

Policy: Managing Unreasonable Conduct by a Complainant

Purpose

This document sets out how NSW Trustee and Guardian will manage unreasonable conduct by a complainant (MUCC).

It aims to:

- ensure equity and fairness for all complainants – regardless of their conduct
- ensure staff feel confident and supported in managing unreasonable complainant conduct and act fairly, consistently, honestly and appropriately
- promote ways and strategies to develop positive interactions with complainants
- ensure staff safety.

Policy statement

NSW Trustee and Guardian recognise staff are involved in complex, difficult decisions which can be stressful. Complainants may include people who are vulnerable, experiencing a loss of control due to a financial management or guardianship order, people experiencing frustration or a lack of understanding of processes and/or dealing with grief and because of this situation, this may have a significant impact on the communication support needs of the person and the interaction with staff members.

NSW Trustee and Guardian is committed to effective complaint handling by applying the six commitments set by the NSW Ombudsman's office to effective complaint handling. The six commitments are:

1. respectful treatment
2. information and accessibility
3. good communication
4. taking ownership
5. timeliness
6. transparency.

The information in this policy relates to people making complaints through the formal complaints process and is based on the [Managing Unreasonable Conduct by a Complainant Manual](#) published by the NSW Ombudsman.

1. Defining unreasonable conduct by a complainant

Most people act reasonably and responsibly in their interactions with NSW Trustee and Guardian, even when they are experiencing high levels of distress, frustration and anger. However, in a small number of cases some people behave in ways that are inappropriate and unacceptable – despite the best efforts of staff to assist them.

The NSW Ombudsman’s Managing Unreasonable Conduct by a Complainant Manual defines unreasonable conduct as:

“any behaviour by a person which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for the people involved in the complaint process.

These can include

- *the organisation responsible for handling a complaint,*
- *the case officer(s) dealing with a complaint,*
- *any subjects of complaint,*
- *the person who made the complaint (potentially including members of their families and friends),*
- *other people who have or make a complaint,*
- *and other service users.*

Unreasonable conduct can happen anywhere. It is not limited to telephone communications or face-to-face interactions. It can also take place online or in written correspondence. So far as a person’s conduct is unacceptable and arises during the course of, or as a direct result of, professional work/services provided by an organisation or its staff, it can legitimately be characterised as unreasonable conduct for the purposes of this manual.”

2. What is considered unreasonable conduct?

NSW Trustee and Guardian may consider conduct unreasonable, whether it is a “one off” or ongoing, if it involves one or more of the following:

- Unreasonable persistence – where the complainant continues to persist with issues even though they have been finalised, refusing to accept a final decision and sending excessive amounts of correspondence/contact
- Unreasonable demands – complainants insisting on outcomes that can’t be provided or outcomes that aren’t possible
- Unreasonable lack of cooperation – complainants providing disorganised, excessive or irrelevant information, or not providing information requested
- Unreasonable arguments – complaints that are trivial, illogical or not evidence based
- Unreasonable behaviours – acting aggressively or rudely, being abusive or threatening.

NSW Trustee and Guardian has a zero-tolerance policy of actual or threatened acts of harm or abuse towards its staff.

3. Responding to unreasonable conduct by a complainant

The goal in managing unreasonable complainant conduct is to manage the impact of their conduct or behaviour by changing or restricting contact with NSW Trustee and

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Guardian. This may include who the complainant can have contact with, what they can raise with us, and when, where and how they make contact.

Prior to changing or restricting a complainant's contact with NSW Trustee and Guardian, the complainant will be provided with a written warning giving them the opportunity to change their behaviour. If a complainant is on restricted contact, they will still be able to access services.

4. Decision to modify or restrict contact of a complainant

- Decisions to modify or restrict a complainant's contact takes into account the complainant's personal circumstances and/or communication support needs and, if relevant, the role the staff member or organisation has played in exacerbating the unreasonable conduct.
- Decisions to modify or restrict a complainant's contact with the agency are approved by management. There needs to be clear documentation and evidence of unreasonable conduct prior to implementation of any restrictions.
- If a person's unreasonable conduct is a result of disability, appropriate strategies are developed to address that conduct of the complainant. Any risk the person's conduct poses to the work of the organisation, and to the health and safety of the staff and members of the public using the premises are carefully assessed, and risks mitigated. Any strategies developed must not be more restrictive than they need to be for everyone involved, but safety of all must be considered.

5. Withdrawing or restricting a complainant's access to services

NSW Trustee and Guardian would only consider withdrawing a complainant's access to services if the person:

- is consistently abusive, threatens, harasses, stalks or intimidates a staff member and/or their family members
- is physically violent and/or causes property damage while on our premises
- makes threats to staff or other members of the public using the services or at our premises.
- produces a weapon or makes bomb threats
- engages in conduct that is otherwise unlawful.

All unlawful behaviour, including physical violence, assault, producing a weapon, threats to personal safety will be reported to NSW Police.

If the services provided are essential to the physical or mental wellbeing of the customer, we may need to modify the way services are delivered to the complainant using alternative service arrangements, rather than withdrawing or withholding it completely.

This could include:

- having security guards on the premises for face-to-face interviews
- consider having relevant materials delivered to the customer's home, rather than having them collect it from office premises.

6. Review of restriction

Any restriction will have a set time period and be regularly reviewed with no more than 12 months after the restriction was put in place.

The complainant on a contact restriction has the right to request an internal review of a restriction decision. There is no jurisdiction to request an external review of a reviewed restriction decision, however the NSW Ombudsman can be contacted by the complainant if they have concerns about the handling or management of the restriction.

If a person requests an internal review, the review will be conducted independently from the staff member that made the original decision.

7. Document information

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