

Responding to challenging situations

Introduction

We understand it can be difficult to know what approach to take when faced with behaviour that might be unacceptable. Some service providers feel unsure of the process they should follow and the level of behaviour they should tolerate when trying to provide a reasonable level of service, and when it may be appropriate to end an instruction.

This guidance is intended to support service providers when they are responding to challenging situations and to help them understand the approach the ombudsman would expect. It sets out the areas we would expect you to consider when handling challenging situations.

Have a clear policy and process in place

It is helpful to have a clear policy in place, so your staff know what is and isn't acceptable.

Things that you might want to include are:

1. What does your firm consider to be unacceptable behaviour?

Think about what is unacceptable for your firm, bearing in mind your client group. If a large proportion of your work relates to areas such as mental health or perhaps emotional issues such as family cases, then your threshold is likely to be higher than conveyancing for example.

These are just some of the behaviours that could be included:

Unacceptable conduct:

- Language
- Being patronising
- Shouting/talking over you
- Threatening behaviour

Unacceptable demands:

- Asking you to act inappropriately /against code of conduct
- Placing you in a conflict of interest
- Expecting unrealistic outcomes

Persistence:

- Excessive calls/requests
- Refusing to accept advice
- Repeating previous conversations

Case study – excessive calls/requests:

A consumer is continually calling the service provider in a divorce case wanting updates over and above what was agreed. The service provider handled this reasonably and gave clear warnings as to the potential costs incurred by dealing with the extra calls for updates.

Case study – repeating previous conversations:

A consumer is continually sending in large amounts of complaints correspondence. The service provider responded fully to the initial complaint and a few times following this. The provider then confirmed that they had reasonably responded to the complaint (as the same issues were being raised) and would no longer respond. Again, this was reasonable.

2. How should a staff member or service provider respond if they are faced with unacceptable behaviour?

- Don't act prematurely. Consider why the customer might behave this way? Are they facing a particularly stressful situation?
- Check your own approach. Is there anything you have done which may have triggered the response?
- Make sure there is someone for staff to talk to. It can always be useful to talk through concerns in order to decide how to deal appropriately with the situation.

Case study – keeping a professional tone:

A service provider is dealing with a challenging consumer, the consumer is very critical, particular, and direct and has made several complaints. When the Ombudsman investigated this complaint, they found that it could have been resolved a lot sooner, had the service provider not allowed the tone of the consumer to influence their own tone in their responses.

Service providers should bear in mind that the purpose of the complaint's procedure is to try and resolve issues. The tone and method of responding should facilitate this rather than being defensive or dismissive. It is important not to take complaints personally.

3. When to take action?

A suggested approach if you decide there has been unacceptable behaviour is to:

- Tell the consumer why there is an issue
- Explain why the behaviour is challenging
- Explain to them how you would like them to work with your firm
- Set out what action you will take if the behaviour does not change

4. How to restrict contact

Consider what the process should be if you decide you have to restrict / manage how a customer contacts you.

- Should you give customers an informal warning?
- Who makes decisions about restricting/managing/terminating a relationship with a customer?
- Make sure you clearly communicate any changes in contact

Support for staff

Consider when staff might need support. We all know how difficult it can be to deal with challenging situations, so it is useful to consider when staff might need support and have mechanisms so they can raise issues and check how they respond.

Document the process

Whatever you decide it is essential to document the process. Note if you think the behaviour has been challenging, and if a warning must be made. If you do decide to manage the process, make sure you tell the customer **what** you are doing and why, outlining **why** the behaviour is unacceptable and any cost consequences if appropriate.

We sometimes see situations where a service provider simply stops responding to a consumer. Before this happens, we would expect the provider to have considered the steps outlined above, and if the relationship has been ended that the reasons for this have been confirmed in writing.

Signpost to the Legal Ombudsman

If a complaint has been made it is fine to manage them through that process and direct them to make a complaint to us. Just make sure you document **what** is happening and tell the customer **why**. Ensure you signpost to Legal Ombudsman at a reasonable point.

When investigating a complaint, we would be looking for evidence of what information was shared with the consumer and what is fair and reasonable in all of the circumstances of the case.

Case study – unreasonable termination of service:

A service provider was dealing with a conveyancing transaction and they were finding the consumer very challenging. The consumer had been rude to staff members and was critical of the service provider, questioning everything they did.

The provider decided to terminate the service. Whilst the service provider had every right to refuse to accept abusive behaviour, there were other factors at play in this case.

In this instance it was unreasonable for the service provider to terminate the service, because:

1. They gave no warning and no notice to the consumer, and
2. The termination was the day before completion on the property and so the termination caused a detrimental impact on the purchase. Given that the service provider had given no notice that they were planning to terminate the contract, they could have acted for one more day to secure the sale with little issue.

Case study – reasonable termination of service:

A service provider was dealing with a boundary dispute and the consumer was refusing to accept reasonable advice. The service provider warned the consumer that they would not be able to continue to act for them, if they failed to accept the advice and instructed the firm to act contrary to this. The consumer still refused to accept the service provider's advice, and the provider terminated the service.

However, they explained the timescales and flagged that the consumer had four weeks before the next hearing to appoint a new service provider.

In this instance, it is reasonable for the service provider to terminate the service, because:

1. They gave clear warning and notice, and
2. There was a reasonable period for the consumer to appoint a new firm to represent them without impacting on their case.