Making Complaints Work for Everyone

Learning from Complaints

December 2017

SPSO Scottish Public Services Ombudsman

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Thanks and Acknowledgements

We would like to express our gratitude to those who provided input and advice to this report especially the staff of the Equality and Human Rights Commission in Scotland and Dr Gordon Skilling.

Ombudsman's foreword

Have you ever been the subject of a complaint? If you have you will know that while it is being investigated can be a stressful and lonely time if you are not given the support you need. But did you also know that it can have an impact on you well after the complaint has been dealt with?

None of us would question that it is important for *everyone* involved that we put right what has gone wrong in the delivery of public service. Equally, we recognise that in addition to addressing injustice as a result of maladministration for individual complainants, we should learn from the complaints we handle to prevent the same thing happening again.

Understanding the impact of complaints is vital to understanding complaints in a more holistic way. The latest research from Queen Margaret University into staff attitudes to complaints echoes an increasing body of research already showing that complaints are often (understandably from an individual perspective) perceived negatively by staff. What may be more surprising is that the research also indicates that being subject to a complaint can have an adverse impact on individuals' future practice and performance, limiting rather than promoting learning.

But that is not all: the impact goes beyond staff well-being. The research also shows a marked tendency for staff to rationalise and justify complaints as expressions of service user misunderstanding, emotional state, misdirected anxiety or attempt to gain advantage by 'gaming' the system. Again these attitudes all present significant barriers, preventing learning from complaints and creating unnecessary costs and burdens for public services.

Paradoxically, at the same time as we become more aware of these difficulties organisations are increasingly likely to describe themselves as 'learning organisations'. It is this dissonance between organisational objectives and the reality of staff experience that this report explores.

The report identifies the causes of negative staff experiences of complaints, including poor organisational support and a culture of blame. SPSO's experience suggests problems arise from a lack of clear processes – including support mechanisms – and unclear strategies to cope with challenging behaviour from that very small number of complainants who engage a disproportionally large amount of staff resource.

We offer a number of suggestions for resources that can help prevent these difficulties while ensuring that the rights of the service user are properly observed.

Rosemary Agnew
Scottish Public Services Ombudsman

Key messages

The overwhelming message is that

> Organisations need to actively support their staff through complaints processes and engage staff in positive and purposeful activities to manage and learn from complaints.

This is because of the detrimental impact of being complained about on the well-being of staff, the negative impact on services, and the risks poor service provision creates in relation to reputation, quality and cost to the organisation.

What we have learned is:

Staff generally describe a negative experience of complaints, often attributing this to a lack of organisational support. Leadership aspirations to be a 'learning organisation' are at odds with this staff experience causing a complaints culture mismatch and lost learning opportunity.

Staff who experience complaints negatively will be more defensive in their future interactions with the public, giving rise to future complaints.

Low employee engagement levels are linked with higher complaint levels and poor staff attitude is a major contributory factor in complaints.

Staff can struggle to differentiate between managing challenging behaviour and a need to provide services by making reasonable adjustments.

A very small number of complainants absorb a disproportionate and distorting amount of staff and organisational resources and have a significantly adverse impact on staff attitudes to complaints.

Organisations must actively support their staff. It is not enough to have an Unacceptable Actions Policy (UAP) if it is not properly used and applied.

Who we are

The Scottish Public Services Ombudsman (SPSO) investigates complaints brought by members of the public about public services. We are the final stage for complaints, which means we normally investigate complaints after the organisation complained about has had an opportunity to investigate and resolve the issues themselves. We are funded by the Scottish Parliament and are independent of the organisations we investigate.

The SPSO is also the Complaints Standards Authority (CSA). We are responsible for developing model complaints handling procedures. These were developed in consultation with each sector and are used by the majority of Scottish Public Sector organisations.

We are strongly committed to promoting and enabling learning from complaint handling that leads to lasting improvement in Scottish public services.

Why we are publishing this report

Through our CSA and learning and development work, good practice and consistency are increasingly embedded in the complaint handling culture of public services in Scotland. Because of our work in this area and the work of a number of consumer and advocacy agencies, there is increasing awareness of the citizen's right to complain about poor service. Public Sector organisations should enable easy access to complaints processes for everyone.

However, as we discuss in this report, there is a significant gap between the organisational aim to value complaints and the reality for staff complained about, who are expected to embrace the learning from complaints. Staff can and often do, experience complaints as substantially negative events, more so when accompanied by challenging behaviour and a lack of organisational support. As well as detrimentally impacting on individuals, this negative experience inhibits the development of a learning culture and may even lead to future behaviours which generate more complaints or prevent a citizen legitimately accessing a complaints process.

Using the narratives of real world examples from cases brought to SPSO as well as our own experiences of managing challenging behaviour, this report aims to instigate and inform discussions around how best to make complaints work for all those involved. We also provide some practical tools to help address particular situations which can be more problematic.

Who this report is for

This report is for anyone interested in creating and sustaining an environment where complaints are genuinely and realistically appreciated and used as tools for learning and improvement. Those looking for guidance to ensure their organisation can best support their staff and their service users to make complaints a positive experience for everyone will find this report together with its tools, checklists and guidance a useful resource.

The rise of complaints as learning opportunities and the decline of staff engagement

1 There is an increasing public awareness of their right to complain about poor service. However, research indicates that for some individuals and groups there remains a fear of the possible consequences of a complaint or an overwhelming sense that 'it won't make any difference'.[1] The public experience doesn't appear to reflect an expectation of an open and learning organisation. What is causing this gap between organisational intent and public expectation?

2 Staff attitudes are consistently mentioned as a contributory factor in complaints. A recent survey of 3,000 consumers by the Institute of Customer Service (ICS)[2] reveals that staff attitude and staff incompetence are rated the "most annoying or frustrating" service problem, while "people-related issues" account for 62% of all complaints. So is this all about a perception of staff not doing their job well?

3 Research in 2009[3] linked the concept of employee engagement with productivity and innovation and more recently a 2012 study[4] made a link between higher levels of employee engagement and customer satisfaction. Unfortunately the evidence also showed that the opposite is true. Lower levels of employee engagement lead to higher customer dissatisfaction (and increased complaints). Additionally, employee engagement levels are declining overall.[5]

4 Although there is considerable research into the link between staff engagement and customer satisfaction, there is very little research exploring the impact of negative staff experiences (such as those associated with complaints) and staff engagement levels. The research reviewed for this report[6] clearly links poor staff well-being, negative perception of complaints (and complainants) and a lack of organisational support:

> Doctors frequently reported feeling powerless, emotionally distressed, and experiencing negative feelings towards both those managing complaints and the complainants themselves. Many felt unsupported, fearful of the consequences and that the complaint was unfair. Physicians suggested procedures should be more transparent, competently managed, time limited, and that there should be an open dialogue with complainants and policies for dealing with vexatious complaints. Some felt more support for doctors was needed.

So is there a problem?

5 In this report we will be exploring five key effects that arise from negative staff experience of complaints including:

- adverse impact on staff well-being
- adverse impact on future practice
- lost opportunity for learning
- disproportionate use of staff and organisations' resources
- failure to make reasonable adjustments.

And just how do we fix all this?

6 The short answer is there isn't a single, simple solution. Research in 2017 by King's College London[7] concluded that:

> These findings indicate some of the obstacles to using patient complaints for learning for improvements in the quality of care. We suggest that current consumer orientated/learning approaches that advise staff to 'take complaints seriously' or 'receive them as gifts' are unlikely, in themselves, to convince care professionals of the value of patient insight and experiential knowledge. The development of 'complaint management' models requires research-informed awareness of how such approaches inform, revise or retrench subjects' positions within the particularities of local service relationships.

7 We provide a number of resources to help organisations reflect on their current processes and develop resources to make complaints work better for everyone. These are listed at the end of this report and are available (along with a number of other useful tools to assist in developing good practice in complaint handling) on our Valuing Complaints website:

www.valuingcomplaints.org.uk

Making complaints work for staff

8 There are several problems caused by poor staff experience of complaints including:

- adverse impact on staff well-being
- adverse impact on future practice
- lost opportunity for learning
- disproportionate use of staff and organisations resources
- failure to make reasonable adjustments.

9 Organisations will need to think a variety of ways to counter these effects. In this section we consider some of these in so far as they impact directly on staff. In the following sections we will consider the importance of managing challenging complainant behaviour while also ensuring individual needs and rights are properly taken into account.

Staff well-being

10 The majority of the research into staff reactions to and perceptions of complaints has been conducted with staff in the health sector or the commercial sector. This has often developed from research around issues of patient safety or increased productivity. Most recently academics have been considering the issue of staff resilience more broadly across the public sector.

11 Research[8] published in the BMJ in 2016 highlighted the impact of being complained about on the health, well-being and future practice of doctors. It concluded that:

> Doctors with recent or current complaints have significant risks of moderate to severe depression, anxiety and suicidal ideation. Most doctors reported practising defensively, including avoidance of procedures and high-risk patients. Many felt victimised as whistle blowers or reported bullying. Suggestions to improve complaints processes included transparency and managerial competence.

12 Preliminary findings from research conducted by Queen Margaret University in 2017 with 132 staff in Scottish housing associations and local authority planning departments, are that most people who had been subject to a complaint reported that it had affected their work practice (71%) and their well-being (67%).[9] While most said they had been affected "to some extent", a significant minority (15%) reported they had been affected "a great deal". 61% of respondents considered that being complained about had affected their attitudes or feelings towards service users and 57% worried about receiving other complaints in future.

13 The largest number of respondents (47%) said that they had been well supported by their organisations during the complaint process, although at least 1 in 5 (22%) felt this had not been the case.

14 The study demonstrates again that complaints are perceived as having an adverse effect on the work practice and well-being of those subject to them. A significant minority were very affected by their experiences, and a similar minority felt that they did not receive adequate support from their organisations. This suggests that for those whose work practice and well-being have been significantly affected as a result of being complained about, there may be a need for organisations to consider whether additional support is required to meet their needs.

15 All of this research demonstrates what staff working with complaints already suspected to be the case: that even a single complaint can have long term and devastating impacts on staff involved. For those working on the front-line who are regularly dealing with customer dissatisfaction this will be a daily source of stress.

Adverse impact on future practice

16 The BMJ research also noted a propensity to defensive future practice which resulted from a negative complaints experience. This backs up the findings of a number of previous studies conducted in the UK and around the world.

Lost opportunity for learning

17 While it is widely recognised that complaints provide rich data for learning[10], research conducted by King's College London[11] published in August 2017 concluded (amongst other things) that:

> interviewees rationalised patients' motives for complaining in ways that marginalised the content of their concerns. Complaints were most often discussed as coming from patients who were inexpert, distressed or advantage-seeking; accordingly, care professionals hearing their concerns about care positioned themselves as informed decision-makers, empathic listeners or service gate-keepers. (..) it was rare for interviewees to describe complaints raised by patients as grounds for improving the quality of care.

18 Organisations generally recognise that their staff are entitled to, and hence receive, protection from abuse. It is common for organisations to operate a 'zero tolerance' policy to protect staff from physical and verbal abuse. However such policies are focused on the management of the adverse behaviour in the future not on helping staff cope with their experience.

19 Such policies are essential but they are not relevant or appropriate for helping to support staff in handling the every-day distress and anxiety that we are increasingly recognising as an intrinsic part of being complained about. We need to ensure that we create an environment that minimises defensiveness and, in turn, fosters openness to both the learning and the relationship building opportunities of complaints.

> Most stressful for me was the pressure from managers or explaining to senior colleagues. I felt like a criminal when I was referred to the GMC.[12]

20 Our research found that a number of NHS organisations have introduced policies to support staff involved in a complaint. These ensure staff are provided with support, including opportunities to be involved in responding to the complaint and debrief following a complaint.

21 Such policies are substantially adapted from guidance issued by NHS Resolution[13] in 2012. In one good practice example we found[14], the organisation had a clear policy and process for supporting staff and a comprehensive tool to ensure the policy was followed and appropriate support was offered. This included a Staff Feedback Form which allows the individual member of staff to self-reflect and assess their own need for further support.

Making a learning culture a reality

22 Research conducted by King's College London[15] published in August 2017 found that the way staff reacted to complaints varied across:

- professional groups (for example medical doctors or surgeons)
- service areas (for example emergency 'one off' care interactions or longer term care provided for chronic conditions) and
- the prevailing local culture in relation to feedback (a learning opportunity or a potential failure).

23 The research noted that according to these different drivers staff might see complaints as:

- a misunderstanding arising from the complainant's lack of knowledge (compared to their own)
- an understandable natural reaction to a painful or difficult situation which required empathy (but no further action)
- an attempt by the complainant to gain an advantage in a system which would otherwise not provide them with what they wanted, when they wanted it
- a lack of trust by the complainant that showed a lack of understanding or appreciation of the work staff were doing ('they have no idea how hard our job is')
- misjudgement of the true situation by the complainant ('I agree with them but the problem is not our responsibility/ we can't do anything about it')
- complaining to improve things (they just don't want it to happen to anyone else).

24 Many of these sentiments are echoed at an institutional level too[16]:

> at most [healthcare] institutions, patient complaints are handled by patient relations or risk management departments, with a primary goal of mollifying the patient and avoiding litigation, missing the opportunity not only to meet the affected patient's needs but also to improve the quality of care going forward by identifying root causes and developing prevention plans.

25 The research into the connection between staff engagement levels and customer satisfaction[17] and the research into staff reactions to complaints [18, 19], show a clear and vicious circle is operating.

Can we turn the vicious circle into a virtuous circle?

26 Here are just two examples of ways that individuals have shown real commitment to learning from complaints brought to the SPSO and which demonstrate that the vicious circle can be virtuous.

Personal reflection by staff

27 We upheld a complaint about the care and treatment of an individual who had sustained a head injury. We recommended that the incident be reflected on and reviewed to identify learning and inform improvement.

28 The clinician with lead responsibility for the team involved called our complaints reviewer in person to discuss how the team had reflected on the issues and what they were doing to change things for the future. They told us that they appreciated the opportunity to tell us about their personal reflection on the case and how the department were learning from it.

Sharing the learning

29 We upheld a complaint where we found there had been a poor standard of communication between a doctor and a patient over several consultations. We recommended that the doctor reflect on their communication standards. We were very pleased to receive this response, which shows a real commitment to the learning opportunity both for the individual member of staff and their colleagues:

> I identified this as a learning point from my discussion and reflection at my annual appraisal. I enclose an audit that I have completed of a random selection of consultations before and after improvement work. Cases were chosen randomly by admin staff and the audit externally verified by (a) Medical Director, from (the) Health Board. I have shared this audit and the learning points with my colleagues at the practice and they plan to complete the exercise also.

When we acknowledged the response we noted that this was an example of best practice.

What can organisations do to encourage a learning culture?

30 There may not be a simple solution but here are some ideas to consider.

Proactively seeking customer feedback

31 Use examples of customer stories in staff discussions to help challenge any assumptions being made about why people complain. Websites like Care Opinion[20] have lots of examples and resources to help organisations develop this work.

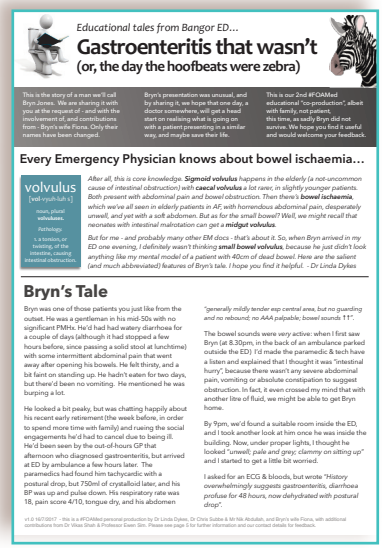
What can organisations do to encourage a learning culture?

32 Share good practice examples to encourage personal reflection by staff. Here is one story taken from a staff perspective, extracted from a blog post in their *Learning Is Good For Everyone* section[21]:

> ***It is not just what we do; it is how we do it.***
>
> A few years ago, I was treating a lady in the Emergency Department who had been rushed in by ambulance. She had had a life-threatening condition, which is not always straightforward to recognise or treat, and I distinctly remember how I and the nursing team had felt really good about how quickly we had established what her clinical problem was, resuscitated and treated her rapidly, called the appropriate specialist and ensured she was rushed to theatre for the surgery that had saved her life.
>
> I also remember, as if it was yesterday, how I had felt when her complaint came into the service a few weeks later. I was so disappointed, so crestfallen, so angry! However, once I had got over myself and nursed my professional pride, I also realised that what I had thought was important in treating somebody might not always be what is most important to them. Yes, the technical aspects of treatment are really critical to get right, but so are the ways in which we communicate with patients and their families around those decisions, and the way we make people feel.
>
> It served as a really powerful lesson to me, and has helped to change my whole approach to looking after people (and running a service): it is not just what we do; it is how we do it.

33 Here is an excellent example of how an NHS organisation has used patient experience stories to support learning:

https://www.cotebangor.org/bryn-s-story-download



Educational tales from Bangor ED...

Gastroenteritis that wasn't
(or, the day the hoofbeats were zebra)

This is the story of a man we'll call Bryn Jones. We are sharing it with you at the request of - and with the involvement of, and contributions from - Bryn's wife Fiona. Only their names have been changed.

Bryn's presentation was unusual, and by sharing it, we hope that one day, a doctor somewhere, will get a head start on realising what is going on with a patient presenting in a similar way, and maybe save their life.

This is our 2nd #FOAMed educational "co-production", albeit with family, not patient, this time, as sadly Bryn did not survive. We hope you find it useful and would welcome your feedback.

Every Emergency Physician knows about bowel ischaemia...

volvulus [vol-vyuh-luh-s]
noun, plural **volvuluses**.
Pathology.
1. a tortion, or twisting, of the intestine, causing intestinal obstruction.

*Alter all, this is core knowledge. **Sigmoid volvulus** happens in the elderly (a not-uncommon cause of intestinal obstruction) with **caecal volvulus** a lot rarer, in slightly younger patients. Both present with abdominal pain and bowel obstruction. Then there's **bowel ischaemia**, which we've all seen in elderly patients in AF, with horrendous abdominal pain, desperately unwell, and yet with a soft abdomen. But as for the small bowel? Well, we might recall that neonates with intestinal malrotation can get a **midgut volvulus**.*

*But for me - and probably many other EM docs - that's about it. So, when Bryn arrived in my ED one evening, I definitely wasn't thinking **small bowel volvulus**, because he just didn't look anything like my mental model of a patient with 40cm of dead bowel. Here are the salient (and much abbreviated) features of Bryn's tale. I hope you find it helpful. - Dr Linda Dykes*

Bryn's Tale

Bryn was one of those patients you just like from the outset. He was a gentleman in his mid-50s with no significant PMHx. He'd had had watery diarrhoea for a couple of days (although it had stopped a few hours before, since passing a solid stool at lunchtime) with some intermittent abdominal pain that went away after opening his bowels. He felt thirsty, and a bit faint on standing up. He hadn't eaten for two days, but there'd been no vomiting. He mentioned he was burping a lot.

He looked a bit peaky, but was chatting happily about his recent early retirement (the week before, in order to spend more time with family) and rueing the social engagements he'd had to cancel due to being ill. He'd been seen by the out-of-hours GP that afternoon who diagnosed gastroenteritis, but arrived at ED by ambulance a few hours later. The paramedics had found him tachycardic with a postural drop, but 750ml of crystalloid later, and his BP was up and pulse down. His respiratory rate was 18, pain score 4/10, tongue dry, and his abdomen *"generally mildly tender esp central area, but no guarding and no rebound; no AAA palpable; bowel sounds ↑↑".*

The bowel sounds were very active: when I first saw Bryn (at 8.30pm, in the back of an ambulance parked outside the ED) I'd made the paramedic & tech have a listen and explained that I thought it was "intestinal hurry", because there wasn't any severe abdominal pain, vomiting or absolute constipation to suggest obstruction. In fact, it even crossed my mind that with another litre of fluid, we might be able to get Bryn home.

By 9pm, we'd found a suitable room inside the ED, and I took another look at him once he was inside the building. Now, under proper lights, I thought he looked "unwell; *pale and grey; clammy on sitting up"* and I started to get a little bit worried.

I asked for an ECG & bloods, but wrote *"History overwhelmingly suggests gastroenteritis, diarrhoea profuse for 48 hours, now dehydrated with postural drop".*

v1.0 16/7/2017 - this is a #FOAMed personal production by Dr Linda Dykes, Dr Chris Subbe & Mr Nik Abdullah, and Bryn's wife Fiona, with additional contributions from Dr Vikas Shah & Professor Ewen Sim. Please see page 5 for further information and our contact details for feedback.

Reflect on your complaint culture

34 Identify the gaps between the organisation's aspiration to learn from complaints and staff experience. SPSO have developed a tool to allow organisations to review and assess their complaints function. This contains sections on Learning from Complaints and Culture which are both directly relevant, though the whole framework provides useful support in achieving a learning culture.

www.valuingcomplaints.org.uk/learning-and-improvement

35 Taking some or all of the steps above will promote and support staff behaviours and attitudes with resulting increases in positive staff and customer experiences.

Making complaints work in challenging situations

Disproportionate use of resources

36 The distress complaints cause staff is compounded if the actions and behaviours of the person complaining go beyond what is normally, or reasonably, expected. Managing such actions and behaviours is essential to an effective and supportive complaints environment.

SPSO comment

37 When people complain, they are generally unhappy with a service. Being unhappy may cause people to act in a way that is more challenging. A complaints process should take care to distinguish between behaviours which result from short term anger or frustration (arguably, such behaviours go with the territory) and behaviour which is inappropriate, even in the context of a complaint.

38 If a problem is not resolved, short term annoyance can escalate into something more. In a very small number of cases, people may become overly persistent or unreasonably challenging. It is essential that complaints processes help protect and preserve a citizen's rights to access services whilst also ensuring that their actions do not impact on the resources of public services to the detriment of other service users and staff.

39 Every public sector organisation should also be mindful that how one organisation treats an individual could also have an impact on the wider public sector as behaviour established with one public body may become a pattern of behaviour with all public bodies.

40 To achieve the optimum balance, SPSO expects organisations to operate a policy to manage challenging behaviour. One of our most frequently downloaded documents has been our Unacceptable Actions Policy (UAP) and in 2015 we published guidance on dealing with challenging behaviour.[22] Indeed, the Model Complaints Handling Procedures require organisations to have a clear process to deal with unacceptable behaviour.

41 It would seem then that everything is in place to enable staff to manage any difficulties they encounter. But is that really the case? We know – from the complaints we see, the calls we receive and the feedback we get from organisations' front-line staff at training sessions – that challenging behaviour still causes difficulties for organisations.

> There was this one complainer, years ago, who just wouldn't let it go. When I tried to manage it and told him I wouldn't answer the same point again he would just go and complain about me to my manager, to his councillor, to the chief exec. All sorts. In the end they just gave in and let him have his way. I was so annoyed – I'd done everything right and he'd just been a bully but he got all his own way and even got an apology from the complaints team for what I had done. I just thought 'what's the point of trying' so I just refer them straight to the complaints team now if I get any hassle.
>
> TOLD TO OUR TRAINING TEAM BY A MEMBER OF COUNCIL STAFF DURING A TRAINING SESSION ON MANAGING DIFFICULT BEHAVIOUR.

42 A report by the New South Wales Ombudsman (NSW)[23] identified an issue of disproportionate use of resources which got in the way of staff being able to do their job effectively and set out ways to deal with this. As the previous quote highlights however, the problem is not confined to the resources of the complaints team or even just to disproportionate use of resources.

Managing Challenging Behaviour

43 Every organisation has a general duty of care to protect their employees from abusive behaviour and to have a system for recording and managing potential abuse.

44 At a recent training session run by SPSO, the discussion turned to a particularly challenging situation which one of the group had encountered working on the front-line for a council. The member of staff described the actions of former client who had posted detrimental and very personal comments about them on a social media platform. They described how distressing they found it that if one of their children were to search for them on the internet then the first thing they would find would be all these offensive personal comments. The incident giving rise to the comments had happened several years ago but the person was still deeply upset by the remarks which remained out there for anyone to read.

Here's an example of how the SPSO dealt with a recent case:

A complainant was unhappy with the advice a member of SPSO staff gave him. The complainant looked up details about the staff member's previous work experience on a website. They used these details to make email contact with the staff member, a number of SPSO staff and people from other organisations. They detailed the reasons why they considered the previous experience rendered the staff member incapable of giving advice in their case.

Understandably, the staff member was upset by this especially as the information was sent to a number of people, many of whom had no connection to this case. A manager contacted the complainant and told them that this was unacceptable. The complainant noted that it was publicly available information and could therefore be used in any way they wished. The complainant was told that as the information was being used in an abusive way (to discredit the member of staff) it was not acceptable, whether or not the information was in the public domain. They were warned that future email contact would be restricted if the behaviour didn't cease.

45 At SPSO we have developed a number of tools to help our staff, including a prompt card to support staff in delivering clear and consistent messages about our UAP. You will find links to this and other relevant resources in the resources section.

46 Organisations must actively support their staff. It is not enough to have a UAP if it isn't properly used and applied.

Case studies where managing challenging behaviour went wrong

47 These are cases we have reported on over the past two years where we identified issues that arose when an organisation did not have a clear policy or did not follow their own process for managing challenging behaviour.

48 As you will see, these failings caused additional distress for the citizens involved and additional work and stress for staff often already under considerable pressure. In the worst cases we are aware of long term staff illness, absence and resignations caused directly by the stress of dealing with challenging behaviour without adequate support.

CASE STUDY

Have a dedicated policy with a clear process to manage restricting contact

Mrs & Mr C contacted a public service organisation with an enquiry. They were advised that the issue was for another organisation. When they questioned this, they were told this would be dealt with later by another member of staff. No one contacted Mrs & Mr C. Mrs C continued to try to make contact with the organisation, who did not respond to her calls and emails. When Mrs C complained, she was told that, under the unacceptable actions part of their complaints policy, staff would no longer respond to contact from Mrs C about the same issue.

We found that there should have been a dedicated unacceptable actions policy, and it was not acceptable for the organisation simply to ignore Mrs & Mr C's calls and emails. We upheld the complaint.

CASE STUDY

Provide an explanation of what would be reasonable or acceptable behaviour and explain any consequences of continuing unacceptable behaviour

Ms C made a number of complaints about her healthcare and about how her complaints were being responded to. She was told that the volume of complaints, comments and feedback she was submitting were putting a disproportionate strain on the Board's resources and impacting on their ability to assist other people. They asked Ms C to adjust her behaviour. They said they were taking action under their Unacceptable Actions Policy and would limit their responses to her complaints, focusing only on those they deemed new and of most significance. Ms C continued to submit high volumes of complaints.

While we understood what the Board was trying to do, we said that they should have explained to Ms C – before limiting their responses – what constituted acceptable behaviour and what they would do to manage her unacceptable behaviour of submitting unreasonable high volumes of insubstantial complaints. We did not recommend an apology for Ms C because, although there had been a lack of clarity on the Board's part, Ms C was well aware of the impact her actions were having on the Board and did not take the opportunity to modify her behaviour.

CASE STUDY

Keep adequate records of warnings and restrictions

Mr C complained that a council officer unreasonably barred his entry into a public event being held in a council facility.

We considered the council's actions and noted staff were entitled to take action where they considered they were likely to be subjected to unacceptable behaviour by a member of the public, acknowledging that this complied with the council's unacceptable actions policy and their policy on dignity and respect in the workplace. However the council had not kept any records of the previous occasions when they felt Mr C's behaviour had been problematic and weren't able to justify the staff action in this occasion.

We recommended that the council ensure that all incidents of unacceptable behaviour by members of the public are properly recorded in line with their own procedures.

CASE STUDY

Restrictions should be systematically reviewed using a transparent process

Ms C, a solicitor, complained on behalf of her client (Mr A) about the council's application of their unacceptable actions policy (UAP). Mr A had been in contact with the council over a number of years about matters relating to the care of his child. Following concern about the nature and frequency of Mr A's contact with the council, they notified him that they had applied their UAP to manage his contact with them.

We found that the council decided to implement their UAP after proper consideration had been given to Mr A's communications with staff. The council applied the UAP consistently and acted reasonably in not inviting either Ms C or Mr A to meetings regarding his child.

We upheld Ms C's complaint that there appeared to be an ad-hoc approach to the council reviewing Mr A's status under the UAP and lack of communication with him about this, although we were satisfied that they had since carried out a review.

CASE STUDY

Give due warnings *before* restricting access and maintain some form of access to the complaints process for any new complaints

Mr C made several complaints about treatment he received over a period of time. In particular he complained that medical staff were unwilling to give him antibiotics he thought he needed. He emailed the Board's complaints team regularly about his complaints and his ongoing health problems. The Board investigated and responded to several complaints but eventually told him that the complaints team was not able to influence his medical treatment and would not respond to further complaints about antibiotics, though they would investigate any new matters. Mr C wrote to complain about a new matter but was told his complaint was closed and would not be investigated.

We concluded that the Board did not follow their unacceptable actions policy. They should have told him as soon as they had concerns about the volume of contact he was having with them (rather than at the point of restricting access). We also found that they should have investigated his last complaint as it raised a new issue that had occurred within the last six months.

CASE STUDY

Complaining is not unreasonable behaviour. Give reasons and only apply restrictions to the person(s) acting unreasonably

Mr and Mrs C's GP practice removed them, and their daughter, from their patient list because of a breakdown in the patient-doctor relationship. Mr C said it was not clear why they had all been removed and that he had not been given a warning. He believed it was because of a complaint he had made about the practice. Mr C complained to the SPSO that he was unreasonably removed from the GP practice's list and that his wife and daughter were unreasonably removed from the list.

We found that there had been an issue during an appointment between Mr C and a practice nurse that was difficult for all concerned. However we were not satisfied that it was reasonable for the practice to remove Mr C without first warning him that his behaviour was causing staff concern and giving him an opportunity to help restore the professional relationship. We were critical that the practice had failed to give reasons for removing him and that, as a result, he was concerned that he was removed because he had made a complaint. We were not satisfied that the professional relationship with the practice had broken down, and so it was unreasonable that Mr C was removed from the list. We concluded that the practice had not complied with their contractual regulations and General Medical Council guidance.

There was also no evidence that it was reasonable for the practice to remove Mrs C's wife and child. We upheld both complaints.

Case studies where managing challenging behaviour went well

CASE STUDY

Empower front-line staff to take immediate action when appropriate

Mrs C complained that the council unreasonably delayed in moving her and her family to suitable alternative emergency accommodation. She was also unhappy that a member of staff ended a phone call, (she said) accusing her and her husband of using inappropriate language.

While we were unable to determine what was said in the phone call when Mrs C and her husband were accused of using inappropriate language, we reviewed the council's unacceptable actions policy and noted that it gave staff the authority to end calls where they consider the language being used is unacceptable. We concluded that this was a reasonable policy and staff were therefore entitled to act as they did.

CASE STUDY

Implement the Unacceptable Actions Policy properly, supported by evidence

Mr C was unhappy when a housing association restricted his contact with them by using their unacceptable actions policy. They did this because the volume and content of his emails were unacceptable. Mr C disagreed, saying that he only responded to what they sent him, and he did not think his correspondence was generally out of order.

We explained to Mr C that it was a matter for the housing association to decide what behaviours it considered to be inappropriate or unreasonable and to set this out in their policy – we would look at how they implemented the policy. Our investigation considered how the decision was taken, how it was communicated and how it was recorded and reviewed. We found the housing association explained the decision, outlined the contact arrangements, confirmed how long restrictions would be in place and recorded all this on their computer system. This meant that the housing association had done all they should have and implemented their policy reasonably. We did not uphold Mr C's complaint.

CASE STUDY

Maintain access to the complaints process and keep the restricted contact kept under review

Miss C complained that the council restricted her access to the noise complaint reporting system and unreasonably imposed restrictions on her contact with them, through their unacceptable actions policy.

Our investigation found that Miss C met the criteria for bringing the council's policy into effect, in terms of both her behaviour and her demands. Although the council told her they would not respond to emails or phone calls, they put in place alternative means for her to complain and continued to respond to her letters. We found no evidence that the council had breached their policy, and noted they had committed to a regular review of the restrictions imposed on Miss C.

Making complaints work for everyone

49 As a general principal, organisations should ensure their communication with all complainants is inclusive and their complaints process is accessible to everyone. In addition, equality law requires organisations to anticipate any barriers to disabled people having equal access to complaints policy and procedure and to make reasonable adjustments to remove those barriers. Therefore, if organisations have not already done so, they must consider whether disabled people can access their complaints policy and procedure on an equal basis with others and make sure they can. This could include making sure the complaints policy is available in alternative formats, such as British Sign Language or EasyRead. Organisations could also include a statement in their communications once a complaint has been received, that reasonable adjustments to the policy will be made for disabled people.

50 Staff handling complaints should be trained to explore with complainants whether the complaints process is accessible for them and to be aware that the duty to make reasonable adjustments applies to the complaints process as much as it does to any service provision. Ask yourself – does your organisation empower staff to ask about and make any necessary adjustments to your processes?

51 In cases we've seen we found that problems arise when the need to make a reasonable adjustment potentially conflicts with a need to restrict contact or limit access (to protect staff from abusive behaviour or to ensure the complaints process operates effectively). In the most problematic situations, the underlying cause of the challenging behaviour may be why a reasonable adjustment is needed. For example, an individual who suffers from extreme anxiety disorder may be making contact with the complaint handler several times a day because of their anxiety, but with a frequency that is preventing the complaint handler investigating the issues effectively.

52 Without guidance and support to assess what adjustments are needed and reasonable, staff can 'freeze' and either fail to make the appropriate adjustment or fail to manage the inappropriate behaviour.

SPSO comment

53 It is important that organisations can evidence that they have considered reasonable adjustments where appropriate. In a very small number of cases we have criticised organisations for not properly considering whether adjustments were needed where there was evidence to indicate it should have been. This lack of proper consideration (or of evidence of proper consideration) will mean we have no option but to conclude there has been a failing by the organisation concerned, irrespective of whether or not a reasonable adjustment is actually required. While such poor administrative practice does occur (and is avoidable) it is rare in our experience.

54 More frequently, our advice team will take a call from an organisation trying to identify good practice in coping with behaviour from a member of the public which would otherwise be considered unacceptable or unreasonable, but which they feel may result from an underlying health condition or disability.

55 We see that staff often struggle to separate out their duty to ensure the service is accessible from dealing with challenging behaviour under the UAP. A fear of getting it wrong can cause staff to panic and do nothing (allowing the unacceptable behaviour to go unchecked), or else to overreact and close down contact and access completely.

56 It is important to recognise that the duty to make reasonable adjustments does not allow someone to be abusive to staff or make unreasonable demands. The challenge for organisations is to remove barriers that may prevent someone from accessing the complaints procedure while recognising the rights of staff and reasonable use of limited resources. At the same time it is necessary to establish a method of communication that enables continued provision of service and the need to respond appropriately to challenging behaviour.

57 Here is an example of a way in which we have dealt with such a situation:

CASE STUDY

Managing challenging behaviour while making reasonable adjustments

A member of the public used unacceptable and abusive language to a member of SPSO staff during phone calls. They were told that the language was unacceptable and ultimately calls were terminated. This was reinforced in writing.

The person told us that their behaviour was a direct result of the prescription medication they needed to manage a mental health condition, and not something they could control. Their position was that we were required to make a reasonable adjustment and not restrict their contact.

We wrote again, explaining that we could make reasonable adjustments to allow continued phone contact, but reinforcing that abuse of our staff was unacceptable. We asked what we could do to avoid the times when the medication was having the adverse effect or whether we might communicate through an advocate.

58 At SPSO we have developed a number of tools to help our staff, including phrase cards to support staff proactively enquiring about where we need to make reasonable adjustments to our processes. We have also found it helpful to ask complainants upfront on our complaint form if we need to make an adjustment for them. You will find links to the phrase cards and other relevant resources in the resources section.

Overview of the Duty to make Reasonable Adjustments

59 The Equality Act 2010 recognises that achieving equality for disabled people may mean changing the way in which services, including handling complaints, are delivered. This could mean providing a service in a different way, having extra equipment or additional support available or removing any physical barriers.

60 This is the 'duty to make reasonable adjustments' and equality law says that organisations providing services to the public or performing public functions must make reasonable adjustments for disabled people. Failure to make reasonable adjustments is unlawful disability discrimination under the Equality Act 2010.

61 The duty to make reasonable adjustments aims to make sure that disabled people can use an organisation's services as close as it is reasonably possible to get to the standard usually offered to non-disabled people.

62 The duty is 'anticipatory'. This means organisations cannot wait until a disabled person wants to use its services, but must think in advance (and on an ongoing basis) about whether there are any barriers that may prevent disabled people from accessing services and what steps they could reasonably take to remove those barriers so disabled people can use the services offered. This means your complaints policy should already have reasonable adjustments built in and contain a policy about how staff dealing with complaints should consider individual reasonable adjustments.

An example of the anticipatory duty and challenging behaviour

A member of staff in a public sector organisation refuses to speak to a member of the public who is swearing and wishes to discuss his complaint form with her. The swearing is a result of him having Tourette syndrome. From his behaviour it is reasonable for the member of staff to suspect that the man may have Tourette's or another condition that means that he is unable to control the swearing, or the swearing is made worse in certain situations.

The duty to make reasonable adjustments is likely to apply here and the organisation should have anticipated the requirements of disabled people and put in place adjustments to the complaints procedure to allow people with Tourette syndrome to have equal access to make complaints.

Faced with this situation, the member of staff should think about whether there are any adjustments that could be made to allow the man to ask his questions and complete the necessary complaint form. This could mean providing a private room to complete the form, allowing him to be supported by another person or to complete the form online (or by phone) if any of these would reduce the symptoms.

Available guidance

63 The Equality and Human Rights Commission (EHRC), is an independent statutory body with responsibility for encouraging equality and diversity, eliminating unlawful discrimination and protecting and promoting human rights in Britain. This includes enforcing equality legislation and the duty to make reasonable adjustments. They have developed guidance that may be helpful when considering making adjustments. These can be found here:

www.equalityhumanrights.com/en/advice-and-guidance

64 The UK government has developed specific guidance to assist people in making reasonable adjustments for people with learning disabilities:

www.gov.uk/government/publications/reasonable-adjustments-for-people-with-learning-disabilities

65 The Equality Advisory Support Service is an organisation established to assist individuals on issues relating to equality and human rights. The 'Help' pages are principally aimed at the service user, rather than the service provider, but offer an excellent overview of the different protected characteristics and will be helpful for staff in considering when or how to make an adjustment:

www.equalityadvisoryservice.com/app/help

The particular challenges of disproportionately persistent behaviour

66 There are a very small but hugely impactful group of individuals who pursue complaints with an unusual degree of persistence and in ways that can cause harm to themselves and the agencies with which they engage. Research estimates this to be between 1 and 5 % of all complainants who take up 15 to 30% of complaint handlers' resources.

67 This type of behaviour is referred to by some as 'querulous'. In producing this report we commissioned an overview from Dr Gordon Skilling, a specialist psychiatric adviser to SPSO. While his views, summarised below, were on querulous behaviours, the underlying message is that it is the behaviour that should be the focus, not the causes.

The key messages from Dr Skilling's overview are:

- focus on the behaviour and not the possible reasons for the behaviour – your role is to manage the complaint, not to diagnose a disorder
- manage your own response / reaction first (don't take it personally, it would be the same no matter who had answered the phone!)
- allow the complainant a reasonable amount of extra time to organise their information (if the initial submissions are excessive) or to submit a more coherent complaint (but not so much as to derail the effective operation of the complaints process)
- personal abuse, hostility, aggression or violence, whilst sometimes understandable, are never acceptable
- be consistent in your organisational approach to setting boundaries and expectations. In particular do NOT tell the complainant you will no longer respond to them (on the same issue) only to then respond again to them the next time they are, inevitably, back in touch.

68 Dr Skilling also concluded that evidence suggests that these behaviours exist at the start of the complaints process and are not caused by it. They can, however, be made worse if badly handled. It also suggests that there may be occaisions where someone displaying these behaviours may not want their complaint resolved as they are invested in the process and may feel there is too much to lose if that process ends. A key challenge is to try to create a 'face saving' exit for the complainant.

69 You can find more information on how to manage unreasonable persistence in the SPSO Guidance on dealing with problem behaviour.[24]

Case Studies: making Reasonable Adjustments

CASE STUDY

Give consideration to what Reasonable Adjustment is needed at the earliest opportunity

Mr C complained that his wife, who was dyslexic, had Asperger's syndrome and suffered from anxiety, was unable to participate fully in her hospital consultation. We took independent advice from an equalities adviser who told us that the consultation booking process may not be accessible to disabled people generally.

The consultant on the day was aware Mrs C was disabled and made adjustments in line with their understanding of this. However, because this information was only read by the consultant just before Mrs C was seen, it had not been possible to plan ahead and make all the reasonable adjustments in advance (in this case to allocate more time for the appointment). It was also not clear that staff had received appropriate training about making Reasonable Adjustments.

We therefore upheld the complaint in relation to the failure to properly consider making reasonable adjustments during the booking process.

CASE STUDY

Managing the unacceptable behaviour and continuing to provide a service

A member of the public complained that an organisation was continuing to limit their access to the complaints process under the Unacceptable Actions Policy (UAP). They recognised that they had previously behaved in a violent and aggressive manner and had been excessively persistent. This behaviour was at least in part due to a mental health condition.

The individual continued to receive services from the organisation (not related to their mental health condition). There were restrictions in place to manage behaviour while these services were being delivered. The organisation would not accept complaints about those services although some time had passed since their UAP had been implemented and there was no current evidence of unacceptable behaviour in the complaints process. The organisation were reluctant to lift the complaint restrictions as they continued to manage behaviour in the provision of services to the individual.

We confirmed it was for the organisation to decide whether or not behaviour was unacceptable and to manage their service delivery accordingly. But we concluded that they should be relying on current information when applying a UAP and should review their restrictions. The organisation reflected on the situation and undertook a new assessment of the current behaviour. The UAP restriction was removed, although the organisation continued to provide services in a restricted way.

CASE STUDY

Organisations can consider reasonable use of their resources in responding, even when there is a need for Reasonable Adjustments

Miss C told us that her housing association failed to provide reasonable responses to her complaints and other correspondence and to take account of her particular communication needs arising from her autism and selective mutism.

We sought advice from a practitioner with expert knowledge of autistic conditions who noted that the association did in general communicate according to Miss C's preference for written correspondence.

We accepted that it was reasonable for the association to say they were unable to dedicate staff time to respond to Miss C with the level of detail she requested. This was beyond the level of detail they would usually provide and the response to her complaint had been sufficiently detailed. Miss C was not entitled to a different level of service in this instance.

Resources

SPSO Resources

Complaints Handling Practice Guide: Dealing with Problem Behaviour

www.valuingcomplaints.org.uk/handling-complaints/resources/dealing-with-problem-behaviour

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Unacceptable Action Policy: Occasionally, the behaviour or actions of individuals using our service makes it very difficult for us to deal with their complaint. In a small number of cases the actions of individuals become unacceptable because they involve abuse of our staff or our process. When this happens we have to take action to protect our staff. We also consider the impact of the behaviour on our ability to do our work and provide a service to others. This Policy explains how we will approach these situations.

www.spso.org.uk/unacceptable-actions-policy

Phrase Cards: Staff in the SPSO have access to prompt cards suggesting strategies and approaches that they can use when on the phone. These are not meant to be used word for word but it can be helpful to have some prompts or to be aware of language to avoid. This can help to build confidence, particularly for new staff who may worry they will forget what to do or what information they need to provide to the customer. The phrase cards available here give a few examples of the types of scenarios where you may wish to develop cards for you and your colleagues and include introducing the Unacceptable Actions Policy.

www.valuingcomplaints.org.uk/handling-complaints/resources/phrase-cards

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SPSO Complaints Improvement Framework: The Complaints Improvement Framework has been developed to help organisations assess and demonstrate the efficiency and effectiveness of their overall complaints handling arrangements. This includes how well the organisation handles and responds to complaints, how it supports its staff and how it learns from complaints.

www.valuingcomplaints.org.uk/learning-and-improvement/complaints-improvement-framework

Other Resources

Engagement for Success

This is a UK Government funded website with various resources training materials to assist organisations seeking to increase employee engagement.

http://engageforsuccess.org/engaging-for-success

Equality Advisory Support Service

EASS is an organisation established to assist individuals on issues relating to equality and human rights. Their 'Help' pages are principally aimed at the service user, rather than the service provider, but offer an excellent overview of the different protected characteristics and will be helpful for staff in considering when or how to make an adjustment:

www.equalityadvisoryservice.com/app/help

Equality and Human Rights Commission

The EHRC have developed guidance that may be helpful when considering making adjustments. This can be found here:

www.equalityhumanrights.com/en/advice-and-guidance

Institute for Healthcare Improvement

IHI are an international organisation who undertake research and develop materials and training to support those working to improve quality in healthcare. One particular strand of their work, **Joy in Work**, offers a number of resources and ways to promote new thinking with the aim of producing a workforce that thrives rather than perseveres.

www.ihi.org/Topics/Joy-In-Work/Pages/default.aspx

Royal Cornwall Hospitals NHS Trust

RCHT have developed a policy and form to prompt discussions with staff about the support they might need when they are involved in a workplace incident, complaint or legal claim. This is based on work undertaken originally by the NHS Litigation Authority in England.

https://doclibrary-ncht.cornwall.nhs.uk/DocumentsLibrary/RoyalCornwallHospitalsTrust/HumanResources/OccupationalHealth/SupportingStaffInvolvedInAnIncidentComplaintOrClaim.pdf

UK Government Guidance

The UK government has developed specific guidance to assist people in making reasonable adjustments for people with learning disabilities:

www.gov.uk/government/publications/reasonable-adjustments-for-people-with-learning-disabilities

Endnotes

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Appendix 1

A word about language and the DESC framework

- There are many different terms used to describe problematic complainant behaviour and the choice of language here is important.
- Language commonly used includes 'unreasonable' complainant conduct, 'unacceptable' actions, 'difficult' behaviour, and 'vexatious' customers. Terms like vexatious mirror the terminology used by courts and legislation (such as FOISA) to describe individuals or their actions when there is a deliberate intention to disrupt proceedings in or out of court. This report refers frequently to challenging behaviour.
- What constitutes challenging behaviour will vary from person to person and is very context dependent. What you may find difficult, for example shouting or use of bad language, may not even register for a colleague. But, accuse them of not doing their job correctly and they may quickly become irate. In a training session a customer service receptionist once told the SPSO trainers that they got very annoyed when people told them that 'they pay my wages'. Since this happened several times a day this was a real difficulty that they needed to learn how to deal with. The SPSO and NSW guidance both give lots of advice and suggestions for the many different situations which people may find difficult.
- When the discussion turns to 'unreasonable'' and unacceptable' we are moving beyond any personal dislikes or triggers. We are assessing behaviour by an objective standard of what is reasonable and acceptable. This standard should be set for us by our organisation and it is the impact on our organisation's resources (which includes us as staff members) which we need to manage. Every organisation needs a clear policy for managing this type of behaviour.
- SPSO prefer not to use the term 'vexatious' in a complaints context as it is emotive and relies on knowing or making assumptions about the complainer or their motives. We will rarely know 'why' someone is complaining (beyond being dissatisfied with the service they received) and labelling something as vexatious can lead to unhelpful speculation and presumption that prevents us actually addressing with the problem.
- The use of simple tools such as the DESC technique allows us to discuss the problem behaviour without the need to resort to personal judgement. The DESC technique can also be helpful in identifying where the challenging behaviour is the result of an underlying issue, for example a health issue, vulnerability or additional communication need, that can reasonably be addressed with an adjustment to our processes.

DESC

Describe what it is that the person is doing that is causing the problem: *'You are shouting at me'* or *'You are emailing me large volumes of information every day'*

Explain why that behaviour is a problem for you (how else will they know otherwise?): *'When you shout I can't understand what it is you need from me'* or *'When you email me a lot of information like this I need to take time to print it, read it and file it and I can't get on with trying to resolve the problem because of this.'*

Suggest what they can do that is acceptable: *'If you can help me understand your problem today, I can look into this for you.' 'If you can limit your emails and only send me any new and directly relevant information, I will be able to get you an answer all the sooner.'* This is often as much as is needed to manage a situation but if the behaviour persists then you need to discuss

Consequences Explain what will happen if they don't modify their actions. *'If you can't stop shouting at me I will need to end this phone call as we are not getting anywhere.' 'If you can't stop emailing me such large volumes of unnecessary information I will need to block your email address.'*

If you do get as far as consequences then you MUST 1) make a record of your actions and 2) follow-through with the consequence otherwise the challenging behaviour may well escalate.

SPSO Scottish Public Services Ombudsman

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January 2023: amendments were made to outdated content within this report.