Complaints handling practice guide

Supporting respectful engagement: handling difficult situations

Contents

Message from the Ombudsman

In our work with public organisations across Scotland the SPSO is frequently asked about how to respond to people who are complaining in a way that the organisations find difficult. This guide aims to help organisations and staff in these situations.

People may have strong views and feelings about the issues they complain about, and may already be feeling frustrated, angry or distressed before complaining. The relationship can become difficult and break down, leaving staff feeling overwhelmed, unsupported, harassed or bullied. Complainers can feel misunderstood and frustrated that the organisation is not listening to them. Being people-centred, a key complaint handling principle, can seem difficult to maintain in these circumstances.

It is all of our responsibility to create spaces where we reduce conflict and ensure we listen with respect and kindness to each other. Organisations need to support staff and users to engage positively with each other. At the same time, there is a need to protect the service and staff from behaviour which can have a significant negative impact. Thinking about the rights of those involved can help to ensure we balance these.

SPSO have recently revisited our own [Engagement Policy](). We have shifted emphasis to promote positive engagement and updated it to bring it in line with the available research on managing difficult communication and our key value of being people-centred.

This revised guide, with its emphasis on using neutral language and non-judgmental approaches, focusing on repairing a difficult situation rather than apportioning responsibility, reflects those changes. The approach will work most effectively if it fits within a broader approach to engagement which works to support positive engagement throughout rather than trying to cope with relationships that have become difficult.

Empowering staff to proactively manage relationships and de-escalate distressing situations can help us meet the needs of those whose situation means they may act in ways others find difficult to understand. Key elements of this approach are:

- Governance and support for staff, helping to have oversight and to create those open conversations with mutual respect
- Setting boundaries as a key way to keep conversations respectful (and this needs to be maintained consistently across the organisation)
- Contingency planning and a risk-based approach – this needs to include how organisations respond to zero tolerance situations and events which may make it difficult for you to provide a service

This is an area where we learn constantly and we welcome your thoughts and comments. This guide is not a solution, but we hope it helps to take this conversation forward.

Why have we created this guide?

This guide has been produced to help organisations and individual staff approach the most common problems that can occur when managing complaints. The examples are based not only on our own experience but also include suggestions shared from across the Scottish public sector. It is not exhaustive or prescriptive. Each situation is different and it is not possible to say definitively what the correct response is in every case. Judgement is always required. The aim is to provide a starting point to help people exercise their judgement fairly.

The aim throughout is to ensure that complaints can be handled in the best way possible. The goal is not to avoid responding to complaints but to provide strategies which may help to de-escalate problems and to ensure where action is needed to manage communication with a customer, their rights to have their complaint heard and responded to are not denied or undermined. [You may notice that throughout we refer to people who may complain as customers or even more simply as persons or individuals. Some organisations, may be more used to describing them as clients or service users. Customer, person and individual are being used as easily understood, generic terms].

Remember the organisation and the customer have a shared interest. It is important for every organisation to know if the decisions they are making or the way they are acting is having negative or unintended consequences. Complaints are valuable feedback. Helping staff be more confident in dealing with difficult communication means they can help customers make clear what their concerns are and what they would like to happen. In this way the complainant can receive the clearest answer and when something has gone wrong that it can be fixed quickly.

How to use the guide

Each section of the guide considers a different topic and includes some suggested strategies. The strategies are not comprehensive, we only deal with some issues that may be raised. They are often set out as statements or questions you could use in conversation or as sample letters so you can see how they may work in practice. As well as being available in this single PDF format, the guide is available online where each section is set out separately.

Throughout the guide you will see the following symbols

 is an important or useful point

 is a practical hint or tip

Who should use this guide

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

If you have a policy or organisation-wide focus

If you are responsible for creating policy you may need to read all the sections when developing or reviewing completely new policies and training to support them. Otherwise you should read the governance section and then whichever of the particular sections best identifies the situations you are considering developing a policy about. As a general guide, we would expect organisations to have policies around engagement that needs to be managed and zero tolerance. You should have training and support available for the situations around 'difficult for you'.

If you have a personal focus

Individual staff can use the flowchart to help them work out which section would be most helpful for the situation they are trying to manage. You will also need to understand the policies your own organisations has in place. If you are unsure or looking for general information, you should start with the 'difficult for you' section.

What this guide will not do?

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

What do we mean by difficult situations?

We know many organisations use our Engagement Policy, this guide supplements that policy but deals with a much broader range of situations.

> 📄 Language which labels people as 'vexatious' or 'difficult' is not helpful. The focus should always be on the situation and what you need to do in response. Neither is it helpful to make judgements about the cause of the situation, or people's behaviour. People do not always act at their best, particularly when they are unhappy and stressed. Concentrating on the situation, rather than the cause, can help you decide whether you need to respond at all, and can also allow you to have open discussions with the individual about how best to move things forward.

The situations we deal with in this guide

Difficult situations can be very varied and will never neatly fit into categories. We have used the following headings to help structure the advice and support in this guide. [You should note our experience of this is most often by telephone or writing, which are our most common forms of contact with our customers. The strategies we suggest may need adapted for face-to-face contact.]

Difficult for you

This section covers situations which an individual may find difficult but it would be reasonable to expect a well-trained, confident member of staff to be able to deal with in most circumstances.

Managing engagement

This section covers situations which are affecting the ability of the member of staff or the organisation to do their job. These can most easily be identified by considering the impact that the engagement has on the resources of the individual or organisation. When an unfair or disproportionate amount of resource is being used, the situation will need to be addressed. Impact on resources is not only about the use of physical resources or time but can include the impact on emotional resource. At times the situation needs to be managed immediately. We deal with situations when action needs to be taken immediately in the Zero Tolerance section. It should be noted these are simply another form of managing engagement, but the risks and challenges are very specific and that is why they are dealt with separately.

Persistence

This is the situation most commonly cited as a problem by staff and organisations. We look at this in a separate section. It is not a category SPSO use in our Engagement Policy, and the section on persistence explains why and also provides some suggestions for how to respond to persistence.

Zero Tolerance

This section covers situations where an immediate response is needed, or situations that are always unacceptable and, therefore, always require action. It is really a sub-category of managing behaviour but the potential impact means we have given this a section on its own.

Section 1 - Governance matters

The basic requirements

The relevant Model Complaints Handling Procedures (MCHPs) published by the SPSO across each sector require organisations to have in place a policy to deal with managing engagement.

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

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

It is for each organisation, based on their own experience and the needs of their customers and staff, to define what engagement requires to be managed. Situations that are deemed to be unacceptable may differ. The SPSO's policy and the definitions in this guide may be a useful starting point and could be adopted. However, organisations will need to consider whether that is appropriate for them and also what that would mean in practice in their own particular circumstances.

Recording and monitoring

It is vital that any decisions to manage engagement are based on accurate, reliable and appropriate information. Maintaining meticulous record-keeping is essential, therefore, in the event that any decisions are challenged or further information is requested.

Organisations should ensure staff are aware of organisational requirements and best practices regarding the recording of telephone discussions which are abusive, offensive, obscene or threatening. Staff must always record these calls in writing, documenting the discussion as far as it is possible in the exact words used by the caller. Staff should be made aware that, without a detailed record, it may not be possible to take effective action to manage the situation. The record of the engagement should always be factual and unemotional. Staff and organisations should be aware that this information may be released. Policies should be in place to ensure that there is clarity about how and where these records are kept.

Moving towards best practice

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

- Providing support and training for individual staff who may face difficult situations whether covered by the engagement policy or not (for example, frontline staff and staff in customer-facing roles).
- Demonstrating clear ownership of the policy at a senior level, so that staff feel confident and empowered in using the policy. This could be demonstrated by regular communication to staff of how the policy has been used appropriately (for example through anonymised case studies).
- Providing clear information, not only to staff, but to the public to allow them to understand what standards of engagement are expected and also allowing them to raise any concerns, particularly around any needs they may have for reasonable adjustments. An example of how SPSO does this is on our website.
- Proactively considering the impact of technology such as social media and whether the policy needs to reflect this.

Accessibility and reasonable adjustments

All members of the community have the right to equal access to the complaints handling procedure. It is important, therefore, to be clear that any engagement policy does not interfere with the need to ensure that any service provided is accessible to all on an equal basis. Organisations will need to carefully think this through, both in developing their engagement policy and in applying it in individual situations. In each situation, you will have to consider whether you need to make reasonable adjustments to your service to allow the person to make a complaint. This may mean that you respond differently to individuals who have genuine access needs. We have produced guidance on complainants with vulnerabilities which may be helpful.

Organisations are often concerned about how to approach behaviour which they think may be occurring as a result of a mental health problem. Staff who are not clinically qualified should never attempt to make a diagnosis of a mental health problem or to make assumptions about what the impact of a particular condition may be on an individual. It is also not appropriate to consider situations related to underlying mental health as a category to be explicitly dealt with in a general engagement policy. Each case will be different and the organisation has a responsibility to consider specific accessibility needs in relation to each individual.

Freedom of information and Data Protection

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

Section 2 – Difficult for you

This section is aimed at individual staff to help them to deal with situations that they find personally difficult. In this context 'difficult' refers to anything which is making communication a problem. This could include factors which you may readily identify as difficult, such as anger or distress, but there may be other factors which are less easy to identify.

We can all experience difficulties when we don't know how to respond to behaviour or communication which is unexpected or challenging. Sometimes we can be unsure about how to respond to behaviour which confuses us or seem odd or disproportionate. We may find a person's behaviour difficult when it does not conform with standards we expect or when it does not meet our values.

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

Identifying situations you can manage with training or support

The types of situations you may encounter when dealing with complaints and may be able to manage with support include:

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

By 'manage' in this context we mean 'deal with appropriately'. The aim is to make your communication more effective and work better for both you and the member of the public.

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

You may also need to end the contact and seek support, even if the situation is one you would normally expect to manage. Bear in mind that if you are in a situation where you are finding behaviour or your response to that behaviour, difficult to manage, it is highly likely you will be reacting in a way that may make the situation worse.

⚒ You may have colleagues who have particularly good interpersonal skills and you

can learn a great deal from watching them.

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

Know your trigger points

Everyone reacts differently to different situations and by 'trigger points' we mean situations which will lead to a heightened reaction from you. This is perfectly normal. There is a subjective element to this, and it is important to be very honest with yourself about what you personally find difficult. This may surprise you as it may not be the same as your colleagues. If you think about conversations where you have later thought 'I wish I had said' or ones where you felt you needed a break before the next conversation, you may find a common factor.

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

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

In training we have been told that some people find it particularly difficult to deal with:

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

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

Strategies for dealing with difficult conversations

The first thing you need to do is to make sure you are not labelling the person. If you find you are defining the person as 'difficult'; 'obnoxious'; 'condescending'; 'weak'; 'needy' or 'over acting' in your head, that is likely to make your response more emotional. You should also be wary of becoming overly involved with someone you genuinely feel sorry for. This can lead to you feeling overwhelmed by the difficulties the other person is facing. Empathy is very powerful, and letting someone know you accept the feelings they are having may be appropriate, but if you want to help, you need to be able to remain calm and clear-headed. Positively, this can help the other person by creating a sense that there is a 'safe place' for them within which they are being listened to. In some circumstances, people can feel frightened by feeling out of control. Staying calm for those people can help them to calm down.

When it comes to particular phrases that may annoy or irritate you, remember that this may well be the first time the person has used this phrase and it may be something they are only saying because they have reached the end of their tether.

Once you have identified your trigger points, you know you need to make active efforts to relax and stay calm in those situations. You also may need to debrief: you can share with colleagues what you find upsetting or annoying and this may help you to manage the emotions. For your colleagues, if they do this, you should empathise with, but not reinforce, the emotional reaction.

In dealing with trigger points it can be useful to have a strategy or approach in mind. The SPSO uses cards for staff with some suggested strategies and approaches that they can skim through and use as prompts when on the telephone. This can help to build confidence, particularly for new staff who may worry they will forget what to do. However, it is important to remember that conversations need to be personal to be effective, and standard or clichéd phrases will likely have the opposite effect to the one you intend. These phrase cards are not meant to be used word for word, but it can be helpful to have some prompts or to be aware of language to avoid.

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

Section 3 – Managing engagement

In this section, we consider situations where a person's engagement with us is such that an unfair or disproportionate amount of resource is being used. These situations need to be addressed. This section considers both how an organisation and individual staff members can respond to these situations by managing the engagement.

We concentrate on the impact on time: the key resource of the staff member or organisation. Managing engagement with customers who are unacceptably using too much of your time can free up time for other work and customers. We also look specifically at the situations we find difficult at SPSO and how we respond to them.

The general approach is very simple and can be used for creating policies, responding to an individual or dealing with a broad range of situations.

The DESC Model

The DESC model is a simple and effective one and the ideas and suggestions below build around or on this.

D - Describe the situation

E - Explain the impact that the situation is having

S - Suggest how the engagement needs to change

C – Consequences (what will happen if the engagement changes and, what will happen if it does not)

The first two steps are very important. In particular, they may help the person to understand their engagement is having an impact they do not intend. It also may give them an opportunity to explain the reason for this. This may allow you to work together to put in place a **S**uggested approach which works for both of you.

Identifying and describing the situation

It is important that you can fairly and consistently identify engagement which is having a negative impact on resources. It can be a one-off interaction or the result of a build-up of communication over time. SPSO have identified some types of engagement that cause us problems in our [Engagement Policy](). This helps us make sure we can identify this objectively and impartially. While it is important to be consistent, there is always an element of subjectivity: the level of resource that you should be using for an individual complaint will vary from one organisation to another depending on the role of your organisation, and within organisations it may vary depending on the needs of the individual customer. This means that you can take into account your organisation's size, capacity and role when assessing the impact of the engagement.

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

You should always be able to **D**escribe the specific issue and **E**xplain why that is a problem in an individual case; but it can be helpful to also think through as an organisation what engagement, in general, causes you problems and why. This can allow you to pre-empt some problems.

The benefits of pre-emptive action – supporting positive engagement

Our revised approach to engagement includes a shift on emphasis to supporting positive engagement. This guide is not focused on that aspect of the revised approach which goes much further than managing difficult interactions. Yet even within this narrower focus, there are steps that can be taken. For example, ensuring the public receive timely and good information about what they can expect from the complaint process can reduce the number of people who are contacting you because they are confused about what is happening or unsure what to do next.

The way you provide information, and when, will depend on your customers. This information has to be useful **for them at the time they receive it**. The complaints you have already received and your experiences of situations which became difficult are a good resource for this. You can use them to identify any repeated problems, pre-empt repeated questions by providing answers upfront.

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

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

DESC in action

We will look at an example based on SPSO's Engagement Policy to show how the DESC model can work in practice. This is a situation where the level of contact with an individual is using a disproportionate amount of resource.

Describing and Explaining the problem

There are a few aspects to this:

Describing

- identify what you would normally expect
- identify the level you are experiencing

- ensure you have considered whether there are additional needs which mean additional support is reasonable

Explaining

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

Let's look at this in more detail.

Identify what you would normally expect

The first step is to identify clearly what level of interaction you would normally expect (this may be part of the pre-emptive approach above). This is useful because it gives you a framework to work from when you are considering whether a particular situation is problematic.

The level of contact you have with an individual will depend on the service you are providing. This may vary and you may find that while it is appropriate for the person to have very regular contact about the direct service (particularly in a health care setting), they may well have less contact with the person handling their complaint.

You should be mindful that there is a difference between what is normal and the maximum you allow. For example:

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

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

Identify what would be a problem

Once you know what you would expect, and why, you are in a better position to understand what levels of contact will cause you problems to the extent that you need to take action. Again this can reflect your role and your organisation's capacity. The key point is to consider what level affects your resources.

> 📄 Be aware of your personal trigger points, if someone who acts in a way that you find annoying or irritating you may be more likely than a colleague to identify their behaviour as unacceptable. You need to have a neutral way of identifying what is

problematic. At SPSO, to ensure consistency and support for staff, we have developed an [Engagement Policy](#) that sets out what kinds of engagement we might need to manage, and how. This is available to both staff and our customers.

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

This is how we let people know in our policy what would cause us a problem:

Sometimes the volume and duration of contact made to our office causes problems. This can occur over a short period, for example, a number of calls in one day or one hour. It may occur over the life-span of a complaint when someone repeatedly makes long telephone calls to us or inundates us with information that has been sent already or that is irrelevant to the service we are providing or sends repeated emails raising the same or similar issues.

We consider that the level of contact has become unacceptable when the amount of time spent on the telephone, or responding to, reviewing and filing emails or written correspondence or managing the contact impacts on our ability to provide a service to that person or organisation, or to provide a service to others.

Do not delay

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

Putting it into practice

Acting before it becomes a real problem

Once you are clear what will be unacceptable, you can spot early signs of this developing. This allows you to address the situation before it becomes unacceptable. The advantage of raising the issue early is that you can do so in a more exploratory, neutral fashion. You can ask why the engagement is occurring in that way, and this may well help you to solve the problem together with the customer. You should record that you have raised the issue.

If you come to an agreement with the customer, you may want this in writing, to let the customer know you will honour this or to record any undertakings they have made.

When the situation has become unsustainable

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

This can be done by telephone, in person or in writing. If in oral communication, you should follow this up in writing to make sure the individual understands the next steps. You need to identify the specific, particular issue and impact of the current situation. You should try to do this in a neutral way, focusing on the situation, rather than the person or their actions. Use 'we' or 'I' rather than 'you'. The goal is to refocus the engagement in a more productive way and to rebuild the relationship, where possible. While you can refer to the organisation's policy on managing engagement, it is often unnecessary to do this (and can escalate the situation unnecessarily).

It is important that you do not deliver the message that the engagement needs to change more than once, or at most twice, before acting on the consequences you have set out. Otherwise your customer will think you are not telling the truth and that the situation is not having an unsustainable impact. This means they are likely to feel you are acting unfairly and for reasons of personal preference if you do subsequently need to put restrictions in place.

Consequences

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

You should always aim to put in place the least possible restriction to manage the engagement. You will also need to explain in writing what you are doing and why, and let the person know how they can challenge your decision to do so.

Managing access to the complaint procedure

In some rare cases, it may be proportionate to manage or restrict a person's access to the complaint procedure for a time. This should be a last resort, and the organisation should be careful to balance the person's right of access to the complaint procedure with the impact on the organisation.

Describe and explain

In this case, we set out in our policy very clearly why we may need to manage this situation. Individuals with complaints about SPSO or a public service provider have the right to pursue their concerns through a range of means. They also have the right to complain more than once about an organisation with which they have a continuing relationship, if subsequent incidents occur. However, this contact becomes unreasonable when the effect of the repeated complaints is to harass, or to prevent an organisation from pursuing a legitimate aim or implementing a legitimate decision. We consider access to a complaints system to be important and it will only be in exceptional circumstances that we would consider such repeated use is unacceptable – but we reserve the right to do so in those exceptional cases.

Describing exceptional

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

It is important to identify whether the complaints look new but are an attempt to reopen a decision that has been made by either reframing or seeking to prevent the work needed to implement the decision. In such cases, the person is being **persistent** and we would not restrict their access to the complaints procedure overall, as that problem can be dealt with more simply in another way (see the section on 'Persistence'). An example of this is a person who disagrees with the decision to involve a social worker in some aspect of their lives, and makes a new complaint about the way they were treated every time they come into contact with the social worker.

Putting it in practice

Before considering using this very strong strategy, staff should prepare a report that itemises all the complaints received over a reasonable period and the topics and outcomes. This is to ensure you are taking an objective view of the position. We would aim to give the person a clear chance to manage this themselves by letting them know the consequences of continuing to complain about certain issues. Only if the situation continues would we move to this restriction. You do need to communicate in an appropriate way but this decision will always require confirmation in writing to ensure the person has a record.

The complaints process is an important safeguard and this is why this decision does need the highest possible sign-off.

Section 4 - Persistence

The problem of persistence

Persistence may be a virtue for someone who has been let down by a public service. There are well-documented instances where significant public injustices were only highlighted and understood as a result of the persistence of a small group of individuals.

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

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

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

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

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

This means it is not appropriate to use a policy to manage engagement when the only issue is that an individual is persistent.

BUT

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

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

Preventing the problem in the first place

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

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

> If someone finds it difficult to access a process or make a complaint, you have already used their resources without any benefit to them.
>
> If the answer to the complaint is no, it does not help to say this to someone three times at three different levels of management before they can ask an external organisation to look at the complaint.

The [MCHP](#) limits the amount of times an individual needs to raise concerns before they can take those concerns to an independent external body. This helps them to move their complaint forwards.

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

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

Clarity in the decision

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

How to say no

Organisations often avoid being clear when they have to say 'no', for fear the person may be disappointed. This can lead to confusion and generate further contact. If the answer is 'no', being clear and letting the complainant know sooner rather than later can help. It can be a good idea to call someone before they receive the written response. You can defer detailed questions until they have had a time to absorb the document but this forewarning can help them to actually absorb the information in the letter better, as they will have had a gap to deal with the disappointment. This means subsequent questions may be better framed and you can provide a better response. This can help you to focus on any genuine outstanding issues rather than getting stuck in a loop.

> ⚒ If you feel nervous about this consider using language like:
>
> "I wanted to call to let you know I have reached my decision. Having spoken to you at the start of the process, I know you will find it disappointing.
>
> I know you will have a lot of questions, I can give you a general idea of the reasons behind the decision but to be fair to you I would ask you to take your time to read through the letter and I will be happy to answer any more detailed questions then."

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

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

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

You may provide additional explanation or answer questions, but be sure that it is clarification that is being sought. If a person seeks clarification more than once, consider whether it is actually an attempt to reopen the complaints process.

It is appropriate to change the decision if the person has new evidence or a clear indication you have made an error – clarity in your decision will help you and the complainant to focus on this. However, if you are in contact more than two or three times after the process has concluded, and no change has been made to the decision, it is probably time to end the contact on that point.

Disagreement with your decision is not a 'problem situation' and you do not need to label it as unacceptable. You simply need to clearly refer the individual to the next stage in the process if there is one (most organisations have an independent body they can refer the

complaint to) and let the person know you will not respond on that point again. At this point, if you have said you will not respond, you need to ensure that occurs.

Make sure that you have identified the correct problem

The decision to engage once a process is concluded is completely within the discretion of the organisation and they can simply choose not to do so or to do so. Under the MCHP, organisations must refer a person to the SPSO at the end of stage 2; further engagement with the person cannot be used to defer SPSO's involvement.

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

Putting it into practice

Some examples of specific situations and strategies are below.

| A person is repeatedly asking questions or for more information but is refusing to enter the complaints process | You can use variations on the strategy for someone who is contacting you too much. You may need to make it clear you have done all you can and if they will not engage with the complaints process, you will no longer respond to questions about this. Remember they do still have their right to make FOI/ Data access requests – this can only apply to requests for comment or further clarification. |

| The person has asked an elected representative to make the same complaint on their behalf | You simply restate the decision you have already made to the elected representative and let them know you have informed the person of their rights to take this further. It is appropriate for a representative to support a person in making a complaint. However, once the decision has been made and unless the representative has new evidence or information, there is no reason to change your decision simply because someone is writing on their behalf. |

| The person has been contacting lots of different colleagues | My colleagues know I am dealing with your complaint and will refer to me to answer your questions. Can we agree if you have concerns you will contact me direct? If I am not here you can leave a message for me.

[If you are not receiving agreement you should add]

I don't want to have to restrict our contact so I would like to reach an agreement with you about contact. [If not achieved] I am sorry we are unable to agree today about this. I would like to give you some time to think about this a bit more and I will write to you explaining why I am concerned. |
|---|---|
| The person has completed the process but is now contacting different agencies to pursue their concerns. This may lead to multiple contacts from those agencies | It is appropriate to discuss the outcome with someone or to provide some clarification. You should not normally expect to have to do so more than once or twice. If you have done this, you should remind the person that the letter has informed them of their right to approach an independent body.

You may want to use variations of the following.

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

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

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

| The person has completed the complaints process but is unhappy and wants to raise the same issue with you again | You may have to respond to a number of different agencies – you need to make sure that your response is co-ordinated and that whatever route is used, your response is consistent. This would include consistently changed, if you do identify a problem as a result of external contact. |

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

Related issues

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

You should always remember that it is we (as civic society) who have set up all of these systems, and individuals may be being signposted to several different organisations – for example 'we can deal with issue A but can't deal with issue B, that is the responsibility of C'.

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

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

The enquiry that is really a complaint

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

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

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

Persistence and the special case of policy decisions

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

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

Staff in organisations need to be able to identify the difference between someone complaining and someone seeking to engage politically. It can be difficult to make the distinction, as some people identify they wish to change a law or policy following an unsuccessful complaint where they discover the law and policy behind the decision. It is important to keep complaints and the political process separate. Again, clarity in your letter with the decision can help individuals and groups be clearer themselves about what next steps they wish to take. It may also be helpful to check what they are trying to achieve in their contact.

When it is clear that individuals and groups are seeking to influence law and policy and are now campaigning, rather than complaining, it is appropriate to signpost them to political routes. For example, you can inform them how to contact elected representatives who may be in a position to make the changes they wish. It is a question for those elected

representatives alone to decide how much time they wish to put into engaging with such individuals and groups.

Section 5 - Zero tolerance

There are situations which it is not possible or appropriate to tolerate in a work setting. It is important to be able to identify these. These can occur both at the start of contact and when contact with someone has been going well for some time.

> ⚒ The dangerous situation
>
> If you feel you, or others, are at immediate risk, you need to take quick and decisive action.
>
> There are skills which can help you de-escalate situations and may be helpful in emergencies when you feel someone's behaviour is becoming dangerous to you or others. One example is the three D's which encourage you to Divert, Deflect, Distract.
>
> This may allow you time and space to move to safety, to get help, or to help the person themselves calm down. If you do have to do this, the incident should always be logged in case this is a pattern of behaviour you need to deal with. You should always de-brief with a manager or appropriate senior colleague after any significant incident.

Identifying situations you should never tolerate

There is a wide range of types of language and actions which you need to consider when deciding whether a person's engagement has fallen into the 'zero tolerance' category.

Physical violence is the most obvious example and will always fall under this category. But threats of violence are also unacceptable. Threats to others remain unacceptable, even if it is not aimed at your organisation.

For staff it is important that they know and understand that if they feel threatened, and at risk, they do not need to maintain the contact simply because a specific direct threat has not been made.

Abusive or degrading language is also unacceptable and is the most common type of unacceptable engagement that staff experience. It is important that all organisations are consistent about the lines they draw and why. We set out specifically in our policy what we mean by abuse or degrading language. Our [phrase cards](#) give some advice on boundary setting.

Consistency is important and each organisation should ensure:

- They can clearly explain, and staff understand, what their boundaries are.
- Staff are given support and training to put those in place safely and consistently.

After the contact

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

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

Additional steps you and your manager should consider are below.

Who needs to know what happened?

Apart from situations of physical violence, when the police should always be called, you may need to consider whether the police should be informed. Do you need to tell any other person who may be at risk if threats were made? The standard answers to both of these questions should be yes. However, you may decide that there are particular circumstances which mean that is not appropriate. If you do so, the reasons for that decision not to follow the standard response need to be noted and recorded.

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

Following up with a formal written warning

You should consider if a written warning should be sent to the individual about their engagement. We would always recommend that this is sent from a senior member in the organisation. You do have discretion to decide if this would not be appropriate for the particular individual or situation. If you do send a written warning, this should follow the process set out for restricting contact in section 3.

Ensure staff are supported

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

How to respond to difficult engagement flowchart

Is the situation threatening, abusive or dangerous

Yes

This is a matter for your zero tolerance policy

Yes or not sure

No

Is the engagement having (or if it continues could potentially have) an impact on the ability of you or your organisation to respond to the complaint or undertake other key tasks

Look at the managing engagement section

No

Look at the difficult for you section