

Policy	Managing Unreasonable Conduct	
Approved by:	Deputy Public Guardian	
Date Effective	March 2022	Version 1
Application	All Office of the Public Guardian (OPG) staff	
Related	Managing unreasonable conduct practice direction Complaints management policy Complaints management practice direction Complaints management assessment checklist Department of Justice and Attorney-General's SALVUS support information (search 'SALVUS' on the intranet) Managing Unreasonable Complainant Conduct Practice Manual (2 nd Edition) published by the NSW Ombudsman	

A. Purpose

- A1. OPG is committed to working with all service users fairly and impartially. At the same time the success of our office dependent on the:
 - i. ability to do our work in the most effective and efficient manner
 - ii. health, safety and security of OPG staff, and
 - iii. equitable allocation of resources.
- A2. When individuals display conduct in their dealings with us which raises substantial health, safety, resource or equity issues, this behaviour can significantly impact our success.
- A3. This policy outlines a systematic and consistent approach to unreasonable conduct (UC). It allows OPG to act proactively and decisively in managing UC that negatively affects the delivery of services.
- A4. The primary objectives of managing UC are to:
 - i. ensure equity and fairness—by dealing with complaints and interactions based on merit, rather than demands or conduct
 - ii. improve efficiency—by allocating sufficient time and resources to deal with UC, rather than leaving complaints and interactions unmanaged
 - iii. ensure health and safety—by identifying (and eliminating or controlling) potential risks to staff health, wellbeing, safety and security.

B. Defining unreasonable conduct

- B1. Most individuals will act in a reasonable and responsible manner, even when experiencing distress, frustration and anger about their situation. However, a small number of individuals can sometimes behave in ways that are unreasonable.
- B2. OPG staff understand they may be faced with challenging situations. This does not mean we expect staff to tolerate behaviour that is violent, offensive, abusive, threatening or due to the frequency of contact, accounts for a disproportionate amount of time and resources that could be spent more effectively dealing with other matters.
- B3. **Unreasonable conduct** is any conduct (behaviour) by an individual which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for our organisation, staff and other service users.

- B4. UC can be divided into **five categories of conduct** that have a disproportionate and unreasonable impact on our organisation, staff, services, time and resources:
- i. Unreasonable **persistence**—continued, incessant and unrelenting conduct
 - ii. Unreasonable **demands**—demands for actions or outcomes that are not possible
 - iii. Unreasonable **lack of cooperation**—being unwilling to cooperate with OPG’s policies and practice
 - iv. Unreasonable **arguments**—complaints that are trivial, illogical or not evidence based
 - v. Unreasonable **behaviours**—acting aggressively or rudely, being abusive or threatening (including threatening self-harm).
- B5. OPG has zero-tolerance of any harm, abuse or threats directed towards any staff. Conduct of this kind is dealt with under this policy, and in accordance with our duty of care and workplace health and safety responsibilities.

C. Unreasonable persistence

- C1. Unreasonable persistence is continued, incessant and unrelenting conduct that has a disproportionate and unreasonable impact on our organisation, staff, services, time and resources.
- C2. Some examples include:
- i. Refusing to accept further action cannot or will not be taken.
 - ii. Reframing information in an effort to have it considered again.
 - iii. Making excessive numbers/volumes of phone calls, visits, letters, or emails (including cc’d correspondence) after being asked not to do so.
 - iv. Contacting different people within our organisation and/or externally to try to get a different outcome or more sympathetic response.
 - v. Refusing to accept a decision because the outcome was not in their favour.

D. Unreasonable demands

- D1. Unreasonable demands are any demands (express or implied) that are made that have a disproportionate and unreasonable impact on our organisation, staff, services, time and resources.
- D2. Some examples include:
- i. Insisting on talking to a senior manager or the Public Guardian personally when it is not reasonable or warranted.
 - ii. Demanding services that are of a nature or scale that cannot reasonably be provided, when this has been explained repeatedly.
 - iii. Insisting on outcomes that are not possible or reasonable in the circumstances – e.g. for someone to be fired or prosecuted or compensation when there is no reasonable basis for expecting these outcomes.

E. Unreasonable lack of cooperation

- E1. Unreasonable lack of cooperation is an unwillingness to cooperate with our organisation, staff, or complaints system and processes that results in a disproportionate and unreasonable impact on our organisation, staff, services, time and resources.
- E2. Some examples include:
- i. Refusing to follow or accept our instructions, suggestions, or advice without a clear or justifiable reason.
 - ii. Providing little or no detail or presenting information in ‘drips and drabs’.
 - iii. Sending a constant stream of unclear, irrelevant or disorganised information, where the individual is capable of writing clearly.

- iv. Displaying unhelpful behaviour such as withholding information, acting dishonestly, misquoting others.

F. Unreasonable arguments

- F1. Unreasonable arguments are not based in reason or logic, are incomprehensible, irrational, false, inflammatory or trivial.
- F2. Some examples include arguments that:
 - i. Are not supported by evidence.
 - ii. Are based on conspiracy theories or irrational claims/beliefs.
 - iii. Have no relevance to the central issue.
 - iv. Illogically or irrationally deny any responsibility for action or inaction.
 - v. Fail to follow a logical sequence.

G. Unreasonable behaviour

- G1. Unreasonable behaviour is unreasonable in all circumstances because it compromises the health, safety and security of others.
- G2. Some examples include:
 - i. Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks.
 - ii. Harassment, intimidation or physical violence.
 - iii. Lying or being intentionally misleading.
 - iv. Baseless attacks on the intentions, motivations, ethics or conduct of staff.
 - v. Threats of harm, threats with a weapon or threats to damage property including bomb threats.
 - vi. Stalking.

H. Preventing and managing UC

- H1. OPG staff will treat individuals with dignity and respect at all times.
- H2. By applying good standards of communication and fair administrative practices, unreasonable interactions may be reduced or avoided.
- H3. When OPG considers that conduct is unreasonable, we will tell the individual why we find their conduct unreasonable and ask them to change it.
- H4. UC strategies implemented by OPG should be firm and consistently applied with proper consideration for compatibility with relevant human rights.
- H5. A broad overview of the management strategies against each category of unreasonable conduct is provided below:

UC	Overarching management strategy
Unreasonable persistence	Saying 'no'—not necessarily using the word but the same principle
Unreasonable demands	Setting limits—limiting the parameters for contact with OPG e.g. How often they can phone, who, when and for how long
Unreasonable lack of cooperation	Setting conditions e.g., Requiring that a complaint issue be defined, information be organised or setting 'virtual' meetings
Unreasonable arguments	Declining and discontinuing e.g., Refusing to deal with complaints that hold no evidence
Unreasonable Behaviours	Setting limits and conditions and if necessary, applying risk management strategies. <i>Additional information is provided in the complaints procedural manual</i>

Offering an apology


- H6. Perceived failings in our actions or decision-making often lead to conduct from individuals who feel they have not been heard or understood.
- H7. Individuals who are treated fairly and with respect are more likely to respond positively, even when faced with negative outcomes.
- H8. OPG acknowledges that sometimes staff may make mistakes or matters may not be handled as well as they should. These instances can trigger or exacerbate UC.
- H9. If a situation arises where OPG has contributed to UC, the situation should be immediately rectified, including providing an apology.

Recordkeeping

- H10. Recordkeeping is vital in the effective management of UC. Comprehensive, accurate, and timely records will be made of observed behaviours and interactions.
- H11. Records should be factual and professional with care taken to avoid any statements of personal opinion.

I. Model for identifying and developing a strategic response to UC

- I1. The model below provides the process to select strategies for responding to UC.

Identify warning signs	Assess the reasonableness of the conduct	Categorise the conduct	Consider and select strategies	Implement strategies and monitor
				
Indicators <ul style="list-style-type: none"> Individual's history Communication style/content Interactions with OPG Outcomes sought Reactions to advice/outcomes Recordkeeping <ul style="list-style-type: none"> Report all UC incidents Make factual record of interactions/observations Handle initial interactions appropriately 	Criteria <ul style="list-style-type: none"> Likely level of impact/risk on staff, clients, service delivery Merits of issues Individual's circumstances Proportionality Responsiveness Personal boundaries breached Unreasonable under any circumstance 	Categories <ul style="list-style-type: none"> Persistence Demands Level of cooperation Arguments Behaviour 	Considerations <ul style="list-style-type: none"> History of interactions with OPG History of success of engaged methods Likely level of impact/risk on staff, clients and service delivery Personal thresholds and skill level of staff Agency policy and practice Jurisdictional issues 	Implement <ul style="list-style-type: none"> Take actions to put strategies into practice Record assessment and strategy Communicate strategy Monitor <ul style="list-style-type: none"> Individual's response Staff response – signs of stress Level of success for OPG Respond/alter strategy as required

J. Decision to change, restrict or withdraw access for UC

- J1. Common strategies for managing the various categories of conduct involve changing, restricting or in severe cases withdrawing access to staff and services for a particular matter or through a particular means.

- J2. Examples include restricting:
- i. Who the individual has contact with, for example a sole contact person in OPG
 - ii. What the individual can raise with us, for example restricting the subject matter of communications OPG will consider and respond to
 - iii. When contact can occur, for example only at a particular time, day, length of time or frequency
 - iv. Where contact occurs, for example limiting face-to-face interactions to particular locations
 - v. How contact occurs, for example limiting face-to-face interviews, phone or written communication, preventing access to our premises, contact through a representative only.
- J3. These decisions to **change or restrict** an individual's access to services as a result of UC will be made by the business unit Director in accordance with OPG policies and practice directions.
- J4. In making these decisions, an individual's personal circumstances, level of capacity and competency, vulnerability, and literacy skills will be taken into account.
- J5. Decisions to **withdraw/end access** to staff or services should only be made in rare and exceptional circumstances and as a last resort when other strategies are not appropriate or have been ineffective. This includes extreme cases where an individual engages in consistent abuse, harassment or stalking of staff (or their family), physical violence, property damage, weapon or bomb threats or engages in conduct that is otherwise unlawful.
- J6. Decisions to **withdraw/end** an individual's access to staff and services for a particular matter because of UC will be **made by the Public Guardian**.
- J7. The initial duration of a restriction or withdrawal of access will not exceed 12 months, with review every four (4) months. A restriction or withdrawal of access can be removed, amended or extended by approval at the same level.
- J8. An individual's access to OPG services and premises may also be ended (directly or indirectly) using legal mechanisms such as trespass laws or orders to protect staff from personal violence, intimidation or stalking. OPG has a security procedure and duress alarm system to assist in managing unreasonable conduct, and may contact police if required.

K. Appealing a decision to change or restrict contact

- K1. Where decisions to change, restrict or withdraw access are made, the decision and reasons for the decision will be communicated to the individual in writing.
- K2. Individuals may appeal a decision to change or restrict access to services by requesting an internal review.
- K3. The request must be lodged within **28 days** of receiving the decision and:
- i. explain why internal review is being requested by outlining what was unreasonable or unfair in the original decision/process and
 - ii. clearly advise what outcome is being sought.
- K4. For a decision to withdraw access to staff or services made by the Public Guardian, an individual may seek external review from an oversight agency such as the Queensland Ombudsman.

L. Relevant Legislation

- L1. *Public Guardian Act 2014*
- L2. *Guardianship and Administration Act 2000*
- L3. *Human Rights Act 2019*

Version #	Approved By and Role	Date	Changes from Last Version	E-docs #
2	Deputy Public Guardian	11/01/2022	Approval of consolidated feedback	#5007644
1	Director, Legal Services and Investigations	19/11/2021	First draft endorsement	#5007644