



THE OWNERS: STRATA PLAN NES2402 (THE PEAKS)

MINUTES OF THE 16th ANNUAL GENERAL MEETING

Held at the Amenities Building of 4765/4767/4769 Foresters Landing Rd, Radium Hot Springs, BC
on March 24, 2018

1. Call to Order: 9:00 AM

2. Call the Roll, Verify Proxies and Issue Voting Cards (one card for each Strata lot at the meeting):

- François advised that the roll call and issuance of voting cards (one card for each Strata lot) was completed at the meeting check-in process.
- There were 85 owners either present or represented via signed proxy which establishes a Quorum.

3. Filing of Proof of Meeting:

- Notice of Meeting was sent out via email in the AGM information package to the owners of record on March 11, 2018 and by mail on March 15, 2018.

4. Approval of Agenda:

- François presented the agenda for the meeting.

Motion: Moved by P113, seconded by W310, that the agenda be approved as presented.

CARRIED unanimously

5. Election of 2 scrutineers:

Motion: Carolyn Bolton and Michelle Robinson be appointed as scrutineers.

CARRIED unanimously

6. Approval of Minutes of Previous Annual General Meeting – March 18, 2017

Motion: Moved by W303, seconded by P314, that the Minutes of the March 18, 2017 Annual General Meeting be approved as amended (correction to the years under 10.a)

CARRIED unanimously

7. Business Arising from Last Annual General Meeting:

- In 2017-2018, the Board had limited time to deal with the Short Term Rental issue. Outcomes of the Board discussion on that topic are recorded in the October 27, 2017 Board Minutes.

8. Report to ownership:

In addition to the Report to the Ownership (attached to these minutes) included in the AGM information package, the following was presented.

- Those Board Members who completed the 2017/2018 term were Cynthia Collins, Purnima Gosavi, Terry Larsen, Wayne Loustel and François Robert. Harold Cotton and Phil Gorman resigned from the Board part way through the term.
- Continuing with the review and development of approach to of Short Term Vacation Rentals two members met with a representative of The Village of Radium Hot Springs, noted October 17, 2017. It was the desire of the Board to focus more attention on finding conclusions on the issue, but time and resources had to be spent elsewhere. The issue should get more attention by the new Board.
- Examples of unacceptable conduct, harassment, abuse and bullying of Strata Board Volunteers, staff and contractors include scrawling of a profanity across the back window of the President's car, defamatory notices posted at Birch elevator doors when there was a need for maintenance, verbal assault of the General Manager on common property, numerous unannounced visits by Owners to personal residences, paying fees for requested copies of records with spare change.
- This appears to be the first Board in a long while which imposed and collected fines as enforcement action for rule or bylaw violation. A fine was successfully collected for a violation relating to a BBQ left burning last Spring. Two other fines have been levied but are being contested by a Civil Resolution Tribunal dispute filed by the Owner.
- Early in the term, those bylaws voted in favour of at the past two Annual General Meetings were found not registered to title and thus not enforceable. This included the increase in the max fines that can be levied for a violation. This was one of the initial trigger items for the immediate need for a General Manager. Registration was carried out promptly.
- In the past 7 years we have elected 31 different Board Members and only two have served more than 2 years. This is not conducive to an effectively governed Strata nor good for corporate memory.
- Terry Larsen described the events of a planned hearing before the Board on March 23, 2018 where the Owner was belligerent and abusive to the point the meeting was discontinued, as yet another example of unacceptable conduct toward the Board.
- Twice in the course of the term a group attended CHOA educational seminars in Cranbrook to benefit the Strata Corp. Once in the Spring with 4 Board Members and again in the fall with 2 Board Members and the General Manager.
- Our aging property requires more frequent maintenance and higher cost projects are coming up. Through this winter we were subject to higher than usual snow accumulation which brought forth issues with water infiltration in parking garages and third floor levels that need to be addressed.
- Phil Gorman explained that digital assets such as the website, email communication account (mailchimp), web hosting service and domain were all found to exist in the names of the volunteers who set them up and not the Strata Corp. Some resistance was encountered in trying to obtain credentials to access these assets, and losses were cut at being able to keep the website vs setting up a new one. Efforts are ongoing to streamline and improve our digital assets as well as our management of digital files/records.

Maintenance Committee verbal report was provided by Colin McGovern:

- Though it may appear that not much has taken place over the last term, many major projects were completed in the last 3 years and we were in wind-down anticipating the availability of an

updated depreciation report this year and setting a new list of priorities for the next 3 years based on it's content. This year Birch building dryer vent cleaning and site-wide window cleaning are planned. The planned replacement of Willow building roof will likely be postponed as additional water infiltration issues have been identified that, when remediated, would impact the completed roof work. This is not a concern as the condition of the Willow Building roof is still a couple years from the end of life expectancy.

9. Financial Report:

- Acceptance of Audited Financial Statement as of January 31, 2018

MOTION: Moved by P113 and seconded by W310, that the audited financial statements as of January 31, 2018 be approved as presented.

CARRIED unanimously

- Approve 2017/2018 Expenditures from Contingency Reserve Fund

MOTION: Moved by W303 and seconded by B214 that the 2017/2018 Expenditures from Contingency Reserve Fund in the amount of \$76,941.39 be approved as presented in Schedule 1 as per Section 96 of the Strata Property Act.

Yes: 65 No: 3 CARRIED

- Acceptance that the Board appoint the Auditors for fiscal year 2018/2019

Motion: Moved by P314 and seconded by B108, that the upcoming Board of Directors appoint the auditors for the preparation of the FY 2018-19 Financial Statements.

CARRIED

- Approval of Contingency Reserve Fund allocation for fiscal year 2018-2019

Motion: Moved by P113 and seconded by B104, that as per Section 96 of the Strata Property Act, to approve expenditures of up to \$200,000 out of the Contingency Reserve Fund related to expenditures established by the Board and the Maintenance Committee. The 2018 Depreciation Report expected in spring of 2018 will be used to establish spending priorities.

Yes: 58 No: 15 CARRIED

10. Financial Report

a. Acceptance of Draft Budget for 2018-2019

Motion: Moved by W209 and seconded by W216, that the 2018-2019 budget be approved in accordance with Section 103 of the Act.

Yes: 68 No: 12 CARRIED

b. Acceptance of Strata Fees for 2018-2019

Motion: Moved by B104 and seconded by B302, to approve the increase in Strata Fees of 4.00% for the 2018-2019 year.

CARRIED unanimously

11. Report on Insurance:

- The Certificate of Insurance was included in the AGM Package

12. New Business

a. Motion to ratify rules of Strata Plan NES2402.

Motion: Moved by B101 and seconded by W310, that a secret ballot be conducted and that any of the 25 rules included in the AGM package which will receive 50% or more of the votes become the upcoming rules of Strata Plan NES 2402.

Yes: 77 No: 1 CARRIED

The 24 rules (see attachment #1) received more than 50% of the votes. Moving forward, those are the only rules that are current as per March 24, 2018 unless rules are modified, deleted or added. Any rules that are modified, deleted or added will need to be recorded at a future AGM or SGM to capture that change.

b. Motions to approve revisions to Owner Developer's Notice of Different Bylaws.

- Proposed bylaw to deal with communication between owners and the Strata Corporation.

Background information

In the last few years, communication between owners and people volunteering or working at the Strata Plan NES 2402 has been challenging and at times abusive. Based on advice from CHOA, the Board recommends that a bylaw guiding communication between the Board and owners and between owners and the Board be implemented.

Guidelines such as those that can be found on the following website will serve as a guide for owners and Board. A copy of the guidelines is attached to the March 24, 2018 AGM package. If the ownership supports this new bylaw, the above mentioned guidelines (attached to these minutes) will be part of the March 24, 2018 Minutes and will be available to owners and Board members for future reference.

<https://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/66787/html.bookmark>

Proposed bylaw amendment to "Owner Developers' Notice of Different Bylaws"

Motion: Moved by P314 and seconded by P113, that the communication between The Board and an Owner and an Owner and the Board shall be done in a respectful way that is not abusive, and/or threatening.

CARRIED unanimously

- Proposed bylaw for email protocol for Board decision making.

Background information

In few instances, the Board needs to discuss and make a decision regarding urgent matters in between scheduled Board meetings. When an emergency happens, having an email protocol for Board decision making provides an additional way for the Board to serve owners.

In such cases, all Board Directors have the right to submit a vote within a specified time period (no less than 48 hours, no more than 7 calendar days). Vote by email will be conducted in the following manner: Directors shall have 3 options regarding their vote: i. Vote to pass the motion ii. Vote to reject the motion iii. Express the opinion that the motion is not amenable to an electronic vote.

If any Board Director objects to the electronic vote, the motion would remain subject to the "in person" quorum voting rules. If no objections are received, a simple majority of all Board Directors is required to pass the vote.

Proposed bylaw amendment to "Owner Developers' Notice of Different Bylaws"

Motion: Moved by B214 and seconded by B104, that a Board decision can be made through an email vote as long as the following conditions are met. #1, If any Board members object to an email vote, the decision cannot be made by email. #2, From the time a motion is proposed by email, there will be a minimum of 72 hours before a decision is made. #3, If there is a unanimous support recorded by email, the 72 hours will be waived. #4, The decision will be recorded in the Board Minutes of the subsequent scheduled Board meeting.

Yes: 77 No: 3 CARRIED

- Proposed bylaw to deal with propane cylinder.

Background information

It has been brought to the attention of the Board that propane cylinder have been improperly handled or stored at The Peaks. Propane cylinder can be stored on owner's patios or balconies.

Proposed bylaw amendment to "Owner Developers' Notice of Different Bylaws"

Motion: Moved by P208 and seconded by P113, that an owner, tenant, or occupant shall not store a propane cylinder in the parking garage or in their strata lot. Propane cylinders are strictly prohibited in elevators.

CARRIED unanimously

- Proposed bylaw revision to deal with vehicle parking on the surface lot.

Background information

All Board members have noticed that on a weekly basis, and weeks after weeks, and months after months, many vehicles have been observed as backing up in stalls and remaining there as parked vehicles.

In FY 2017-18, there was no budgeted funds to contract proper signage. There was also no proper process to fully implement the existing bylaw.

By rescinding the current bylaw regarding vehicle parking on the surface lot (bylaw 25 of "Owner Developers' Notice of Different Bylaws"), and by replacing it with a new bylaw, it will achieve the intended objective of bylaw 25 of "Owner Developers' Notice of Different Bylaws". That objective is that all vehicles must be parked so that the exhaust fumes are directed away from all doors and building air intake vents.

Proposed bylaw amendment to "Owner Developers' Notice of Different Bylaws"

Motion: Moved by P312 and seconded by P313, that Bylaw 25 of "Owner Developers' Notice of Different Bylaws" is rescinded and replaced by the following bylaw. Any vehicle parking on the surface lot shall not back into a stall that is within eight (8) meters to a building window, door or air intake vent.

CARRIED unanimously

c. Motion to authorize the sale of Strata NES2402 Corp owned unit W205.

Motion: Moved by B303 and seconded by B114, that the Board is authorized to sell Willow Unit 2015 and apply all proceeds to the Contingency Reserve Fund.

Yes: 42 No: 34 CARRIED

13. Information and Questions from the floor

- Questions asked from the floor were addressed.

14. Elect from the floor an individual to chair items 15 and 16 of the agenda.

Motion: Moved by B302 and seconded by B206, that Colin McGovern be appointed as chair for items 15 and 16 of this AGM Agenda.

CARRIED unanimously

15. Establish number of directors for fiscal 2018-2019

Motion: Moved by W209 and seconded by B104, that the number of Directors for 2018-2019 will be 7.

CARRIED unanimously

16. Election of Strata Board Directors – 2018-2019 Term:

- 10 names were presented and a secret ballot was taken to elect the seven candidates with the most votes. The following candidates were elected:

Joanne Buckley	P314
Purnima Gosavi	W101
Terry Larsen	P103
Wayne Loustel	B310
Kelly McGovern	W210
François Robert	B302
Carla Simoes	B214

17. Adjournment Motion

Motion: Moved by P103 and seconded by B310, that the Annual General Meeting be adjourned at 2H29 PM

CARRIED unanimously

END OF MEETING MINUTES

Encl. Report to the Ownership	[5 pages]
Ratified Rules of Conduct	[2 pages]
European Ombudsman: Establishing guidelines on how to deal with abusive communications and complaints which amount to an abuse of process	[4 pages]



REPORT TO THE OWNERSHIP

2017 ANNUAL GENERAL MEETING / FISCAL YEAR 2017-2018

The current Board was elected on March 18, 2017 at the last AGM. Five of the seven Board members elected are still on the Board. The most significant issues the Board has been faced with are as follow:

1. **Governance issues and challenges** for Strata NES2402 Corporation.
2. **Financial challenges** with the approved 2017-2018 operating budget vs actual operating costs.
3. **Effective Management/Administration** of the Strata Corp considering acute Board and key staff position turnover.
4. Validity, interpretation and enforcement of **Rules & Bylaws**.

Governance Issues and Challenges:

- It was found that the bylaws voted in favor of at the March 19, 2016 AGM had not been registered to land title and could not be enforced. Registration was carried out as quickly as possible, had cost implications and was time consuming.
- The Strata Corporation mailing address registered on Land was found to be incorrect in January 2018. Potential for legal ramifications existed. A change was filed promptly.
- In it's last seven (7) fiscal years, *The Peaks* has had 31 different Board members. Only 2 have served 3 years or more on the Board. Board fatigue, being caused by the conduct of a few Owners, is a significant contributor to this serious problem.
- Similar to what was recorded in the 2016 AGM Minutes, resistance to Rule & Bylaw compliance was high. It's felt that resistance to compliance and respect for the Board is reaching a catastrophic proportion with a few Owners.
- The Strata Board/Strata Corp's time and resources are being syphoned by a small number of Owners. Over the term, one Owner in particular has sent at least 47 emails to the Board to date, 17 of which in 2018 alone. These emails were often copied to multiple Board administered addresses, inundating out inbox with multiple copies, and often included some form of negative content.
- We are involved in 2 active Civil Resolution Tribunal disputes filed against the Owners of Strata NES2402, have held 4 hearings at the request of individuals, provided 16 warnings for rule or bylaw violation, pursued the towing of 2 vehicle/trailer combinations parked on site and levied 3 fines for rule or bylaw violations, 2 of which are being contested by the Owner in one of the active Conflict Resolution Tribunal disputes. The Board has filed a counterclaim in both disputes before the Civil Resolution Tribunal.
- With consideration to Strata Property Act Section 61, we have reviewed how the Strata Corporation communicates with owners, and have begun addressing issues with how

communication/notice has been handled in the past and what is legally required under the Strata Property Act.

Conclusions:

1. The situation created by a few owners continues to escalate. The Strata Corporation is vicariously close to requiring the appointment of an Administrator by the Province at a substantial cost, unless tools are made available to deal with the few Owners creating the majority of issues that monopolize Board time and continue to escalate in their demands and inappropriate conduct towards the Strata Corp/Strata Board. The Board included in this year's material, updates to rules & bylaws that, if approved, should provide tools for the upcoming Board to deal with challenges faced by past Boards and a safe and productive work environment for those contributing in the future.
2. Selection of qualified and appropriate Board members during an AGM or SGM is imperative. The only way to have a counterproductive Board member cease to be a Board member is if that Board member resigns or there is a duly called SGM where 50% vote is received to remove that Board member.
3. As per Strata Property Act Section 174, there is a real possibility that the Strata Corporation, or an owner, tenant, mortgagee or other people having an interest in a strata lot, could apply to the Supreme Court for the appointment of an Administrator to exercise the powers and perform the duties of the Strata Corporation. This would have significant repercussions on all owners.

Financial Challenges:

- The 2017 budget for "Management" was set at \$90,160. "Management" included the bookkeeper/financial administrator, open and close of pool (routine pool and hot tubs operation & maintenance), caretaker (routine upkeep and maintenance of site) and janitorial (routine cleaning of building common areas). With the exception of the line item for open and close of pool, all other operations were close to budget. A miscommunication in preparing the 2017/2018 budget had this expense underestimated by roughly \$34,000.
- Strata fee increases of 2.86% in 2015/2016, 0% in 2016/2017 and 1.83% in 2017/2018 have not kept pace with the inflation rate for key line items such as electricity and insurance.
- An update to our Depreciation Report, as mandated every 3 years by Provincial Legislation, is in progress with the onsite review taking place March 16, 2018 and the final report expected within the next 30 days. Limited updated information will be available in time for the AGM. The completed report will help make a blueprint of priorities for the Maintenance Committee. Support of the owners will be sought at the AGM to develop a plan of action to implement the recommendations that will be proposed.
- The Peaks requires about three-quarters of a million dollars each year to operate. With the complex about 15 years old, preventive maintenance costs will increase in the years to come. It is beneficial for Owners to have solid governance (Strata Board), strong Management and to hire specialists to implement regular and non-regular maintenance items.

- In the past years we have seen some larger expenditures including roof replacements for Poplar and Birch buildings. It is anticipated the remaining Willow and Amenities building roofs will be replaced within the next 3 years. That said, it is also expected the Contingency Reserve Fund will need to be replenished at a higher rate in years to come. The Depreciation Report is expected to provide best-practice suggestions in this area.
- The current Board is of the opinion unit W205, owned by the Strata Corporation, should be sold once the current lease expires on November 30, 2018 and proceeds should go towards the Contingency Reserve Fund.

Conclusions:

1. The cost and need to keep two hot tubs operational year-round vs operating only those two hot tubs between May and September should be examined. Savings estimated at up to \$40,000 could be achieved. After that examination, a budget related decision could be made at the AGM to be held in March 2019.
2. The Board will put forward a motion at the March 24, 2018 AGM proposing that up to \$200,000 be set aside from the Contingency Reserve Fund for maintenance projects as will be determined from the updated Depreciation Report. The allocation of spending will be a joint effort between the Strata Board and the Maintenance Committee.
3. The Board will put forward a motion at the March 24, 2018 AGM to sell Unit W205 and apply the proceeds to the Contingency Reserve Fund.

Management/Administration:

- The Peaks is at a stage where dedicated management/administrative support is required to deal with immediate, short term, and long term operational issues. There are notable and substantial differences between the skills and workload of a caretaker and a manager. Requests and needs generated from a development such as The Peaks require proper process, decision making and record keeping.
- While the use of volunteers to act as management served the Owners reasonably well in the past, it has come at some operational cost and a substantial rate of volunteer burn out. We are now seeing many of the downside of that approach.
- The Board believes there are seasons for everything. We appreciate those who have labored in the past to keep The Peaks in excellent condition. The demands ahead of us from our aging development, new legislations, etc. are an increased burden and require increased management.
- A substantial amount of time was spent on reclaiming web and email assets that were solely in the position of the volunteer who was administering them. Ownership was taken of most of the credentials for access, and losses were taken on items like the website and the email marketing service (Mailchimp). We continue to work toward bringing all digital assets/services into the name and control of the Strata Corp, and to streamline what's being used and improve the functionality of it.

- A lack of long-range/multi-year plans for routine maintenance of systems such as HVAC of parking garages & common areas or the boiler system that heats the amenities building and pool & hot tubs has been identified. Effort needs to be put into moving from reactionary to preventative maintenance to manage risk, control costs and get maximum service life from systems.
- Challenges were experience with communicating with owners through email. Through a better understanding of the conditions of the Strata Property Act called into question the validity of how certain communications/notices are communicated to the Owners. Proper documentation and a streamlined, functional process are ongoing priorities.
- Keeping of a variety of records is both required by the Strata Property Act and essential to management and operation of the Strata Corp. Shortfalls in type, access and duration of records need to be addressed then maintained for effective management of both the corporation and risk to it.

Conclusions:

1. The Board recommends continuing the employment of a General Manager. The current General Manager's term expires March 31, 2018. Funding for the position is part of the proposed 2018/2019 budget.

Rules & Bylaws:

- We currently have 25 individual rules. Some of those rules are being violated on a regular basis. These rules have been accumulated over the years, and it's possible many of our current owners are not in favor of some of those rules. The Board has included all 25 rules in the AGM package. We will ask owners on March 24, 2018 to decide if they want to keep or reject each of these 25 rules.
- Per the Strata Property Act, the rules that will receive more than 50% vote, and will be maintained and documented in the AGM Minutes. Only those rules will be effective until they are revised or cancelled, or other rules are voted in. Abstention does not count in the calculation of a majority vote. By example: if there are 72 people represented who are eligible to vote at the AGM and 34 votes are in favor, 30 are against, 8 abstain/do not vote then the majority is based on the 64 who voted. $34/64 = 53\%$ in favor, and the rule would be maintained.
- For all proxies the Board will receive for the March 24, 2018 AGM, when it will come time to exercise those proxies regarding if a rule should be maintained or rejected, the Board will abstain if the owner giving the proxy to the Board has not indicated in their proxy that they are for or against a specific rule.

However where an owner is provided information regarding their position with a rule, the Board will honor the owner decision and will vote accordingly. By taking this position the Board will not influence if a rule is maintained or rejected.

- To provide tools to owners and upcoming Boards, and to enable them to operate more effectively, new rules and bylaws included in this package will be presented to the ownership through various motions for a vote.

- Unless a proxy received by the Board indicates the voting intention of the unit Owner regarding a given bylaw being proposed, the Board will vote in favor of the bylaw being proposed.

Conclusions:

1. Following the March 24, 2018 AGM, all rules will be documented through the March 24, 2018 AGM Minutes. Each rule will also have a date indicating they were ratified on that date. This provides appropriate record of the ratification/implementation of rules.
2. We strongly believe that the proposed new bylaws to address issues encountered with threatening and abusing of Board Members, Volunteers, Management, Staff and Contractors are a necessity for upcoming Board members to be effective and protect/serve owners at the Peaks.



RULES OF CONDUCT

For violation of a rule, the Strata Corporation may proceed with enforcement including the application of fines or other remedies as necessary.

AMENITIES BUILDING & POOL AREA

1. Use of the amenities building is restricted to owners of units, invited day visitors and overnight guests when the owner is present, invited overnight guests when the owner is not present, unit renters only on the days they are renting with no outside guests permitted but not after 11:00am on the date of check-out.
2. Possession or consumption of alcohol is prohibited.
3. No glass containers of any type
4. Smoking is prohibited.
5. Pets are prohibited.
6. Access permitted only between the hours of 9:00AM and 10:00PM, with any access to the building or pool area outside of these hours will be considered trespassing.
7. Children age 12 and under must be continuously supervised by an adult in the building and in the pool and hot tub areas.
8. Behavior that constitutes a danger to yourself or others including running, diving and rough play, is not permitted.
9. Use of swimsuits/proper swim attire is mandatory at all times in the pool and hot tubs.
10. No rocks, sharp objects or dangerous materials to be in or around the pool or hot tubs.
11. No loitering inside the amenities building.
12. Use of water guns, metal toys and water balloons are not permitted in the amenities building, pool, hot tubs and anywhere within the fenced area.

(Cont'd)

RESIDENTIAL BUILDINGS & INDIVIDUAL DECKS AND BALCONIES

1. Smoking in elevators or hallways is prohibited.
2. Having bare feet or a wet body in an elevator is prohibited.
3. Noise levels while arriving, departing, and during your stay must be kept to a minimum and after 11:00PM deck and balcony activity must be confined to quiet conversation.
4. Occupants of a unit will be held responsible for damages caused by objects falling or being thrown from a deck/balcony.
5. Hanging towels or any article of clothing on deck/balcony railings is prohibited.
6. Running or playing in elevators, hallways or lobby areas is prohibited.
7. Consumption of alcohol is limited to adult occupants and invited guests on decks/balconies or the privacy of their unit.
8. The use of any patio heater or open flame device not withstanding any make, model, style, or fuel type; is prohibited on any deck/balcony.
9. BBQs shall not be used (lit) in a position adjacent to combustible materials including walls clad with vinyl siding, must be a minimum of 12 inches (30 cm) from all adjacent building elements including stucco clad walls and balcony railings, and BBQs shall be supervised always when lit.

PETS

1. Pets of guests and renters are only allowed on site with the permission of an owner and must be fully supervised and on leash in all common areas.
2. Dogs must be taken to the designated relief area west of the west garbage building.
3. Pet owners must clean up fecal matter deposited by their pets anywhere on the property or the designated relief area.



Decision

Establishing guidelines on how to deal with abusive communications and complaints which amount to an abuse of process

The European Ombudsman, having regard to Article 11.8 of the Decision of the European Ombudsman adopting Implementing Provisions, has adopted the following guidelines:

1. The purpose of the guidelines

The Ombudsman and the Ombudsman's staff should always interact with citizens politely, and they should always show respect, patience and empathy.

It is, however, important that the Ombudsman's staff have clear guidelines aimed at assisting them in dealing properly with persons whose behaviour is abusive, such as when a person addresses the Ombudsman or a member of staff¹ using threatening or vulgar language or when a person's contacts with the Ombudsman are manifestly repetitive, excessive in number, pointless, petty or vexatious (see in this respect Article 14(3) of the European Code of Good Administrative Behaviour²).

2. Types of communications covered

These Guidelines cover all communications, whether written or oral, and whether in relation to complaints or otherwise. The term "communication" includes letters, faxes, e-mails, all visual communication, such as images, pictures and videos, and all oral communication, such as telephone calls.

3. Abusive communications

A communication is abusive if:

¹ These Guidelines are without prejudice to the Ombudsman's legal obligation, under Article 24 of the Staff Regulations, to assist any official, in particular in proceedings against any person using threatening, insulting or defamatory language, as well as the Ombudsman's legal obligation, set out in Article 4(1) of the Ombudsman's Statute, to immediately notify the competent national authorities if, in the course of inquiries, s/he learns of facts which s/he considers might relate to criminal law.

² Article 14(3) of the Code states that: *No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character.*"



It is sexist, racist, or insults persons because of their social origin, their genetic features, the language they speak, their religion or belief, their political or any other opinion, their membership of a national minority, their disability, their age or their sexual orientation;

It is egregiously defamatory or egregiously insulting to the Ombudsman, a member of the Ombudsman's staff or any other person;

It contains language which is manifestly vulgar and offensive;

It contains information that is intentionally misleading, such as intentionally falsified information or forged documents;

It is manifestly repetitive, such as when the author again raises an issue on which the Ombudsman has already provided a clear reply;

It is manifestly pointless or petty;

It is manifestly vexatious, such as when it has no useful purpose, but aims only to cause disruption or annoyance.

A communication from a complainant who submits a very large number of complaints on issues of no or minor importance may be considered to be vexatious and an abuse of process.

A communication which is manifestly unclear or confusing will not be considered abusive communication. However, if it is not possible to identify any reasonable request for action or information, the communication should be filed with a note stating that no further action is required by the Ombudsman.

4. Dealing with abusive communications

4.1 Procedure - Informing superiors and keeping a record

If a staff member encounters an abusive communication, s/he should draw up a **note** setting out the facts and the reasons why s/he considers the communication to be abusive. The note shall be submitted to the Head of Unit for information and approval. The approved note shall be saved in the relevant file.

Once the note has been approved, the staff member shall **inform the author of the abusive communication**, preferably in writing, that his/her communication is considered to be abusive and the reasons therefor. The author of the abusive communication shall also be informed that any further abusive communication may lead the Ombudsman to decide to cease all communication with that person on the matter in question.

Where the abusive communication occurs by telephone only, and there is no means of informing the person in writing, the member of staff who takes any subsequent telephone call should inform the person that his/her communication is considered to be abusive, the reasons therefor, and that any further abusive communication may lead the Ombudsman to decide to cease all communication with that person on the matter in question. A short note regarding that telephone call should be drawn up and filed.



4.2 Further abusive communications

If, following the procedure set out in Article 4.1 of this Decision, the author of the abusive communication continues to make contact in an abusive manner (in writing or by telephone), the staff member concerned shall draw up a **further note** setting out the facts and suggesting that a decision be taken to no longer reply to communications from the person on the matter in question. The note shall be submitted to the Head of Unit and the Secretary-General for information and approval. The approved note shall be saved in the relevant file.

Once the note has been approved, a **decision letter** from the Secretary-General shall be sent to the author of the abusive communication, stating that the Ombudsman will no longer reply to communications from the person on the matter in question and setting out the reasons therefor.

4.3 Implementation of a decision to no longer reply to abusive communications

A written communication received following a decision under Article 4.2 of this Decision shall be filed and no further action will be taken. Where the person in question makes telephone contact following such a decision, the staff member who receives the call should politely refer to the decision that has been taken (that no more calls or communications from the person will be answered) and should terminate the call.

4.4 Particularly serious cases of abusive communications

In cases where the language used is particularly abusive, because, for example, it contains serious threats, the staff member should immediately inform his/her Head of Unit and should follow the procedure outlined in Article 4.2 of this Decision without first complying with Article 4.1 of this Decision. The staff member should set out the reasons why s/he considers the communication to be particularly abusive.

In the case of telephone calls that are particularly abusive, the staff member may immediately inform the person calling that s/he believes that to be the case and that, accordingly, s/he will terminate the call and will inform his/her manager. The staff member should then follow the procedure outlined in Article 4.2 of this Decision without first complying with Article 4.1 of this Decision.

4.5 Apologies

If the author of the abusive communication writes to the Ombudsman recognising that his or her previous communication was abusive, apologises for that abusive communication and commits himself/herself not to repeat the abusive communication, the Secretary-General may withdraw the decision referred to in Article 4.2 above. The person concerned will be informed of any such withdrawal.



5. Entry into force

These guidelines will enter into force on the day they are signed.

Strasbourg, 28/04/2016

Emily O'Reilly