**Dealing with unfair comments on websites**

Most practices will at some time receive unfair, biased, incorrect or plainly rude comments on sites such as NHS Choices. This advice sets out how practices can use the law to get things corrected. Despite the myth its not all stacked against you.

**The 2013 Defamation Act – Website Operator’s Regulations.**

Under the 2013 Defamation Act you can ask people who host web sites to have adverse comments removed. The 2013 Defamation regulations provide some automatic legally binding defences for the “operators” providing they abide by the regulations. If they don’t then you can sue them for the defamation as well as the poster. The 2013 regulations are reasonable, fair, balanced and have appropriate timeframes built into them. NHS Choices is not exempt from the Act. The full act can be found at;

<http://www.legislation.gov.uk/ukpga/2013/26/contents>

And the more detailed and very useful official guidance at;

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269138/defamation-guidance.pdf>

This is a concise quick reference outline of the process and does not cover all the detail. if after reading this you want to pursue things I recommend using the guidance above.

**Outline**

Basically you, the "complainant", send a "notice" to the “operator” of the web site who then has to decide whether to remove the offensive post or contact the "poster". If the “poster” is contacted they can decide to agree, negotiate or dispute your complaint. If the “poster” cannot be contacted, does not respond or does not comply, the offending ***entry must be removed***. It follows that where the poster is anonymous (to the operator) the Act provides for automatic removal. From start to finish the whole process can be wrapped up in 9 days.

The law is designed to be easy to use and is specifically written for the public without needing to resort to solicitors or lawyers.

**Process**

So someone makes a comment on a web site that you think is defamatory.

Defamation is defined as “caused or is likely to cause serious harm to the reputation of the claimant”. Note a claimant can be an individual or a practice, for a practice “serious harm” means causing or likely to cause “serious financial loss”.

1. The first test is whether or not you can identify the poster from the offending entry. If you can identify the poster you must pursue them directly.
2. If you are unable to identify the poster you then issue a “notice” to the “operator” of the web site. The notice must contain the following information;

Your (the complainant) name and contact e-mail address.

Where on the website the offending statement was posted,

preferably in the form of a URL.

What the statement actually says.

Why you think its defamatory.

Any parts that are factually inaccurate or opinions not supported by fact

Confirmation that you can’t identify the poster directly.

Whether or not you consent to your details being passed on to the poster

On receipt of the “notice” the “operator” has two options, within 48 hours they ***must either remove*** the entry or attempt to contact the poster;

1. If the operator is unable to contact the poster, for example because it does not have an e-mail address for the poster or cannot contact the poster by another means of private electronic messaging, then the operator ***must remove*** the offending statement. They must inform the complainant that the statement has been removed.

If follows that for all truly anonymous postings the operator ***must remove*** the entry.

The operator ***must also remove*** the statement if the operator considers that the name and address provided by the poster are obviously false.

1. If the operator is able to contact the poster they must do so within 48 hrs and again they must confirm this to the complainant within the same 48 hrs of receiving the notice.

If the poster is contacted they then have 5 days in which to respond. The law allows for 5 scenarios;

1. There is no response from the poster to the operator within 5 days.

Then the operator ***must remove*** the statement, even if the poster has changed or amended the entry and inform the complainant and do so within 48 hours of the expiry of the 5 days.

1. The poster replies to the operator within the specified time period indicating that the poster agrees to the entry being removed, then the operator ***must remove*** the statement within 48 hours of receiving the poster’s response. Within the same 48 hours the operator must also inform the complainant in writing that the statement has been removed. Where the poster agrees to removal of the statement, the poster does not have to provide identity and contact details to the operator
2. The poster replies to the operator within the 5 days but fails to provide further information. If the poster replies within the 5 days but does not provide all the information requested then the operator ***must remove*** the offending statement within 48 hours of receiving the poster’s response and inform the complainant that they have done so. The operator is not required to send any further communication to the poster.
3. The poster replies to the operator within the 5 days indicating that the poster does not wish the statement complained of to be removed, and consenting to the operator sending the poster’s contact details to the complainant. In this situation it is then for the complainant to engage with the poster direct. It is open to the operator to continue to assist the complainant if the operator chooses to do so.
4. The poster replies to the operator within the 5 days indicating that they do not wish the entry complained of to be removed, and refusing to consent to the operator sending the poster’s contact details to the complainant. In this contested situation the operator must contact the complainant in writing within 48 hours of receiving the poster’s response. This communication must inform the complainant: that the poster does not wish the statement to be removed, that the statement has not been removed and that the poster has not consented to the release of the poster’s contact details.

In this situation, if the complainant wishes to take further action it may be open to the complainant to seek a court order requiring the operator to release the poster’s contact details to the complainant. An operator which is served with notice of such an application may wish to inform the poster of this, though this is not a requirement of the Regulations.

Notwithstanding the above the operator can at any time decide to ***remove the posting***.

Schematic

Pursue them directly.

Yes

Can you identify

Poster from the entry?

E-mail the web site operator a Notice of Complaint

No

The entry must be **removed** within 48 hrs

Can the operator identify

Poster

No

Yes

Operator contacts the poster.

Poster responds, refuses removal but consents to identity being released. Complainant takes up directly

Poster responds, refuses removal and refuses release of identity.

Complainant can apply to courts.

They agree to the entry being **removed**

They respond but not fully, the entry is **removed**

No response

Entry is **removed**