- Creating unpleasant websites with rude comments, photos or videos depicting members of an organisation and/or their family members.
- Copyright and trademark infringements.
- Creating fake online profiles to impersonate someone – eg a staff member – or so that they cannot be identified and then engaging in behaviours described above.

What can you do to manage online conduct?

To effectively manage UCC online organisations will need to adapt to online and electronic communication technologies like social media to ensure that they and their staff are adequately protected from any risks to health, safety and liability.⁴⁸ Preferably, this should happen whether or not your organisation has an online or social media presence and should include clear protocols and procedures for dealing with online conduct. These protocols may be part of a broader UCC policy or can be a separate document, and should provide clear guidance for staff on when and how to respond to such conduct.

The following five-step process is provided to assist relevant staff in this regard. It is primarily based on information obtained from articles by Mike Kerwin, Executive writer at Levick Strategic Communications LLC⁴⁹ and Alyssa Gregory, founder of Avertua LLC.⁵⁰ This information has been used in conjunction with other sources to suit a public sector complaint handling context.

Step 1 – Monitor

Maintain an ongoing system for researching and tracking postings, comments, websites, blogs, etc. for negative content about your organisation or your staff:⁵¹

- Encourage all staff to report any inappropriate or questionable online content that they discover online and which relates either to your organisation or a member of your staff.
- Use online listening tools and alerts – such as Google Alerts, Social Mention, Technocrati, TweetBeep, Boardtracker, Dialogix, The Search Monitor, etc. to track comments about your organisation online. For example, Google Alerts sends regular email updates of the latest online mentions of your organisation whether it is on a blog, in an online newspaper, a video or tweet – thus eliminating the need for manual searches.
- Designate a staff member (or response team or specialist service) to monitor online content. This staff should also be responsible for identifying, evaluating and responding to inappropriate online conduct – when necessary.

⁴⁸ *ibid*, pp.13-14.

⁴⁹ Kerwin, Six Tips for Responding to Blogger Attacks.

⁵⁰ Gregory A 2009, 'Online reputation management: The basics', *Webpro Business*, 20 May, viewed 27 April 2011, <<http://www.sitepoint.com/online-reputation-management/>>.

⁵¹ *ibid*.

Step 2 – Evaluate

Once the unacceptable online content is discovered it needs to be assessed immediately to determine whether a response is needed.⁵² It is essential for this to be done promptly so that you can avoid and/or minimise the likelihood of the content 'going viral' and spiralling out of control. The following factors may be considered:⁵³

A. Content

- Does the online content contain constructive criticism or observations or is it purely negative?
- Is the online content reasonable in its tone or does it contain grossly inflammatory or offensive content that will require some form of action?
- Is the online content grossly misinformed or misleading? Does it contain misrepresentations or lies that could reasonably mislead others?
- Does the online content contain personal information about a staff member (or their family) that has been inappropriately obtained and/or used for an inappropriate purpose – eg personal photos, videos, address information, etc?
- Does the online content contain defamatory information or threats, violate trademark or copyright laws or contain otherwise unlawful content?
- Does the online content contain indecent, vulgar, or obscene sexual content and/or unsubstantiated allegations about staff?

B. Visibility and credibility⁵⁴

- Is the online content on a website that is highly visible and easily accessible? For example, is it on Facebook (with 9.8 million Australian users) or is it an obscure website that has been viewed by a relatively small number of people – eg the complainant's inner and/or extended circle of friends and family.
- Has the online content 'gone viral' – taking on a life of its own, possibly even being reported in the news media thereby requiring a relatively comprehensive response?
- Could the online content be perceived to be credible or is it so farfetched that it will not be believed by a reasonable person?

C. Apparent purpose/objective

- Does the online content appear to be dedicated to targeting or degrading others? Is it part of a smear campaign or a publicity stunt?
- Does the online content incite others to engage in particular acts or omissions – eg targeting your organisation or a member of staff – or engage in unlawful conduct?
- Does the online content appear to have been created with the intention to embarrass or humiliate, or as part of a joke?

D. Impact

- Could the online content significantly damage your organisation's reputation or the reputation of a member of your staff? – Note: this only applies if the damage is unwarranted/the content is false.
- What impact, if any, will the online content have on your workplace environment, on relationships between colleagues or with complainants, in particular if it is believed?
- If the online content is about a staff member, how do they feel about the posting? Have they (or their family) been affected by it in a substantial way?
- Could your organisation be open to a common law duty of care, WH&S or legal liability if some form of action is not taken in response to the online content?
- Could the online content be interpreted as a representation made by or on behalf of your organisation?
- If relevant, is the complainant hijacking the communication stream in a way that is impacting on its effectiveness or the ability of other people to use it in the intended way? – Eg if your organisation is running a blog, Facebook or Twitter page where you engage in a two-way communication.

52 Morgan, D 2011, 'Another Cautionary Tale about how NOT to Respond in Social Media', *PSAMA Blog*, 1 April 2011, viewed 21 April 2011, <http://www.psamablog.blogspot.com/2011/04/another-cautionary-tale-on-how-to-not-to.html>.

53 Note: the factors are based on general information obtained from: Department of Education 2010, *Prevention and Education Team Standards and Integrity Directorate*, Western Australia.

54 Kerwin, *Six Tips for Responding to Blogger Attacks*.

E. Context

- What are the circumstances surrounding the online posting? For example, does it stem from an interaction or conflict the complainant has had with your organisation (or a member of staff), a decision that your organisation has made or an action that has been taken – either against them directly or generally?
- Does the complainant appear to have a legitimate issue? If so, steps should be taken to rectify the matter – even if the complainant's actions seem to be somewhat disproportionate in the circumstances?
- What is the timing of the online content? For example, has it been created at a time when your organisation (or a member of your staff) is under unusual public or media scrutiny? If so, a response may be needed for the purpose of 'damage control'.

Step 3 – Act

Once the content has been assessed a decision will need to be made about whether it needs to be responded to. Some reasons for responding to negative or inappropriate online content may include that:

- There is a significant risk that the online content could mislead others, contains gross misrepresentations or is highly misinformed.
- It is extremely inflammatory, offensive, defamatory or otherwise unlawful.
- It could cause significant reputational and psychological harm.
- It discloses sensitive personal information about staff or their families or could give rise to legal or WH&S issues for the organisation if it is not acted on.
- It is highly visible and accessible, has or could 'go viral'.
- It appears to be credible even though it is not, and/or could cause others to be grossly misinformed.
- It is having a significant impact on the workplace and relationships between colleagues and with complainants.
- It has been created at an inopportune time for your organisation.

Some reasons for not responding to online content may include that:

- It would only encourage or incite the complainant if you responded – publicly or privately.
- It would only create controversy and invite media interest.
- It is so farfetched that it could not possibly be believed by a reasonable person.
- It is relatively moderate or contains constructive criticism and carries little risk to staff or the organisation.
- It does not violate any laws and would not raise any duty of care, WH&S or legal issues for your organisation if it is not acted on.
- It is not located on a website that is highly accessible or visible to others.
- It is unlikely to cause reputational or psychological harm or affect the workplace environment in any significant way.

If a response is needed

If it is determined that a response is required in a particular case, the response should be done promptly (ie within hours if not minutes of the online content being identified) – before it has a chance to be picked up and to spread widely. A timely response can be pivotal to whether or not you can defuse a situation and whether the content is picked up by others and spreads out of control.⁵⁵

The response must also directly address the comment/content, as a failure to do so may simply lead to increased frustrations (by the complainant) and more negative comments and postings.⁵⁶ An option in these situations might be to address the comment directly (in the public forum) and then contact the complainant privately and resolve the issue.⁵⁷

There are a range of possibilities for responding to online content. Responses can be public, private, or both. They can take the form of a comment, a rebuttal or rejection or can include statement in agreement.

⁵⁵ Kerwin, *Six Tips for Responding to Blogger Attacks*.

⁵⁶ *ibid.*

⁵⁷ Bacal, *Defusing hostile customers workbook*, pp. 143.

Responses can also be done on the website or forum where the online content was discovered, on your organisation's website, blog or social media page, in an online newsletter etc. They can be done by email, telephone call, face-to-face interview or in a letter sent via Australia Post. The most appropriate form of response will depend on the circumstances of the case along with the characteristics of the complainant involved.

If a response is needed you may also need to decide whether to notify police about the online content and/or seek legal advice about the content. Also, note that if the complainant's conduct constitutes a crime you may be required to report their conduct – section 316, *Crimes Act 1900 (NSW)*.⁵⁸

Public or private response?

Also, if you have decided that a response is needed in a particular case, you will need to decide whether that response will be public, private or both. The following general guidelines may be useful in this regard.

I. Public response

If the online content is on a website that is highly visible and accessible or includes gross and repeated false and misleading information, a public response may be appropriate.

It is important for public responses to be unemotional. They should show restraint and should never include personal attacks, be mean spirited, shun the complainant, or involve 'he said/she said' debates.⁵⁹

Public responses should offer to correct things if your organisation or staff have done something wrong, and if this fails, should simply thank the complainant for their comment and move on as quickly as possible.⁶⁰

The reality is that the public audience is more likely to be looking for how you respond, rather than the complainant's response. If you respond poorly you will probably do more damage than the complainant ever could do.

Once you have responded publicly, in the first instance, you may decide to shift to private responses/correspondence with the complainant – for example via email, telephone or face-to-face communications. Social media and the internet can be 'poor platforms for problem-solving and there may be confidentiality and privacy issues that will need to be considered.'⁶¹

II. Private response

If the online content is not on a website with high traffic, then a private email response by letter or telephone may be appropriate and adequate. A private response can be used to clarify things, including when your organisation or staff have done something wrong, or to give the complainant an opportunity to remove the online content before taking more decisive action – eg legal advice in incidents involving defamation, etc.

III. Both public and private responses

If the online content has taken on a life of its own and has spread virally across the internet or through social media, targets specific member(s) of your staff, is unlawful, or appears to be credible, then a more comprehensive response strategy may be required. This response strategy could include elements of both a public and private response including press and/or media releases and interviews, proactive outreach to relevant complainant(s), corrective messaging in social media and/or on your website or blog, or response(s) in any other relevant publication(s) produced by your organisation.

Note: It can be difficult to know when an online posting or website will spread virally. While some (usually the non-credible ones) can generally be dismissed quite quickly, others get picked up by other bloggers and even the media.⁶² The online listening tools (referred to above) can be helpful in this regard because they alert you to all mentions of your organisation. Therefore, if the number of mentions about your organisation increase unusually or repeatedly raise the same issue, you will have an opportunity to make a comment or even deal directly with the source of the posting before things get out of hand.

No response needed

If a response is not needed then no further action will be required, although depending on the circumstances, it may be appropriate to copy and make a record of the content to identify recurrent behaviour. It may also be important to provide support for any affected staff members.

⁵⁸ Waterhouse M, 'Unsavory Online Communications – How Can Australian School Authorities Take Action?' In proceedings of the ANZELA Conference 2011, pp. 4.

⁵⁹ Morgan, *Another Cautionary Tale about how NOT to Respond in Social Media*.

⁶⁰ *ibid*.

⁶¹ Bacal, *Defusing hostile customers workbook*, pp. 143.

⁶² Kerwin, *Six Tips for Responding to Blogger Attacks*.

Step 4 – Follow up and follow through

Once the online content has been responded to – either directly or indirectly – you should continue to monitor the internet, in particular the website/blog where the content was located, to see if there are any new (or old) comments relating to the original posting. You should also check to see if the content has been picked up elsewhere.⁶³

Also, in cases where the content/comment is legitimate and/or your organisation or staff have done something wrong, consider following up with the complainant a couple of weeks after the incident to make sure that you satisfactorily addressed their concern(s). By keeping in touch you convey a sense of approachability and increase the likelihood that they will contact your organisation in the first instance next time around – before turning to the internet.⁶⁴

Step 5 – Supporting affected staff members

If the online content poses a significant risk of psychological or reputational harm to staff, it may also be important to consider providing the affected staff with a public message(s) of support – as part of your public response. The message of support will be important in discrediting and rejecting the complainant's remarks and making staff feel (and the public recognise) that they and their work are valued and supported by the organisation. Appropriate steps should also be taken to ensure that staff receive adequate counselling and support services like debriefing.

Staff should also be advised on the legal avenues that they can take in such situations and should be supported to do so, in appropriate cases. Depending on the circumstances, the legal mechanisms that may be relevant under Commonwealth and State statutes include, the:

- *Defamation Act 2005* (NSW)
- *Copyright Act 1968* (Cth)
- *Copyright Act 1879* (NSW)
- *Privacy Act 1988* (Cth)
- *Privacy and Personal Information Protection Act 1998* (NSW)
- *Racial Discrimination Act 1975* (Cth)
- *Anti-Discrimination Act 1977* (NSW)
- *Broadcasting Service Act 1992* (Cth)
- *Crimes (Domestic and Personal Violence) Act 2007* (NSW) – for AVOs
- *Crimes Act 1900* (NSW), in particular Part 6 – Computer Offences
- *Criminal Code Act 1995* (Cth), in particular sections:
 - 147.1 – Causing harm to a Commonwealth public official
 - 147.2 – Threatening to cause harm to a Commonwealth public official
 - 474.14 – Using a telecommunications network with intention to commit a serious offence
 - 474.15 – Using a carriage service⁶⁵ to threaten to kill another person or entity
 - 474.16 – Using a carriage service for a hoax threat another person or entity
 - 474.17 – Using a carriage service to menace, harass, or cause offence to another person or entity in such a way as would be regarded as offensive by reasonable persons

See Appendix 9 – Flowchart for responding to inappropriate online comments/content by a complainant.

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ A 'carriage service' under the *Criminal Code Act* is any service that facilitates communication through electronic energy. This includes telephones or mobile phone service, the internet (and any facility on it like email or social networking websites), using facsimile, or other electronic means.

Case study example – Responding to UCC online

provided by the NSW Ombudsman



Mr C complained to the NSW Ombudsman in 2010 about the outcome of an investigation that a public authority had undertaken into complaints he made about his former employer. Mr C had complained that his former employer had failed to comply with WH&S obligations. He felt that the public authority had not responded appropriately to his complaints and had failed to refer to important legal evidence

that he had provided during the investigation. Mr C was very distressed and complained that in the process of pursuing what he considered to be an important safety issue, he had lost his employment, finances, retirement investments and worst of all his good health.

Our office made enquiries into Mr C's complaint. During the course of our enquiries we were advised that a website had been created about Mr C's ordeal. All the information we were provided suggested that Mr C had created the website.

The subject website was not relevant to our decision that the agency had not committed any wrongdoing in his matter. However, we did access it as part of the information that had been provided to us during our enquiries.

The website contained highly inflammatory and defamatory comments about his former employing company, its board of directors, and various individuals and organisations that had rejected Mr C's complaints (including copies of correspondence with them – some of which had been altered). It also included several comments and arguments that appeared to be illogical and that did not appear to be founded on credible information.

The website also made a vast array of allegations of criminal activity, negligence, fraud, discrimination and violence and included images of more than 30 union, government and company trademarks and logos – some of which had been altered.

The website also offered a reward \$5,000 to anyone who could provide evidence to show that the company concerned had violated WH&S regulations and encouraged people to access Twitter and Facebook pages which had been created as 'part of [his] pursuit to expose [the company's] *alleged* [WH&S] crimes'.

The content of the website typically met the threshold for the types of complainant conduct and online content that organisations should respond to in order to protect and support their own reputations and those of their staff. The website made targeted and personal attacks towards specific individuals, included images of them, made what appeared to be false and unsubstantiated allegations, was highly defamatory and appeared to violate copyright and trademark rules.

However, because any reasonable person looking at the website would likely consider it to be far-fetched and not credible, and because the website was not visited often as well as the complainant's personal circumstances we did not believe that this was the type of incident that warranted further action – although on-going monitoring of the site might be required in the circumstances.

APPENDICES



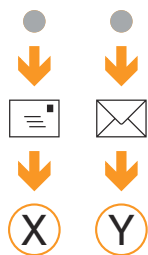
Appendix 1 – A word on unusually persistent complainants (querulants)

Although this manual cautions against approaches that focus on mental health issues, one that is particularly relevant to complaint handlers is querulance. Querulance is a psychiatric diagnosis for people who have morbid (illness driven) complaining behaviour.⁶⁶ These people are abnormally driven by suspicion and accusations and tend to exhibit extreme kinds of UCC. For example, when compared to a matched control group, querulants have been found to:

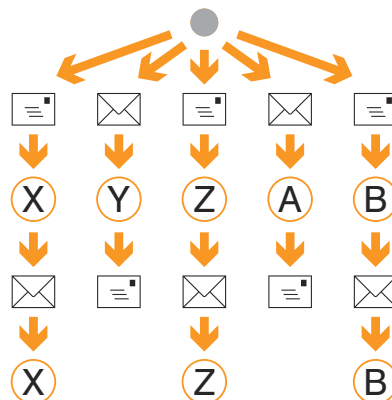
- Pursue their complaints for much longer than other complainants.
- Produce far greater volumes of material in support of their case.
- Telephone more frequently and for longer.
- Intrude more frequently without an appointment.
- Continue complaining after their cases have been closed.
- Engage in behaviour that was typically more difficult and intimidating.
- Involve other/external organisations more often including contacting Ministers as their complaints progress.
- Want outcomes that a complaint handling system cannot deliver – eg vindication, retribution and revenge.

The research in this area also indicates that one of the distinguishing features of querulance is an extreme loss of focus over time that results in querulants pursuing multiple complaints at the same time and across a number of organisations as demonstrated in the charts below.

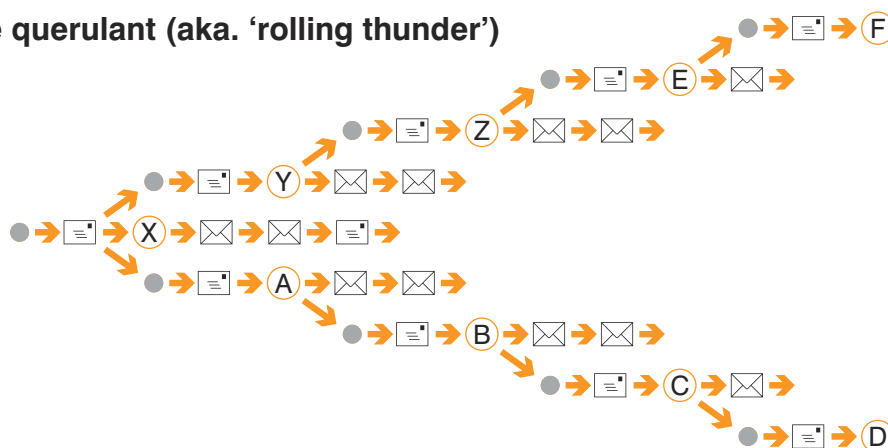
The usual complainant



The persistent complainant (aka. 'scatter gun')



The querulant (aka. 'rolling thunder')



Legend

● issue or event that causes them to complain



the complaint/FOI application



the agencies that receive the complaints/FOI applications

⁶⁶ Lester G 2005, *A guide to the management of the unreasonable complainant and their behaviours*, unpublished manual, pp.18.

Most people can be expected, over time, to make one, two, sometimes three complaints to a few agencies about issues resulting in a few separate complaints streams. They may display difficult behaviours at times, but they do maintain reasonable balance and perspective.

The classic querulant's issues will grow over time. They lose perspective of their issue and their focus moves onto allegations of incompetence, conspiracy and corruption, initially by the organisation handling their issue and then by other review bodies to whom they have turned for vindication.

People who could be classified as querulants can be dealt with in the same way as all complainants who display unreasonable behaviours, however it should be noted that they do tend to represent the extremes of UCC. They are more likely to pursue their complaints into what Lester and Mullen have described as a 'downward spiral' that often ends in unemployment, bankruptcy, divorce, and possibly domestic violence and suicide. Also, the chances of querulants reverting to 'normal' behaviours decreases as they descend down the 'spiral' and managing their behaviour may require you to either severely restrict or even terminate their access to services.

For more information on querulance see: Lester G, Wilson B, Griffin L & Mullen PE, Unusually Persistent Complainants, *British Journal of Psychiatry*, 2004.

Appendix 2 – Email sample received from complainant with characteristics of UCC

What follows is a de-identified copy of parts of a 32 page email which a complainant copied to 23 Ministerial offices and 99 media outlets, organisations and individuals. The email exhibits some of the indicators of possible UCC that can be identified from a complainant's writing style. See Part 3 – Early warning signs of UCC.

WITH RESPECT TO EVERYONE - PLEASE UNDERSTAND THIS VERY WELL

I refer to the matters above and to your inadequate response...

...I repeat ALL ISSUES, as people **should not be put through (1) the wringer nor**

(2) have to keep resubmitting and escalating [just like this 2nd submission]

...**if council**ors [for one] were doing **the right thing by the public** [their rate payers] **at large** in the first place. – **How many times** do people have to keep resubmitting their valuable time, energy and **endless frustration** to then **compound councils 'work load' and waste of public funds** **...to end up in your unhelpful office is a horrible compounding injustice !.** – Therefore regarding your comments on **"out of date and irrelevant"** and what clearly **"appears" to be your lopsided defence of council** — **you're certainly not showing yourself as a proactive public defender...**

3. Nor would they publish it **if** it wasn't truthful and/or going to embarrass them in some way if it wasn't worthy of comment and/or "In the Public Interest" - ...

4. **Therefore are you implying that this newspaper, part of a major media group don't know what they are talking about?...**

5. Nor was this **claimed to be or defended as being "proper procedure"** by **ANY** of the **Council**ors interviewed - **read the article Ms...**, I'd included it in the **PDF, #RE Alleged breach of TMO [etc - attached above] - being complaint #1** - for everyone's reference and convenience – this sort of thing obviously effects many ordinary folk locally and plausibly statewide **because your Office doesn't seem to act** – how many similar cases is your office [for one] aware of ?...

6. **...In fact - each and every point** of my complaint(s) **[the major details]** were/are **very very clearly** set out in my immediate opening address with the relevant areas of investigations taken directly from your website [again as published - as supposedly committed -for public information]. You also don't like the **use of bold fonts and underlining throughout - AND - you don't like copying and pasting [otherwise being commonly used tools to emphasise, highlight, clarify, simplify etc]** thank you for the lesson Madam but I'd beg to differ - so tell me something – please - **wasn't it really the way in which I detailed explicate evidence and expressed the blunt truth have anything to do**

...if you had ANY trouble accessing web links it's very easy to do your own search with the info I gave – just as I had initially with nothing to go on - otherwise - I did offer to send the matter as PDF's – all you had to do was take the trouble to ask. Plus I did say:

"Please follow the descending date & time email thread below [which form a part of this document and to save reiterating, to be read in conjunction with all included matter/attachments] then read FIRSTLY the detailed PDF attachment titled 'RE Alleged breach of - response 28 Feb 20..'--. which is loaded with questions"...

Is everyone out there who is 'looking on' , awake to or care about the wider implications of what "appears" to be happening here – this is our government at work – on us their fools - and it could very well be you or your loved ones caught up in such situations - and - "may be" from ANY agency etc. Relationship noted – ombo.nsw.gov.aunsw.gov.au....can ANYone notice the standout feature – just asking ?...

...Is everyone keeping up with me here ? – if not please let me know if there's ANY queries or disagreement etc with ANY thing I have said otherwise it shall indicate that I AM MAKING- perfectly-understandable-acceptable-logical-sense. Alternately let me **condense all of this matter** [extensive I know, but every word **has genuine meaning**] into one simple question – **are you people HAVING A LEND OF US ? – as without a VERY CREDIBLE response - speculation and deduction is acutely UNDERSTANDABLE**

Appendix 3 – Sample acknowledgement letter for managing expectations

Our reference: [reference]
 Contact: [case officer]
 Telephone: [number]

[Date]

[Name of complainant]
 [Address of complainant]

Dear [name of complainant]

We have received your complaint about the [name of organisation/person].

The person handling your complaint is [case officer].

What we do first

Generally speaking, when we receive a complaint we [briefly explain general complaints process].

At this stage we are assessing your complaint and will decide whether we need to [action]. It can take [number of days, weeks, or months] for this to occur and for us to inform you of the results.

When a complaint takes longer to deal with

In some cases, it can take us longer than [number of days, weeks, or months] to [explain]. When this occurs we may need to [explain]:

- inspect files and documents
- conduct interviews
- visit the site
- ask them for a written report.

These actions take time, but we will try to complete them and let you know the results within [number of days/weeks/months].

Formal investigation

Sometimes when a problem is not solved or we think the problem is very serious, we can start a formal investigation. This is a long, complex process that usually takes at least nine months. In these cases, we will keep you informed of our progress.

Important information

On the back of this letter, there is some information that explains what the [name of organisation] does and what its responsibilities are. Please read this through carefully.

We will work through the complaint you have made and the facts you have given us, and will contact you again shortly.

Yours sincerely

Signature

Full name

[example of the reverse side of the acknowledgment letter used by the NSW Ombudsman]

What the Ombudsman's office does	What the Ombudsman's office doesn't do
In most cases, we can investigate the administration of NSW government departments, organisations and local councils when that administration appears to be wrong or bad.	We do not have to investigate every complaint we get. We are more likely to investigate ongoing problems or serious abuses of power.
We are free of control by any government body and act independently.	We do not act for particular parties or organisations.
Our aim is to be fair and find out the truth.	We cannot force an organisation to take action in the way a court can.
Our aim is to work out reasonable solutions that are in the public interest.	We do not give legal advice.

The responsibilities of the Ombudsman's office	Your responsibilities when you make a complaint
<p>We are responsible for:</p> <ul style="list-style-type: none">• handling your complaint professionally, efficiently and fairly• keeping you informed of our progress• giving you reasons for our decisions• treating you with respect.	<p>You are responsible for:</p> <ul style="list-style-type: none">• providing us with a clear idea of the problem and the solution you want• giving us all the relevant information you have (or know about) at the beginning• telling us new facts or letting us know you no longer want our help• cooperating with us• treating us with respect.

For more information on who we are and what we do, please refer to our website www.ombo.nsw.gov.au.

Appendix 4 – Defusing complainant anger with CARP

1. Control

This is about getting the complainant to stop and listen and letting them know that their anger is not going to control you or the interaction. Be assertive, but not aggressive or passive.

2. Acknowledge

Deal with their feelings first. It's important that the complainant knows that you understand (or at least empathise) with their emotional state of mind and situation.

Where it will not encourage UCC, give them an opportunity to let off steam and vent their emotions. Venting can help them feel like they are being listened to and understood.

Venting should be timely, usually not lasting more than 2-5 minutes. The complainant should be able to settle down and discuss their complaint in a calm manner after being given such an opportunity. Note: Extended venting can do more harm than good because it can make the complainant feel like they are reliving the bad experience.

Echo what they are telling you to show that you are listening. This usually involves repeating the last few words or their key words. This can be done by backtracking (eg 'so you are saying...') or paraphrasing (ie defining what you believe they said and meant).

3. Refocus

Make the transition from their emotions to their issues of complaint by refocusing the conversation. Ask questions about facts and repeat, in your own words, the complainant's issues. See Table 11 – Scripted responses to statements and conduct associated with unreasonable persistence (Unproductive phone calls).

4. Problem solve

This is about getting down to business – telling the complainant what can and cannot be done, what will and will not happen, and focusing on possible solutions to their issue etc.

Remember: the order of CARP is important!



For more information on CARP you can also visit: www.darncustomers.com/course/ch4-defusingprocess.htm and the *Defusing Hostile Customers Workbook*, 3rd edn, by Robert Bacal, pp. 28.

Appendix 5 – Effective communication strategies

Do:

- Show respect
- Clarify
- Allow venting
- Acknowledge emotions
- Show empathy
- Find something to agree with
- Check understandings
- Acknowledge their point of view without agreeing
- Echo what they say
- Listen actively
- Allow space to think, if necessary
- Admit and apologise, if necessary
- Stay calm
- Seek resolution



Don't:

- Argue, defend or deny
- Give excuses
- Be confrontational, verbally and non-verbally
- Be overly formal or bureaucratic in your responses
- Be too informal and do be wary of joking
- Respond to fighting words
- Suggest the complainant needs therapy or counselling
- Invade the complainant's personal space



See Part 4 of the Manual – Preventing UCC (Dealing with anger through effective communication).

Appendix 6 – Risk assessment worksheet

Risk assessment worksheet		
List details of the complainant's conduct, including all the major and minor risks associated with it.	What are all the things that could occur as a consequence of the conduct – best and worst case scenarios?	What can you and your supervisor do (as appropriate) to manage or mitigate the risk posed by the complainant's conduct?

Appendix 7 – Ten steps for responding to threats, hostility and aggression

1. Recognising danger signals and reviewing risk

- Recognise the signs of client anger – whether or not the anger is directed at you.
- Ask yourself: 'Am I in danger?'
- If 'yes' – remove yourself from harm's way as quickly as possible. Walk through the nearest door into a more secure area, and then inform the complainant that the interview has/will be terminated – eg *'I cannot continue this interview while you are behaving in an angry way or making threats.'*
- If the threat abates – that is, the client's behaviour improves – then you can re-start the interview based on clear behavioural ground rules.

2. Repeating

- Make sure threats are clarified (made overt) and the client takes ownership of the threat by repeating the statement as close to verbatim as possible – eg *'You have just said to me that..'*
- Ask if this is what the client meant to say and whether it is in fact a threat to cause harm – eg *'Is that what you meant? Are you threatening me?'*

3. Reacting

- React to all threats by explicitly acknowledging them – whether they are overt or covert threats to you, themselves or to others.
- Always show some reaction to a threat, even if minimal – eg take a 5 minute break.
- But, don't over-react or mirror the threatening language or the threatening behaviour.
- Continue to show respect even when the person is being rude or threatening.

4. Responding

- Ask the client to stop the behaviour – *'Mr ... stop shouting at me'* – while informing them of the organisation's protocols for responding to threats.
- Communicate clearly and consistently what the consequences will be if the behaviour continues.

5. Redirecting

- Redirect or distract the attention of the client with actions or comments that do not reward the behaviour.
- Ask questions about the substantive issue to try to move the client from the 'emotional' state back into a 'cognitive' or thinking state.
- Take a 5 minute break or offer a cold drink, if needed.

6. Refocusing

- Try to help the client bring their emotions under control, refocus their attention on their issue. A question about the facts can change a client's focus from their feelings to thinking about the substance of their issue.

7. Raising concerns

- If you feel threatened, activate a silent alarm (if available) or leave the room and call for assistance from other staff.

8. Running

- If all else fails and you feel an imminent risk of harm – run (or at least move quickly) to a safe location.

9. Recording

- Always make a 'verbatim' record of all threats and put a copy on the relevant file.

10. Reporting and reviewing responses

- Report the matter to a supervisor/manager so that both of you can review your responses to the threatening behaviour and identify strategies to manage or control any future interactions with the person.
- You may want a formal or informal debrief after the incident.

Appendix 8 – Dealing with internal hazards through environmental design

One way to minimise the risks posed by violent and aggressive complainant conduct is to consider the environmental design (or layout) of your organisation. The concept of Crime Prevention Through Environmental Design (CPTED) suggests if you enhance certain design features within your office you can discourage violence, in particular by dealing with things like space, layout, colour, lighting temperature etc. The following examples of CPTED are taken from the Prevention and management of customer aggression guideline – by Comcare. They include:⁶⁷

- Using building security if available, or stationing employed security guards or police officers at entry points that are visible to complainants. This can be full or part time – eg when a 'notorious' complainant will be attending the premises.
- Increasing the number of staff around the office at high risk times.
- Separating the access points to the building, different floors of the building or lifts for staff and the general public.
- Clearly differentiating between complainant/customer and employee space by using different carpet, tiles, etc.
- Requiring that visitors identify themselves and sign themselves in and out of the workplace.
- Closed circuit television – which has been proven to have a deterrent effect, particularly when people can see themselves being recorded.
- Prominently posting signs that you are video monitoring as well as codes of conduct for visitors.
- Wider and/or higher front counters that make it more difficult for a complainant to reach across, jump over etc.
- Ensuring that things are fixed and cannot be used as projectiles.
- Designated safe rooms where staff can gather if a threat arises.
- Double exit doors in all interview rooms.
- Shatterproof glass in interview rooms and public areas of the office.
- Complainant access to interview rooms and certain part of the office controlled – eg need key card access to enter.
- Having minimal furniture in public areas and furniture that is large enough that it cannot be easily thrown about.
- Minimising the number of entrances to the workplace, while maintaining fire code regulations.
- Metal detectors at building entrances (depending on the nature of the services provided)
- Duress alarms fitted to walls or desks or worn by staff during interviews – these alarms can be silent internally but with a link to computers that raise automatic emergency responses.
- Having a planned approach to queuing such as taking a number or clearly defined queuing area.
- Ensuring waiting rooms are comfortable and spacious and that there is adequate seating – to minimise discomfort.
- Making sure that there are proper ventilation and temperatures controls.
- If complainants will be waiting in waiting areas for extended periods of time, having televisions and/or reading materials in the reception area that are suitable for them – but do try to minimise waiting.
- Making sure that there is adequate lighting in car parks surrounding the workplace.
- Using relaxing music and calm colours in paintwork to reduce potential violence.
- Visitors must be escorted to non-public areas.
- Air phones.

The suitability of these strategies will likely depend on the type of services provided by your office.

For more information on CPTED see: Chappell, D. 2008, Literature review into the best practice for preventing and managing customer aggression, www.comcare.gov.au.

⁶⁷ Comcare, *Prevention and management of customer aggression*, pp.16.

Appendix 9 – Flowchart for responding to inappropriate online comments/content by a complainant

MONITOR

Discover

Find negative or inappropriate comments or content about your org. or a staff member online

EVALUATE

Evaluation considerations to determine if an organisational response is needed.

Content

Does it contain inflammatory, offensive, defamatory or unlawful content?
Is the content misleading or misinformed?
Does it contain indecent, vulgar or pornographic materials?
Does it contain threats?
Does it violate trademark or copyright laws?

Apparent purpose/objective

Does it appear to be part of a targeted campaign or attack?
Does it seek to incite/influence others?
Is it intended to embarrass or humiliate or is it part of a joke?

Visibility and credibility

Is it on a highly visible and accessible website?
Has it gone viral/does it have the reasonable potential to go viral?
Is it believable? Does it appear to come from a credible source?

Impact

Could it be interpreted as a representation made by your org?
Could it significantly affect your org's reputation or that of a staff member?
Could it affect workplace cohesion or relationships?
Could it open your org to liability and WH&S issues if it is not dealt with?
Is it intimidating or harassing in any way?

Context

What are the apparent circumstances surrounding the comment/content?
Does the complainant appear to have a legitimate issue?
What is the timing of the incident?
Has the content been inappropriately used or obtained?

ACT

YES

Response needed

Public response?
Private response?
Both public and private responses?
Notify police or pursue legal options?

NO

No response needed

Keep record of negative comment/content if it is sufficiently serious and needs monitoring
Take no further action
Continue monitoring the internet for negative content

FOLLOW UP

Follow up & follow through

Follow up with the complainant – eg if they had a valid issue.
Continue monitoring the internet for negative and/or inappropriate content

SUPPORT

Support staff

Support affected staff as necessary and appropriate. This could include counselling support, legal support and/or a public message of support.

Acknowledgements

We wish to thank the following for permission to reproduce copyright material:

Comcare: www.comcare.gov.au

- Prevention and management of customer aggression, OHS 33 (2009).
- Bullying in the workplace A guide to prevention for employers, OHS 65 (2007).
- Identifying Hazards in the Workplace, OHS 10 (2005).

Department of Human Services (Vic) (Child Protection, Placement and Family Services):
<http://www.dhs.vic.gov.au>

- Staff safety in the workplace: Guidelines for the protection and management of occupational violence for Victorian Child Protection and community- based Juvenile Justice staff, (2005). Copyright © State of Victoria, Australia. Reproduced with permission of the Secretary to the Department of Human Services. Unauthorised reproduction and other uses comprised in the copyright are prohibited without permission.

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