

OFFICE OF THE OMBUDSMAN FOR BERMUDA

UNACCEPTABLE BEHAVIOUR POLICY

Purpose

The Office of the Ombudsman (“Office”) believes that everyone that interacts with the Office deserves to be treated with respect and has the right to be heard. We work hard to be open and accessible to all.

There are occasions, however, in which a service-user’s actions become unacceptable and constitute abuse of our staff or our process. When this happens, we must consider the impact of unacceptable behaviour on our ability to do our work and provide a service to others. This Policy explains how we will approach these situations.

Policy Statement

This Policy does not seek to explain how we will approach every situation; it is intended as a general policy statement which sets out:

- some of the actions our Office considers unacceptable; and
- our general approach to addressing unacceptable behaviour including the types of actions we may take.

We recognise that some people who turn to our Office can be frustrated and upset and may have difficulties communicating. With this Policy it is our intention to consider the particular circumstances of each case and strike a balance between meeting our obligations to a service-user and the need to safeguard our staff and our processes from abuse.

Authority

This Policy has been issued by the Ombudsman.

Application and Scope

This Policy applies to all public officers and employees of the Office as they carry out the Office’s case management function.

This Policy is the point of reference for all case management practices and procedures that address communications with and services for service-users.

Statutory Obligations

The Ombudsman Act 2004 (“Act”) does not obligate the Ombudsman to investigate all complaints. Under s.9 of the Act, the Ombudsman may decide not to investigate a complaint when he is satisfied that a complaint is frivolous, vexatious or not made in good faith (s.9(1)). Additionally, he may decline to investigate a complaint in cases where

the complainant knew of the administrative action complained of for more than one year before the complaint was lodged or if there is an existing procedure to address the complaint which the complainant has not pursued.

What constitutes unacceptable behaviour?

The Office frequently assists individuals during times of crisis when upsetting circumstances have led a person to reach out for help from us. Complainants also often feel strongly about their cases.

We consider the following unacceptable behaviour which we aim to manage with this Policy:

- behaviour that is aggressive or abusive towards our staff; and
- unreasonable demands on our Office.

Hostile or Abusive Behaviour

Complainants may be angry about their complaints; however, we consider it unacceptable for anger to escalate into aggression towards our staff. Any hostility or abuse towards staff will not be accepted. We consider abuse to be behaviour or language (whether verbal or written) that may cause staff to feel afraid, threatened or abused, and may include threats, derogatory remarks, and offensive language used towards staff. We also consider inflammatory statements and unsubstantiated allegations to be abusive behaviour.

Unacceptable behaviour or demands

We understand the importance and urgency of the matters for which people seek this Office's assistance. We will always consider making reasonable adjustments for a person with a disability if we are asked to do so. However, there are times when the behaviour of a complainant negatively impacts our Office to such a degree that it becomes unacceptable. When determining whether demands or behaviour are unacceptable we consider whether they unjustifiably require excessive amounts of staff time or resources and as a result disadvantages other complainants.

Examples of such behaviour include, but are not limited to:

- refusing to specify the grounds of a complaint, despite offers of assistance;
- refusing to cooperate with the case management process;
- refusing to accept that certain issues are not within our jurisdiction to investigate;
- insisting on the complaint being dealt with in ways that are incompatible with our procedures or with good practice;
- making unjustified complaints about staff and seeking to have them replaced;
- changing the basis of the complaint as we proceed with our process;
- denying or changing statements made at an earlier stage;
- raising numerous, detailed but unimportant questions and insisting that they be answered;

- covertly recording meetings and telephone conversations;
- submitting falsified documents;
- making excessive demands on the time and resources of staff with lengthy telephone calls or detailed communications every few days, and expecting immediate responses;
- submitting repeat complaints with minor additions/ variations and insisting these are ‘new’ complaints;
- refusing to accept the Office’s determinations;
- repeatedly arguing particular claims without presenting new evidence to support them;
- repeatedly demanding responses within an unreasonable timescale;
- insisting on seeing or speaking to a particular member of staff or the Ombudsman when that is not possible or necessary; and
- insisting on a face-to-face meeting when we do not consider it necessary.

Unacceptable level of contact

We understand that complainants may seek to provide additional information to us or wish to be updated on the progress of their case. However, we may take action under this Policy if the volume and the length of contacts an individual makes to our Office negatively impacts our ability to do the work of the Office. This can occur over a short period, for example, a number of telephone calls in one day or one hour. It may occur over the lifespan of a complaint when a service-user repeatedly makes long telephone calls to us or inundates us with long letters or copies of information that has been sent already or that is irrelevant to the complaint.

We consider that the level of contact has become unacceptable when the amount of time spent talking to a service-user on the telephone, or responding to, reviewing and filing written correspondence impacts on our ability to deal with that complaint, or with other people’s complaints.

Unacceptable use of complaints process

Individuals have the right to make more than one complaint about an authority with which they have a continuing relationship.

However, repeated complaints can become 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.

Actions We May Take

We must take action when unacceptable behaviour impairs our ability to carry out the work of this Office.

When we take action we seek to address the unacceptable behaviour and try to minimise the impact on the complaint lodged with the Office. We will try to ensure that any action we take is the minimum required to solve the problem, taking into account relevant personal circumstances including the seriousness of the complaint and the needs of the individual.

Where a complainant repeatedly phones, visits the office, raises repeated issues, or sends large numbers of documents that are not relevant to the complainant's case with our office, we may decide to:

- limit contact to telephone calls from the complainant at set times on set days;
- restrict contact to a nominated member of staff who will deal with future calls or correspondence;
- restrict contact to writing only;
- return any documents that are deemed not to be relevant to a case; and
- take any other action that we consider appropriate.

Where we consider continued correspondence on a wide range of issues to be excessive, we will tell a complainant that only those matters within our remit will be considered. We are only able to consider complaints which have been fully considered by an authority.

We will always tell a complainant what action we are taking and why.

How we make Decision under this Policy

Any member of our Office that directly experiences aggressive, abusive or bullying behaviour has the authority to deal immediately with that behaviour in a manner they consider appropriate and in line with this Policy.

Aside from such decisions taken at the time of an incident, the Office will only deem behaviour unacceptable after careful consideration by the Ombudsman or Deputy Ombudsman.

Wherever possible, we will give a complainant the opportunity to change their behaviour before an action is taken.

Notifying a Complainant of our Decision

When one of our members of our Office makes an immediate decision in response to aggressive, abusive or bullying behaviour, a complainant will be advised of the decision at the time of the incident or as soon as practical after the incident.

When a decision has been made by the Ombudsman or Deputy Ombudsman, a complainant will be given the reasons for our decision in writing (or another form of communication when requested). If the Office decides to take action in response to unacceptable behaviour, we will provide details of our planned action, including any restrictions we are imposing and how long the restriction will be imposed.

How we record and review a decision to restrict contact

We record all incidents of unacceptable actions. Where it is decided to restrict a complainant's contact with our Office, an entry noting this is made in the relevant file.

Monitoring

The Office will record instances in which we determined that behaviour was unacceptable and the action we took. This will allow us to ensure we are applying this Policy consistently.

Roles and Responsibilities

The Ombudsman has overall responsibility for ensuring that the Office complies with the requirements of legislation affecting the provision of services to the public. The Ombudsman will also make determinations of whether or not behaviour is unacceptable in instances that are escalated by the Deputy Ombudsman (including cases in which it may be necessary to contact the Police or the seriousness of the behaviour requires escalation to the Ombudsman).

The Deputy Ombudsman is responsible for:

- ensuring that this Policy is implemented effectively;
- making determinations of whether or not behaviour is unacceptable based on a written report of alleged unacceptable behaviour provided by the Investigations Officer or other members of staff. They may escalate a case to the Ombudsman in certain instances (e.g. when the behaviour may require contacting the Police or the seriousness); and
- ensuring that the Office monitors the unacceptable behaviour decisions made and any requests for review of these decisions, including the outcome of these reviews.

The Investigations Officers are responsible for:

- alerting service-users to our Unacceptable Behaviour Policy; and
- compiling a written report of alleged unacceptable behaviours and requesting a decision be made by the Ombudsman or Deputy Ombudsman.

Requesting a review of an Unacceptable Behaviour Decision

It is important that a decision can be reconsidered. A complainant can request a review of a decision to restrict contact. We will only consider arguments that relate to the restriction and not to either the complaint made to us or to our decision to conclude a complaint.

A review could include, for example, claiming that actions were wrongly identified as unacceptable, the restrictions were disproportionate, or that a complainant will be adversely impacted because of personal circumstances.

A senior member of staff who was not involved in the original decision will consider the request for a review (“Reviewer”).

The Reviewer has the discretion to remove or vary the restriction as they think best. The Reviewer will make their decision based on the evidence available to them. The Reviewer must advise the complainant in writing (which can be supplemented if written communication is not the most appropriate form for the complainant) that either the restricted contact arrangements still apply or a different course of action has been agreed.