

Shared Insights

Best practice when engaging with vexatious litigants/complainants and litigants in person

Speakers

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Walsall Healthcare **NHS**
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Introduction

This session was chaired by Matthew Alderton, a Partner specialising in the conduct of complex and high-profile litigation.

We were delighted to be joined by Kevin Bostock, Group Chief Safety and Assurance Officer for Walsall Healthcare NHS Trust and Royal Wolverhampton NHS Trust.

Matthew was also joined by Heather Andersen from Browne Jacobson's Barristers team, Angela Williams from our personal injury team and Adam Sutherland from our Public Law team. They shared their insights and practical tips, drawing on learning from a range of recent cases we have advised on in the health and care sector.



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How we can help

During the session we covered tips and best practice for organisations on how to engage effectively with vexatious complainant and litigants in person. Our team have worked with a range of clients on these matters and have a breadth of experience in supporting organisations effectively engage with vexatious complainants and litigants on areas such as:

- Advising on governance, complaint processes and procedures in dealing with vexatious complainants.
- Obtaining Civil Restraint against individuals who make multiple meritless claims and applications.
- Supporting witnesses through the Court process, including practical measures at hearings to protect your staff.
- Our in-house barrister team have extensive experience in dealing with vexatious litigants.
- Providing ad hoc and strategic advice to clients on all issues which can arise when engaging with vexatious litigants and complainants.

Balancing process, protection and duty of care

Kevin Bostock – Group Chief Safety and Assurance Officer, Walsall Healthcare NHS Trust and Royal Wolverhampton NHS Trust

Kevin emphasised the importance of being open and clear with individuals on what you will and will not correspond on and getting appropriate legal support. Organisations should focus on the key issues when dealing with vexatious complainants and avoid subjective messaging and advice. Signpost people to the appropriate resources, rather than getting drawn into subjective or personal opinions.

Always focus on the process, not the person and, insofar as is possible, sidestep bad behaviour and bring them back to process all the time. Vexatious complainants don't like process and will often try to deviate away from it.

It is important to be conscious of vexatious service users' ability to push up costs, which is often done deliberately through unreasonable persistence. Vexatious complainants will often try to play people off against one another. Organisations should try to maintain a single point of contact to minimise duplication or inconsistent messaging.

It can be stressful for staff to manage these people and in public services we have ongoing exposure to difficult personality types. Personal attacks get launched at staff quite often by individuals who do not

want to engage with the proper processes.

There have been cases where vexatious individuals have used social media to stalk and defame staff. It is important to protect staff, to whom employers have a duty of care and need to ensure that they have access to support and counselling. In extreme cases, it is sometimes necessary to involve the Police. Clinical staff who have to continue to treat these individuals can often experience extreme stress but cannot refuse to treat them. Managing these types of personalities requires a balance between upholding processes and protecting staff from abuse.

It is clear that vexatious complaints and litigation are getting more frequent and Artificial Intelligence and social media is fuelling that. This is only likely to continue, so it is important to ensure your staff are trained to recognise the patterns early on so the appropriate procedures can be implemented.

There is not one solution for all, everyone needs to be treated differently, and it is about achieving that balance and identifying the appropriate processes and procedures early on in your relationship with vexatious individuals.

Strategy and best practice when engaging with vexatious complainants

Adam Sutherland – Associate, Browne Jacobson

One of the difficulties in dealing with vexatious complainants is that they often refuse to adhere to the rules and procedures that most service users abide with. A small minority of service users thrive on maintaining an antagonistic relationship with a public body and are motivated by the process of being a burden. Unlike most complainants, they can't be placated by dealing with a single complaint or issue.

Adam highlighted experiences where a vexatious complainant has directed all their energies into placing excessive burdens on a public body through repeated complaints, regulatory referrals, repeated FOI and SAR requests and meritless litigation. This has huge

implications on public resources, management time and the wellbeing of frontline staff who have to manage highly challenging behaviour.

It is crucial to set parameters with vexatious individuals on exactly what you will and will not correspond with them on and then be disciplined in sticking to that. There needs to be clear communication between management, frontline staff and legal representatives. As Kevin highlighted, vexatious complainants often take a scattergun approach, hammering at the same point to different people and departments within the same organisation. It is therefore important to have absolute clarity on who is dealing with what issue.

Maintaining a united front as an organisation is vital and everyone who has to deal with a vexatious individual should be made aware of the agreed procedures in managing them and any restrictions on their correspondence or volume of complaints. If there is any inconsistency or contradictory messaging, the vexatious complainant will latch on to it.

It is common that where a vexatious complainant is not receiving the answer they want from one person or part of an organisation, they will go to another in hope of a different answer. Be aware that vexatious individuals might target more junior staff members, who they feel they can pressure into giving them the answer that they are seeking. It is crucial to have clear communication and awareness of process to prevent a vexatious complainant driving a wedge between different people within an organisation.

As well as setting out clear parameters with vexatious individuals, it is also important to be disciplined in managing your own time. There is no getting around the fact that the volume and tone of correspondence from these individuals can be quite draining. Often these are highly confrontational and single-minded people, and they don't see you as a professional just doing a job. In instances where allegations and threats are made against you, it can start to feel quite personal. As legal professionals, we tend to have quite thick skin, and it can be easier for us to dismiss.

However, for frontline staff who don't have that legal background, these threats can be quite daunting, particularly as vexatious complainants and litigants tend to have a modicum of legal knowledge that they can throw at you.

Vexatious complaints and correspondence will often come outside business hours. The first thing you log into in the morning or after a weekend might be a large volume of correspondence worded in an aggressive tone. You should be disciplined with your own time and set aside the time to deal with such correspondence properly, rather than necessarily always opening it as and when it comes in. These individuals can be incredibly demanding but shouldn't be dealt with to the detriment of all other tasks and responsibilities.

Protect your own time and recognise that in our busy professional lives it is not always a good use of time to break off from the task you're doing to deal with vexatious complainants.



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Practical strategies for legal representatives and public bodies

Heather Andersen – Barrister (Senior Associate),
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The experiences of Kevin and Adam in dealing with vexatious litigants also occur in the courtroom. When engaging counsel in these cases, there is a great deal of importance in instructing someone who has experience of litigants in person. Often these cases are not suited for more junior advocates. Vexatious litigants are highly unpredictable, and their submissions often aren't limited to issues raised in their documentation. They throw new issues at you and the Judge will expect your advocate to be able to know what they are talking about and be able to provide an answer. It is crucial to instruct someone

who will know everything about the case, so that they have the knowledge to deal with everything thrown at them in Court.

It is important to follow processes to the letter and ensure any interactions with vexatious individuals are recorded in writing. Vexatious litigants will often raise irrelevant issues, embellish their evidence and even lie. It is therefore important to have accurate records of interactions and events that can be referred to.

At the stage legal proceedings are issued, it will often be the case that these individuals have harassed staff.

Maintaining a united front as an organisation is vital. Vexatious litigants usually do not have legal representation, which means they will be cross-examining your staff. The prospect of being cross-examined by someone who may have behaved in an imitating manner is understandably upsetting for many people. There are a number of things we can support with to ensure your staff are looked after if they have to give evidence in cases involving vexatious litigants. Your lawyers can make an application for “special measures” which may involve a screen being placed around the witness box when the vexatious litigant is cross-examining a witness. This creates a physical barrier and prevents a line of site. In my experience, this really helps witnesses give their best evidence in difficult cases.

For litigants who make lots of meritless applications, we can apply for civil restraint orders which, if granted, put in place a process whereby vexatious litigants need the permission of the Court to make further applications.

There are also practical considerations on the day such as getting in and out. Courts can be very busy; you have to queue for security and when you get in you are waiting in the same areas as the litigant in person. We can arrange for your witnesses to come in via a different entrance or at a different time.

We can also ensure that a room within the Court building is booked for your witnesses to wait in. It should never be underestimated what vexatious litigants might say or do, so your legal representatives should be thinking about the practicalities in getting in and out of the courtroom.

There is no avoiding the fact that costs in these cases will often be high. Litigants in person tend to write very long emails and send lots of irrelevant documents. Your legal representatives will still have to consider them as there may be a small nugget that has to be dealt with which is contained within otherwise lengthy and irrelevant submissions.

Public bodies and their legal representatives should think outside the box on the issue of costs and whether there may be ways to settle cases. Often this may not be palatable, particularly where a claim against you is weak, but in some cases a small payment can make a vexatious individual go away. However, it doesn't always work and in some cases it will not be appropriate.

Unfortunately, public bodies are unlikely to recover costs in many instances, as litigants in person are often impecunious. Even if you get a costs order, you may experience difficulties in enforcing it where a litigant doesn't have any income or assets.

The key is patience. Vexatious litigants are persistent and can inundate you with applications and claims. However, by engaging appropriate legal support, we can assist you in getting these dismissed and supporting your staff through the process.



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Civil restraint orders: An effective tool for managing vexatious litigants

Angela Williams – Legal Director,
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Vexatious litigants waste a lot of organisational time and money as well as Court resources. They can relitigate the same issues, use litigation to harass or intimidate and ignore the Court rules. Vexatious litigants go beyond being persistent and actively abuse the legal process. However, there are safeguards that organisations on the receiving end of vexatious litigation should consider.

Vexatious litigants can be restrained by Civil Restraint Orders. This is a realistic and effective mechanism that can be sought when a litigant is repeatedly making meritless applications.

A limited Civil Restraint Order applies to the specific cases in which it is sought and prevents any further applications within that case without the permission of the Court.

An extended Civil Restraint Order prevents recurring litigation on the same or similar issues. It puts in a filter against further applications and claims on issues and topics that a vexatious individual has already litigated. In the most extreme cases, the Court may grant a General Civil Restraint Order. This prevents an individual from issuing any application or claims for three years without the permission of a High Court Judge.

To get any sort of Civil Restraint Order, you will need evidence of meritless and repetitive behaviour or conduct interfering with the proper administration of justice. Courts are sometimes willing to act of their own motion and issue a Civil Restraint Order in circumstances where vexatious individuals are using up a lot of Court time.

In practice, applying for a Civil Restraint Order is straightforward but it must be supported by sufficient evidence. The timing of the application is key and you will have to show a number of orders striking out

claims as totally without merit.

Ensure that the focus is on the Claimant's conduct, rather than their personality. Organisations should keep chronologies of events, evidence of repetitive complaints and litigation as well the associated costs and disruption to services. Clear and factual timelines will be useful in showing the Court that a particular individual is abusing the process.

This is important as the Judge will have to consider whether the conduct is persistent or abusive and whether the order that you are seeking is proportionate against the litigant's right to pursue justice.



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Discussion

There was discussion around Artificial Intelligence ("AI") and its contribution to the volume and substance of vexatious claims against public bodies. AI tools such as ChatGPT have made it easier for litigants to draft detailed claims, grievances and complaints and contributed to an increase in the depth and length of complaints. It was also recognised that AI can give a false sense of confidence in bringing meritless claims as it often seems to support whatever argument someone wants to put forward. This has resulted in more issues being escalated to legal teams. Attendees also had experience of being sent large volumes of copied and pasted legislation, case law and pleadings that had been run through AI, resulting in repetitious documents.

Discussion also touched on the concerns for healthcare professionals when complainants start involving professional bodies.

This can create huge pressures for individuals who have to balance engaging with external referrals with any organisational response. It was noted that organisations should be transparent with members of staff and provide support, without forming an opinion on the merits of the complaint on the basis of the identity of the complainant.

The discussion came back to the importance of identifying at an early stage the individual staff who will be dealing with a particular vexatious complainant and the processes of doing so. Often this will require an early Multi-Disciplinary Team meeting followed by clear communication in writing to the individual about how they will be managed and who their point of contact is. This should also be communicated to other staff so they know the appropriate person to redirect them to if they are approached.

Top tips and key takeaways

- Be clear about processes and parameters and appoint a single point of contact if appropriate.
- Ensure there is awareness among staff of those processes, to prevent duplication or inconsistent messaging.
- Vexatious complainants can be demanding but protect your own time and recognise many demands are not urgent.
- Vexatious litigants who make multiple meritless claims and applications can be restrained by Civil Restraint Orders.
- Record interactions in writing and chronologies of events and accurate timelines. This will assist you in obtaining Civil Restraint Orders.

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