

Recognising and managing negative conduct impacting on the workplace

PSRMA Seminar
Sydney Museum, Bridge Street
Thursday, 22 April 2010

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What is the nature of the problem?

I am going to talk to you today about the management of unreasonable complainant conduct, looking at such things as: Whether too much time is being spent dealing with complaints that are unreasonable for fear of bringing the organisation or individuals negative attention? What is the risk of not acting swiftly on unreasonable complainant conduct? And, finally, where do organisations commonly go wrong in responding to unreasonable complainant conduct?

We at the NSW Ombudsman have noticed over the years that there has been an increase in the number of complainants whose behaviour we find challenging and in the seriousness of this challenging behaviour. Our experience is shared by the other Australian Parliamentary Ombudsman, as well as by a wide range of other complaint handlers from across Australia and overseas. To address the problem, the Australian Parliamentary Ombudsman have developed and published very practical guidance for managing unreasonable complainant conduct – written by complaint handlers for complaint handlers. This guidance can be found in *Managing Unreasonable Complainant Conduct – Practice Manual*.

There is a general consensus among complaint handlers is that we are seeing more complainants who:

- are very angry, aggressive and abusive to our staff
- threaten harm to our staff, to third parties or to themselves
- are dishonest or intentionally misleading in presenting the facts, or who deliberately withhold relevant information
- flood our office with unnecessary telephone calls, emails and massive amounts of irrelevant documentation, and
- insist on outcomes that are clearly not possible or appropriate, or demand things they are not entitled to, or who at the end of the day, are unwilling to accept our decision and continue to demand that we take further action on their complaint.

We are also seeing that complainants are far more likely to shop around for a more favourable outcome by taking their complaints to other agencies, Ministers or courts of law where they start up the complaint cycle again. This include complaints about our office.

I used to think that the problem of unreasonable complainant conduct was largely a western phenomenon, however, I was fascinated by a request we received some months ago from the Taiwanese equivalent to our Ombudsman, called the Control Yuan, to translate the Practice Manual into Mandarin. We have recently been given a copy of the manual, fully translated, along with the advice that due to high demand it is now in its second print run.

When does 'difficult' become 'unreasonable'?

A certain level of difficulty is only to be expected when handling complaints. People who make a complaint have a problem – people do not make a complaints if they are happy. Complainants get more upset, often very upset, if they believe they have been treated badly when they raise their concerns.

When I talk about unreasonable complainant conduct, I am not talking about people who are a bit strange, difficult to understand, who cannot put their thoughts together in ways that are easily comprehensible, or even those whose anger leads them to pepper their language with expletives. What I am talking about is conduct that is out of the ordinary compared to the conduct of complainants generally. I am not talking about complainants who create some difficulties or challenges for the complaint handler – I am talking about complainants whose conduct is so unreasonable that is it unacceptable.

As indicated in the Practice Manual I referred to earlier, conduct only becomes 'unreasonable' (as in unacceptable) where it causes or raises certain issues to levels that cannot be ignored, such as:

- safety issues for staff, for example due to threats or actual violence
- health issues for staff, for example due to stress
- resource issues for the organisation
- equity issues in relation to the allocation of resources between complainants.

What is the impact of unreasonable complainant conduct?

Even though the percentage of complainants who behave unreasonably is quite small, they nevertheless take up a disproportionate amount of our time and resources, and cause serious stress to complaint handlers, and indeed to themselves.

The problems caused by unreasonable complainant conduct include:

- (1) *resource problems* – as I have said, they make up a small percentage of complainants, in our experience generally 5% - 6% of complainants, and take up an inordinate amount of time and resources – agencies commonly reporting that they devote 20% - 30% of their resources to the handling of such matters.
- (2) *equity problems* – in relation to the equitable distribution of the available resources to deal with all complaints received by an organisation
- (3) *staff stress* – which results in staff burn-out, high staff turnover and of course creates duty of care and occupational health and safety issues for the employer
- (4) *change of focus problems* – we have noticed that complainants who act unreasonably commonly change the focus of their complaints from the substantive issue that started them off, and the organisation or individuals they saw as responsible for it, to how their complaint was or is being handled by the complaint handler.

Depending on the size of the organisation and the nature of the unreasonable conduct, the impact of unreasonable complainant conduct on an organisation can range from painful to devastating.

Where do organisations commonly go wrong in responding to UCC?

In our experience there are a range of ways in which organisations commonly mishandle their responses to unreasonable complainant conduct. Often complaint handlers throw fuel on the fire by failing to deal with complainants appropriately.

I would like to take a bit of time to run through the more common mistakes:

- (1) Firstly, the issue of 'ownership': No matter what may be the underlying reason or cause of unreasonable complainant conduct, be it psychiatric, experiential, environmental, situational or whatever, in our experience the primary 'trigger' for most unreasonable complainant conduct is a struggle for control over how a complaint is dealt with. This struggle for control is primarily due to ignorance, a misunderstanding, a failure to recognise, or a refusal to accept who effectively 'owns' the complaint. We have found it very common that complaint handlers, and their employing organisation, misunderstand their role and the nature of their relationship with the complainant. They allow complainants to believe that they are in control of the process, and in fact often allow complainants far too much control over the process.

For the proper management of complaints it is vital that both complainants and complaint handlers understand from the outset that once a complaint has been made, the complaint handler effectively 'owns' that complaint and decides how it will be dealt with. The complainant may still 'own' their 'issue' and would of course be able to do whatever else they may wish to do with it, which might include taking it to any other forum they believe appropriate.

In terms of 'ownership', it is the complaint handler who decides, for example:

- whether or not a complaint will be taken up or declined
- if taken up, who it will be assigned to for action
- how the matter will be progressed
- what resources will be devoted to it
- what priority will be given to it in relation to other matters being dealt with
- the time period in which the matter will be dealt with
- the nature and level of input that the complainant may be allowed in the handling of the complaint, including when and what information will be provided to the complainant
- the outcome of the complaint process, for example how it will be finalised and the nature of any finding or recommendation that is made – in this regard the conclusions, findings and recommendations arising out of any investigation are solely the preserve of the complaint handling body.

In summary, the complaint handler has all the prerogatives, discretions and responsibilities that ownership effectively entails. Complainants on the other hand continue to 'own' their issue and are therefore free to raise it through other available avenues such as the courts, the media, the politicians, etc.

- (2) Secondly, the issues of priority and resourcing: It is not uncommon that complaint handlers perceive complainants who engage in unreasonable conduct as being 'difficult' people who are a nuisance, an irritant and an unwarranted interference with the performance of their core work.

It is an unfortunate fact of life that some complainants will act unreasonably, and it is a widely held perception that the problem is growing in scope and seriousness. In these circumstances agencies should recognise that the management of unreasonable complainant conduct is an integral part of their core complaint handling work. The people within an organisation dealing with unreasonable complainant conduct therefore need to be properly resourced and supported by management.

- (3) Thirdly, the 'squeaky wheel' issue: Complaint handlers and their employing organisations will often allow the conduct of the complainant to dictate the level of resources that are devoted to the handling of the complaint. Quite clearly it should be the merits that dictate resources allocated, not conduct.
- (4) Fourthly, the focus issue: A common mistake made by complaint handlers is to focus on the person not the problem. Too often the approach is to attempt some sort of amateur psychoanalysis of the complainant or to in some way to divine or impute particular motives to a complainant instead of focussing on the issues raised in a complaint. Complaint handlers need to recognise that:
 - they are professional and impartial complaint handlers, and generally not psychologists, social workers, and certainly not advocates – they can't be impartial and be an advocate for one side at the same time
 - secondly, even if they are social workers or mental health professionals, they seldom have enough face to face contact with a complainant to make a valid assessment as to mental state, and unlikely to have enough information to be able to make a valid assessment as to the real motives or intentions of a complainant.

Therefore, while complaint handlers are not in a position to determine, and have no control over the mental state or intentions of complainants and little or no ability to change the way they behave, they can control how they manage their interactions with complainants – in other words how they respond to any observable unreasonable conduct.

- (5) Fifthly, the terminology issue: The common practice in the past, of which we have been equally guilty, is to focus on the person – referring to certain complainants as 'difficult' or 'vexatious'. Our original guideline that we published in the late 1990s that addressed this problem was entitled *Dealing with Difficult Complainants!* Over time we came to realise that such an approach focuses on the person, not the problem. It results in a 'one-size-fits-all' response, even though the problem manifests itself in a range of different behaviours that should be managed differently. That is why we have changed our terminology to focus on the 'problem' – referring to '*unreasonable complainant conduct*'.

This links back to what I was referring to earlier about the need to focus on the conduct, not the person – on an objective assessment of observable behaviour, not on a subjective assessment of the mental state or motives of the complainant. This approach allows for implementation of appropriate responses and management strategies by people who are not mental health professionals.

The use of the terminology such as 'unreasonable' also facilitates greater transparency between complaint handlers and complainants. It is terminology that can appropriately be used in face-to-face conversations or written communications with complainants whose conduct is unreasonable. It is one thing to say "*we think you're acting unreasonably*" and another thing entirely to say "*we think you are a difficult complainant*" or "*we think you are vexatious*"!

- (6) Sixthly, the consistency issue: It is not uncommon for organisations to respond inconsistently to complainants. This might be because a complainant has shopped around within the organisation to find a more sympathetic ear, or it may be that the complainant has raised a series of similar issues over time and received different responses. Because intermittent reinforcement is reinforcement of the most powerful kind, it is vital that complaint handlers adopt appropriate practices and procedures to ensure consistency in responses to complainants about similar matters, and to individual complainants about their matters.
- (7) The last issue I will refer to is expectations: It is very common for complaint handlers to assume a complainant's expectations are realistic – at least until they are confronted by the complainant's actual expectations which may be quite unrealistic, impractical or even fanciful. At this point it is often too late to change the complainant's expectations or to avoid the frustration and anger that can be caused by those unmet expectations. It is therefore vital to manage complainant expectations from the outset. Tell them at the start:
- what you can do
 - what you can't do
 - what you will do
 - what you won't do.

If time allowed, I could to on and on about the ways in which complainants and their complaints are after mishandled.

As I mentioned earlier, the Australian Parliamentary Ombudsman got together to develop what we see as a new approach to the management of unreasonable complainant conduct. We have set out this approach in our publication *Managing Unreasonable Complainant Conduct: Practice Manual*, which can be downloaded from the NSW Ombudsman's website at:

<http://www.ombo.nsw.gov.au/publication/PDF/guidelines/Managing%20Unreasonable%20Complainant%20Conduct%20Practice%20Manual%202009.pdf>.

NSW Government Publication
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