

Minimising conflict, maximising support: Families, NDIS participants and NDIS service providers working effectively together

The purpose of this fact sheet is to help disability providers understand ways in which they can prevent, manage and resolve conflict, and support effective communication with families*, to minimise any adverse impact on participants.

It is also to help agencies understand the key issues the NSW Ombudsman considers when assessing whether an agency has acted appropriately in response to conflict with families, including ending support to a participant.

The issue

The NSW Ombudsman's office has received an increased number of complaints about NDIS providers ending the provision of support, including exiting participants from accommodation services, due to unresolved conflict with the participant's family. In addition to the adverse consequences for the participant, our concerns in handling a range of these matters are that:

- it has not been evident that the provider has taken all reasonable steps to resolve the issues with the family members –

including seeking external help when needed – before making a decision to end supports to the participant, and

- inadequate consideration has been given to the needs and wishes of the participant, including in relation to transition planning.

The importance of promoting and maintaining good relationships with families

The shift to fee-for-service NDIS funding arrangements can lead providers to question why they should invest time in developing and

* In this fact sheet, reference to 'families' and 'family members' includes carers, and other people who are important to the participant.

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maintaining relationships with participants' families. Aside from this being in the interests of the participant, we note that:

- disability services standards recognise the importance of working with families,¹ and compliance with the NDIS Terms of Business requires adherence to national and NSW quality assurance arrangements²
- effective relationships and good communication upfront can reduce conflict, complaints and the time needed to resolve them, and
- organisations with a strong reputation for dealing respectfully, transparently and ethically with participants and their families are likely to have an advantage in a competitive market.

Communication should always include the participant. However, families can be an important source of information about how well a service is working for the participant, areas for service improvement, as well as identifying critical wellbeing issues that need to be addressed for the participant.

1 See for example [NSW Disability Service Standards: Standards in action](#), Standards 1-5 and [National Standards for Disability Services](#), Standards 1-6.

2 National Disability Insurance Scheme, 2017, [Terms of Business for registered providers](#)

Case study 1

Geoffrey is 30, has an intellectual disability and epilepsy, and communicates via gestures. He has lived in a group home run by Anonymous Disability Services (ADS) for 15 years. Geoffrey's mum, Patricia, visits regularly and takes him out each Saturday.

Patricia is concerned about the quality of the support provided by ADS and its response to the issues she has identified. Patricia has raised a range of concerns over the past year, including instances of unexplained bruising; staff not informing her about incidents; missed medications; frequent changes in staff; and inadequate cleaning of the house. Patricia has received a response from the provider about some of the issues, but feels that she is not getting the full story about the action that has been taken to address her concerns.

The team leader of the group home has raised concerns with service management about the amount of time it takes for staff to communicate with Patricia and respond to her concerns. The team leader has told management that staff are stressed about the constant demands by Patricia for information and her related complaints, and that they don't want to work at the house any more. ADS management has advised Patricia that her expectations about service delivery and communication are too high. ADS has written to Patricia to advise her that the amount of time it is taking to respond to her concerns is unsustainable, and that this time is not funded under the NDIS, and so she is being given four weeks' notice of the need for Geoffrey to find alternative accommodation.

Working proactively to avoid conflict

The NDIS Terms of Business require registered providers to ‘act in good faith and in the interests of people with disability’.³ Even when there is conflict, it is vital that the focus remains on the person with disability and their interests.

The situation in Case Study 1 is typical of a number of matters that we have received. Through no fault of his own, Geoffrey faced the prospect of losing the security of his longstanding home, friends and broader supports. While there is no single or easy fix for these difficult situations, there are ways of working that can minimise the potential for conflict.

Employ constructive engagement – A lack of consultation and communication are common themes in complaints involving families and disability service providers. Constructive engagement, based on principles that respect differing views and acknowledge the contribution that both parties make to a participant’s life, can be used to address these drivers of complaints and set the foundations for more positive interactions.⁴

Use the development of a service agreement as an opportunity to discuss and agree on communication and broader working arrangements – Registered providers are required to develop a service agreement

in conjunction with a participant, including details about:

- the expected outcomes and nature, quality and price of the services provided
- any agreed terms and conditions
- information on complaint handling and dispute resolution, and
- timeframes for providing notices relating to the termination of services (including minimum notice periods⁵ aimed at promoting smooth service transition).

Related discussions in relation to the service agreement can provide a valuable opportunity to embed, at the outset, a constructive approach to communication and support between the service, the participant and their family, including reaching agreement regarding:

- communication between the parties, including the preferred method for receiving information, frequency, and key contacts
- the level of involvement, roles and responsibilities of the family (including steps that the family can take if they have concerns about their family member’s health, safety or any infringement of their rights)
- the roles and responsibilities of the service provider (including requirements for mandatory reporting and steps that the service provider will take if they have concerns about their client’s health, safety or any infringement of their rights), and

3 National Disability Insurance Scheme, 2017, [Terms of Business for registered providers](#).

4 Victorian Disability Services Commissioner, 2014, [Learning from Complaints, Occasional Paper No. 2, Families and service providers working together](#).

5 NDIS, 2017, [Terms of Business for registered providers](#), see ‘Service agreements’ and ‘Withdrawal or termination of services by the registered provider’.

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- how decisions will be made and who will be involved in the process.⁶

Reaching agreement and being clear about communication, decision-making, and the roles and responsibilities of all involved, can guide good practice, set realistic expectations, and give all parties a framework to refer to if issues arise.

Ensure that there is a whole-of-organisation approach to working effectively with families

– Having specific policies and procedures focused on working with families and participants can assist staff, participants and their families to be clear about an organisation's strong commitment to working constructively through issues, along with what this should mean in practice.

Have a focus on early and local resolution

– Protracted unresolved concerns and issues can make disputes difficult to resolve. Staff should be given clear guidance about the importance of providing an active and constructive response to inquiries, concerns and complaints, as well as clear advice concerning when matters should be escalated to a more senior staff member. Taking time to ensure that a family is provided with a thoughtful and respectful response to their concerns, can help to reduce frustration and resolution time.

Provide clear guidance on handling complaints and resolving disputes – The NDIS Terms of Business require registered providers to have 'clear and accessible' complaint

handling and dispute resolution processes.⁷ The guidance should include explicit timelines relating to providing responses, specify the positions responsible for dealing with complaints, and emphasise that it is an offence to take adverse action against any party for making, or proposing to make, a complaint.

Identify at an early point whether the matter may need the assistance of an independent mediator or facilitator – The early appointment of an independent mediator can sometimes be invaluable in achieving a resolution of a complex or particularly sensitive complaint. (See 'External help' for some options).

Have a clear access and exit policy – A clear access and exit policy that clearly outlines the criteria for accessing a service and the circumstances under which provision of supports may cease can be of benefit to all parties. Providers must ensure that the policy adheres to the minimum notice requirements referred to in the NDIS Terms of Business. The policy should also outline how the provider will enable a smooth and supported transition for the participant to another service.

Make sure your policies and procedures are transparent and accessible – To work effectively together, parties need a shared understanding of how things will be done and what is expected. For this reason, your relevant policies and procedures need to be available in formats that work for those using them.

⁶ Victorian Disability Services Commissioner, 2014, op cit.

⁷ NDIS, 2017, op cit. Requirements relating to complaints systems and handling are also contained in existing disability services standards, and are also a key part of the NDIS Code of Conduct and the NDIS Practice Standards (from 1 July).

If there is current conflict

Case study 2

Marina is 24 and attends a day program operated by XYZ Disability Services and enjoys the community participation activities. She has swallowing difficulties and her diet is designed to reduce her choking risks. Marina's family has told the provider that they no longer want her to go out on community activities. They have also started to provide meals for Marina that are not consistent with her safe swallowing requirements. Marina's family has always been specific about how they want the provider to support her, but it now includes daily instruction.

When XYZ staff raised concerns about the situation, the family became upset, and one of the family members became aggressive. XYZ wrote to the family, advising that they would not be renewing the current service agreement, which was due to expire in two weeks. The provider told the family that their intimidation of staff presents a work, health and safety issue; and the failure to provide safe food for Marina is a duty of care issue that they cannot compromise.

Consider whether escalation to an appropriate authority is necessary – Your service should seek advice as soon as possible (see 'External help') if you believe the conflict or related matters involve an infringement of the rights of a person with disability, such as abuse or neglect.

Focus on the interests of the participant – The above Case Study 2 highlights a situation in which the focus on managing the conflict has skewed the focus away from Marina and her interests. While there are legitimate concerns about the family's actions, ceasing supports to Marina while the situation is unresolved could leave her at risk of harm.⁸

There is a range of options that the provider could consider to seek to determine the best way of promoting Marina's rights – including appointing a trusted staff member to act as the contact point; involving an independent third party who could assist the parties to work through the issues; and applying for a guardianship hearing to examine the suitability of the decision-making arrangements for Marina.

Additionally, it is important that providers adhere to the minimum notice periods stipulated in the NDIS Terms of Business to allow time for a planned and smooth transition to another service.

The following steps and resources may assist you to manage and resolve conflict. It is also important to note that parties can contact the Ombudsman's office (or other oversight

⁸ Department of Social Services, 2013, National Standards for Disability Services, see Standard 1, Rights, which requires providers to actively prevent abuse, harm, neglect and violence. The NDIS Code of Conduct and the NDIS Practice Standards (from 1 July) also include requirements relating to preventing and responding to violence, abuse, neglect and exploitation of people with disability.

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body) at any stage for advice – particularly if the matter raises concerns about potential infringements of the participant’s rights.

Consider whether you need to escalate the matter to an appropriate authority – Seek advice as soon as possible (see ‘External help’) if you believe that the conflict or broader issues involve an infringement of the rights of a person with disability or will affect their health or safety.

Consider using an independent third party – An independent third party can be valuable in identifying issues, providing an objective analysis, facilitating resolution, and aiding agreement on any outstanding matters.

Invest in early dispute resolution – It is important to deal with concerns and complaints as soon as possible, using a person who has the authority to investigate and resolve the issue, such as a Senior Manager. A senior person is also well placed to make a decision about whether the matter should be raised with an external body – especially where there are concerns for the person’s safety.

Get together to discuss the issues

– Highlight that the meeting will be conducted with respect for all parties. Families should be invited to bring a support person to a meeting to discuss their concerns, if they wish. Depending on the circumstances of the matter, there may be significant benefit in involving an independent third party, or external mediator. The focus should be on the participant and setting a positive path for the future, including agreed communication arrangements.

Transition support

Disability services standards require services to manage exits in a transparent, fair and responsive way, in which the person is supported with options and information.⁹ In the event that the participant, their family and/or the provider believe that the best option is to exit the service, it is important that the provider works collaboratively with the participant, support coordinator, family and others to support a planned and smooth transition. This should include consideration of the information that the new provider may require to provide effective support that works for the participant.

⁹ Department of Social Services, 2013, National Standards for Disability Services, see Standard 5, Service Access. The NDIS Practice Standards (from 1 July) also include requirements relating to transitions to or from the provider, including that a planned transition is facilitated in collaboration with each participant and effectively managed; risks associated with each transition are identified, documented and responded to; and processes for transitioning to or from the provider are developed, applied, reviewed and communicated.

External help

NSW Ombudsman

- You can contact the NSW Ombudsman to seek advice at any time. You do not have to wait until there is entrenched conflict or an active complaint.¹⁰

Web: www.ombo.nsw.gov.au

Telephone: **02 9286 1000** or **1800 451 524** toll free (outside Sydney metro)

Community Justice Centres

- You may wish to consider **mediation**. Community Justice Centres operate a free service in NSW to assist people resolve disputes.

Web: www.cjc.justice.nsw.gov.au

Telephone: **1800 990 777**

Guardianship Division of NSW Civil and Administrative Tribunal (NCAT)

- where there are serious concerns about the rights, health and welfare of the person, it may be appropriate for a party to make an application for the matter to be heard by the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT).

Web: www.ncat.nsw.gov.au

Telephone: **1300 006 228**

The National Disability Abuse and Neglect Hotline

- provides support to report abuse and neglect of people with disability.

Telephone: **1800 880 052**

Fair Trading NSW

- you can complain to Fair Trading about purchased products or service issues (including contracts).

Web: www.fairtrading.nsw.gov.au

Telephone: **13 32 20**

¹⁰ From 1 July 2018, the NDIS Quality and Safeguards Commission will commence, and will take over responsibility for handling complaints about registered and unregistered NDIS providers. The NSW Ombudsman will retain responsibility for handling complaints about NSW community services, public sector agencies, and assisted boarding houses.

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Resources

NSW Ombudsman

Complaint handling kit for community services

Managing unreasonable complainant conduct manual

Unreasonable complainant conduct: a model policy and procedure

Victorian Disability Services Commissioner

Families and service providers working together: Developing policy principles and strategies to support families of adults with a disability and disability service providers to work more effectively together, Learning from complaints: Occasional Paper no. 2.

Community Justice Centres (NSW)

Better Ways to handle conflict: Factsheet

Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*).

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street
Sydney NSW 2000

Email
nswombo@ombo.nsw.gov.au

Web
www.ombo.nsw.gov.au

General inquiries 02 9286 1000
Facsimile 02 9283 2911

Toll free (outside Sydney metro)
1800 451 524

National Relay Service (NRS)
133 677

Telephone Interpreter Service
(TIS): 131 450
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

