

Parliamentary and Health Service Ombudsman (PHSO) Casework Policy and Guidance

Unreasonable behaviour policy

Policy statement [\[link\]](#)

What is unreasonable behaviour? [\[link\]](#)

What to do if a complainant exhibits unreasonable behaviour [\[link\]](#)

Issuing a warning [\[link\]](#)

Process for requesting the application of the policy [\[link\]](#)

If the policy is not applied [\[link\]](#)

If the policy is applied [\[link\]](#)

Complaints about decisions to apply the policy [\[link\]](#)

Extreme behaviour [\[link\]](#)

Modification of behaviour [\[link\]](#)

Reviewing decisions to apply the policy [\[link\]](#)

Further complaints and information requests [\[link\]](#)

Variation of these procedures [\[link\]](#)

Policy statement¹

1. The Ombudsman is often the last resort for customers who feel that their complaint has not been addressed and we are concerned to ensure that we have fully understood the issues which they raise with us.

2. We are committed to dealing with all customers fairly and impartially and to providing a high quality service. As part of this service we do not normally limit the contact customers have with this Office. However, we do not expect our staff to tolerate behaviour by customers which is, for example abusive, offensive or threatening, or which because of the frequency of the contact with this Office, hinders our consideration of complaints and we will take action to manage such behaviour.

3. We will make every effort to ensure that our service is accessible to all of our customers. To achieve this outcome we will make reasonable

¹ Paragraphs 1-8 are the policy statement that should be sent to a customer when a warning is applied. This text should also be used for the policy statement on the website.

adjustments to meet the individual and particular needs of anyone who contacts us.

4. When we consider that a customer's behaviour is unreasonable we will tell them why we find their behaviour unreasonable and we will ask them to change it. If the unreasonable behaviour continues, we will take action to restrict the customer's contact with our Office.

5. The decision to restrict access to our Office will only normally be taken after we have considered possible adjustments to our service which may help the customer to avoid unreasonable behaviour. The decision will be taken at Director level (or above). Any restrictions imposed will be appropriate and proportionate. The options we are most likely to consider are:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer;
- restricting telephone calls to specified days and times;
- asking the customer to enter into an agreement about their future conduct; and/or
- asking the customer to contact us through an advocate.

6. In all cases we will write to tell the customer why we believe their behaviour is unreasonable, what action we are taking and the duration of that action. We will also tell them how they can challenge the decision if they disagree with it and we will consider any challenge under our 'complaints about us' policy.

7. Where despite any adjustments we have made, a customer continues to behave in a way which is unreasonable, we may have to decide to terminate contact with that customer.

8. Where the behaviour is so extreme that it threatens the immediate safety and welfare of the Ombudsman's staff or others, we will consider other options, for example, reporting the matter to the Police or taking legal action. In such cases, we may not give the customer prior warning of that action.

What is unreasonable behaviour?

9. It is difficult to provide a definition of what constitutes unreasonable behaviour. Such judgments will depend very much on the individual situation of the person concerned. The policy statement gives examples of behaviour that is abusive, offensive or threatening and also where the level of contact hinders our consideration of complaints.

10. Such behaviour can be shown in a variety of circumstances including in person, on the telephone or in written or email correspondence. Factors we should take into account include the type and level of contact as well as the

frequency of contact, content of contact and the level of disruption caused. Please note that it is not a requirement for all of these factors cited in the policy statement to come into play for the policy to be enacted. For example, a series of disruptive calls which contain no abusive content may be suitable for action to be taken under this policy as might a single call which contains a specific threat against a member of staff.

11. When making judgments about what is unreasonable behaviour we will take into account any relevant equality or diversity issues. For example, a complainant with a disability might find it difficult to behave in a way that we consider reasonable unless we have considered, and where appropriate made, adjustments to our service to make this possible.

What to do if a complainant exhibits unreasonable behaviour

12. If a complainant behaves in an unreasonable way then it is important that we tell them that we consider their behaviour unreasonable, explain why, give them the opportunity to stop that behaviour and consider whether we can adjust our service to help them do this. (Note: this explanation can, if necessary, be given at the same time as a warning [link] about the potential application of this policy. Such a decision should be taken on the individual circumstances of the case).

13. In some circumstances a member of staff may not feel comfortable in challenging unreasonable behaviour and should not risk their personal safety to do so (particularly if the behaviour is threatening and/or displayed in a face-to-face setting such as a visit or interview). In those circumstances it is important that the details of the complainant's behaviour are noted on Visualfiles as soon as possible after the event and discussed with line managers to allow appropriate action to be taken.

14. Examples of when to challenge unreasonable behaviour:

- If a complainant uses offensive language during a telephone call then it should be explained to them that their use of such language is unreasonable and they should be asked to stop. For example, by simply saying 'Please don't swear at me'. If the complainant refuses to comply with that request then they should be advised politely that the call will be terminated and then the call should be ended. A note of the call and the reasons for terminating it should be added to Visualfiles as soon as is possible and discussed with a manager.
- If a complainant uses offensive language in letters or emails then our next written response to them should explain that the language they have used is unreasonable and ask them not to do this in future correspondence.
- If a complainant makes repeated telephone calls without legitimate purpose (for example, to ask about progress on their case when they have recently been fully apprised of that) then it should be explained to them that their behaviour is disruptive to the staff being contacted and is preventing work on their case and others; they should be asked to stop doing this. If the complainant refuses to comply with that

request then further calls can be terminated politely after a brief explanation (for example, that we have nothing further to add to the last update given on the case).

- If a complainant sends repeated letters or emails without legitimate purpose (for example, if they send one letter each day which does not add anything to the evidence in support of their case) then our next written response to them should ask them to limit the level of their correspondence.

15. It is important that full details of any behaviour considered to be unreasonable by complainants are logged on Visualfiles. This should include noting specifically the type and frequency of contacts and details of, for example, offensive terms used. So, instead of saying 'During the call Mr A made a number of racist remarks', we should record explicitly the language used and give as much information as possible as to how and when it was used.

16. In seeking to manage a complainant who is displaying unreasonable behaviour it may be appropriate to approach their advocate or representative (if they have one) at an early stage to ask for their assistance in understanding and managing the behaviour or to suggest that they consider getting an advocate. This may be particularly relevant if there are equality or diversity issues (for example, if the complainant has a disability which directly affects their behaviour).

17. In all cases of unreasonable behaviour the member of staff should discuss the appropriate response and seek support from their line manager. If we are aware of specific reasons why such behaviour is being shown we should consider an appropriate plan to manage it.

Issuing a warning

18. Before we will consider applying the policy a warning will normally be given to the customer. This can be done by the member of staff dealing with the case or another member of staff as appropriate (for example, Manager or Director).

19. The warning should explain:

- why we consider the behaviour to be unreasonable; and
- the likely consequences of any continuation.

20. The customer concerned should also be sent a copy of the policy statement (paragraphs 1-8 above; also available on PHSO's website). Ideally, warnings will be given in writing as this provides a clear statement for the customer and also presents a clear audit trail for our records. If it is necessary to give a warning over the telephone or face-to-face then a copy of the policy statement should be sent to the customer as soon as possible afterwards, with a brief letter reiterating the warning. A letter of warning should (if appropriate) also make clear our willingness to discuss a reasonable adjustment to our service if this would be helpful.

21. Where a Member of Parliament and/or a representative has been involved in the case, we should also tell the customer that, if the unreasonable behaviour continues and we decide to apply our policy, the MP and/or the representative will be notified of that.

22. The decision to give a written warning should be discussed in advance with a Manager. If the warning is given in a telephone call or face-to-face setting then the member of staff who gave the warning should advise their Manager as soon as possible after the event.

23. The issuing of a warning should be recorded fully on Visualfiles by noting the individual's details screen (this screen can be accessed by either searching for the individual by name or by accessing their person details from a case).

- On the individual's screen select '*Behaviour policies*' then '*Apply warning*' (if a previous warning exists the option to '*View existing warnings*' or '*Create a new warning*' appears).
- Complete the mandatory comments box: which should summarise the reasons for the warning being given and contain a brief note of the discussion with the manager.
- Select the manager with whom the warning was discussed from the list of staff.

Existing (or previous) warnings can be looked at by selecting '*View warnings*' from the '*Behaviour policies*' screen.

24. Where the behaviour of the customer is particularly serious, a decision may be taken at Director level to apply the policy without prior warning to the complainant. In that event, the member of staff authorising the application of the policy will write immediately to the customer explaining the reasons for doing so.

Process for requesting the application of the policy

25. Where a customer has been given a warning and we have considered possible adjustments to our service, but, the customer continues to behave in a way which is unreasonable, then a request to apply the policy should normally be made.

26. The case should be escalated via line management to Director level (**PHSO policy requirement**). The member of staff proposing that the policy be applied should provide:

- a summary of the evidence for applying the policy;
- information about any extenuating circumstances or particular needs of the customer;
- relevant documents; and
- what steps they consider appropriate to control the adverse effects of the customer's behaviour; and

- the proposed duration of any restrictions.

27. The Director will then consider the evidence, make any necessary further enquiries and will decide whether to apply the policy and will record the decision and reasons on Visualfiles along with a decision about who should conduct any further communication with the customer.

28. As part of this consideration the Director should, in consultation with other staff as appropriate, consider whether restrictions need to apply to any other existing enquiries, reviews, investigations or information requests that the customer has outstanding with PHSO.

If the policy is not applied

29. If it is decided not to apply the policy then the Director will consider:

- the need for advice and support to staff dealing with the customer;
- changing the officers dealing with the customer; and
- the need for a plan to manage the customer's behaviour.

If the policy is applied

30. There is a range of actions that may be appropriate and the action applied will depend on the nature of the customer's behaviour.

31. Any action taken must be reasonable and proportionate. In deciding such action the Director will balance the interests of the customer with the duty to protect the health, safety and welfare of our staff.

32. Possible actions include:

- requesting contact in a particular form (for example, letters only);
- requiring contact to take place with a named officer;
- restricting telephone calls to specified days and times;
- asking the customer to enter into an agreement about their conduct; and/or
- actions designed specifically to meet the needs of the customer.

33. The action will be applied for a set period and the Director will set a date for a review (**PHSO policy requirement**). The first review should normally be held not longer than six months after the original decision. In exceptional cases the Director may decide to apply the policy for a longer period.

34. The Director will then write a letter to the customer including the following (**PHSO policy requirement**):

- the reasons for the decision;
- the requirements the customer must follow and any adjustments we will make to assist this;
- the date set for review;
- how the customer can challenge the decision;

- a warning that continued unreasonable behaviour may lead to the case being closed or investigation being discontinued; and
- where relevant, that the MP/representative has been notified of that action.

35. A decision to apply the policy should be recorded fully on Visualfiles by (or on behalf of) the Director authorising the decision.

- On the individual's screen select '*Behaviour policies*' then '*Apply policy*'.
- Select the Director who approved the decision to apply the policy.
- Select the date on which the application of the policy should be reviewed.

Relevant details about the restrictions imposed should then be added.

- Select '*Add/view restrictions*' (if previous restrictions exist the option to '*View existing restrictions*' or '*Create a new restriction*' appears).
- Choose the restriction type from the list that appears.
- Complete the mandatory comments box: which should summarise the restrictions imposed.
- Select the manager with whom the application of the restriction was discussed (note: in many cases this will be the Director who authorised the application of the policy).

Existing or previous restrictions can be viewed by selecting '*Add/view restrictions*' and then '*View existing restrictions*'.

36. In the face of continued unreasonable behaviour the Ombudsman or Chief Operating Officer on the recommendation of an Operations Director may decide to terminate contact with a complainant completely (which would also have the effect of closing/discontinuing any active assessment, investigation or review under consideration by PHSO at that time). This may be appropriate, for example, where a customer refuses to comply with restrictions on contact that we have imposed under this policy. In such cases we will read all correspondence from that complainant, but will send an acknowledgement only unless there is fresh evidence which affects our decision on the complaint.

37. It is essential that the information relating to the application of this policy on Visualfiles is kept updated, particularly if the restrictions on contact are altered/varied or removed.

Complaints about decisions to apply the policy

38. If the customer disagrees with the decision to apply the policy, the Director will refer the file to the Review Team, who will arrange for the complaint to be considered in accordance with the PHSO Complaints about us policy. A response to any such complaint will be signed out by the Ombudsman unless specifically delegated.

Extreme behaviour

39. In exceptional cases, the behaviour of the customer may pose an immediate threat to the health, welfare or safety of our staff. In such circumstances, the Director may decide to take action without prior warning to the customer. They may also consider Police involvement and/or initiating civil or criminal proceedings. A record must be kept of this decision, clearly recorded on Visual files and notified to the Chief Operating Officer or Ombudsman.

Modification of behaviour

40. If at any point before the review date the officer dealing with the complaint believes that the customer has modified their behaviour to the extent that the restrictions should no longer apply, then they should refer the matter to their Director with a proposal to remove the restrictions.

41. Removal of restrictions can be agreed at Director level. If a decision is taken to remove restrictions before the set review date then written notification should be sent to the customer. Any such notification should make clear that resumption of the previous behaviour could lead to restrictions being reimposed or further restrictions imposed.

Reviewing decisions to apply the policy

(Note: this section applies to review dates set when the policy is applied, not to reviews of any objections made as a complaint about us.)

42. The person reviewing the decision will have been identified when the policy was applied. It will normally be the Director who took the decision to apply the policy. The review date will have been recorded on Visualfiles when the policy was applied (see paragraph 35)

43. When reviewing a decision to apply the policy, the reviewer will take into account the evidence and reasons for making the original decision, and any evidence of the customer's subsequent behaviour. The reviewer will also seek comments from appropriate staff and consider the effectiveness of any adjustment we have made.

44. If the reviewer decides not to extend the original decision for a further period, the special requirements imposed on the customer will lapse. If, at the time of the review, there is continuing contact with the customer, the reviewer will write to the customer explaining the decision. The decision will also be noted on the case file and on Visualfiles. If the customer is not in regular contact then we will not re-establish contact to inform them of the decision, but would advise them of the decision if and when they make contact again. (PHSO policy requirements)

45. If the reviewer decides to extend the original decision, they will set a further period of a maximum of twelve months, on the expiry of which there will be a further review. If it is proposed that the restrictions should continue to apply as a result of that further review the Ombudsman should be consulted. (PHSO policy requirements)

46. If, at the time of the decision to keep any restrictions in place, there is continuing contact with the customer, the reviewer will normally write to the customer explaining the decision. The reviewer will inform the customer of the decision in writing and explain the reasons for it, and the time period for any further restrictions. Any objections to that decision will be considered under the PHSO Complaints about us policy. If the customer is not in regular contact then we will not re-establish contact to inform them of the decision, but would advise them of the decision if and when they make contact again.

47. The review of the policy should be recorded fully on Visualfiles by (or on behalf of) the Director carrying out the review.

- On the individual's screen select '*Behaviour policies*' then '*Policy review*'.
- Select the Director who reviewed the application of the policy.
- Select the outcome of the policy review: '*Continue*', '*Revised restrictions*' or '*End application of policy*'.
- If '*Continue*' or '*Revised restrictions*' are selected then a further review date must be entered.
- Before '*End application of policy*' can be recorded there must be no current restrictions in place. To end a current restriction select '*Add/view restrictions*' and then '*View existing restrictions*'. Highlight the relevant restriction and then press '*Select restriction*'. You can then select '*End date*' and will be prompted to enter the name of the manager who approved the ending of the restriction (which may also be the Director who reviewed the application of the policy).

Further complaints and information requests

48. Restrictions under this policy are generally applied to an individual. However, there may be circumstances in which restrictions may be applied on a case-specific basis. This will depend on the individual circumstances of the case.

49. If a customer who has had restrictions applied under this policy seeks to make a fresh complaint then a Director (normally the Director who applied the policy) should be consulted in order for a decision to be reached on how to respond to that further contact.

50. If a customer who has had restrictions applied under this policy makes a Freedom of Information request or Data Protection Act subject access request then a Director (normally the Director who applied the policy) and Head of FOI/DPA should be consulted for advice.

Variation of these procedures

51. These procedures may be varied in individual circumstances or on a specific issue by agreement with the Ombudsman or an Executive Board Member.