

# How to respond to vexatious behaviour



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## Introduction

Occasionally a person is described as a ‘vexatious complainant’. The legal process and other formal mechanisms for managing querulous complainants are interrogated in a search for principles and solutions that might be adopted in other places. This guide offers a description, suggestions for treating the person with respect and survival strategies.

Although there are some hints about possible ways to treat the person with respect, to date, this document pays insufficient attention to the humanity, motivations and feelings of the person who is labelled vexatious. The bulk of the material that has been found so far tends to focus on the survival strategies for those who are the target, or who may even feel themselves to be the victim of the vexatious activity. It is strongly hoped that this deficit can be remedied in future versions of this paper. As a simple demonstration of the need to find respectful approaches, this paper often refers to vexatious *behaviour*, rather than labelling the person as vexatious at every opportunity, thus acknowledging that the person’s conduct may be transient or driven by circumstances or context.

## Compare a reasonable complaint with a vexatious complaint

The following table provides a rather exhaustive description of vexatious behaviour. It is more than the actions of a lonely person who makes contact too frequently in search of conversation or someone with whom to share their news. It is rather less personal than stalking and harassment but is perhaps similar in the degree of preoccupation, attempt to gain power and control and sometimes

to scare staff<sup>1</sup>. It is unlikely that all the features catalogued here will apply in every case, but the list will help individuals and organisations to recognise what is happening<sup>2</sup>.

<b>Reasonable complaint</b>	<b>Vexatious complaint</b>
The complaint relates to a legitimate role of the organisation	The complaint concerns matters which are beyond the remit of the organisation
The complaint has a reasonable chance of success	The matter is impossible to determine or is beyond the control of the organisation.
It is designed to improve the service for the complainant or others in the future	It is pursued to harass or annoy, or to seek retribution, revenge or financial compensation
The matter is important and has value for the complainant and for others in similar circumstances	The matter is frivolous, trivial or extravagant and has no merit. The cost of investigation is disproportionate, diverting resources away from others.
The complaint has a sound factual basis	There is no underlying justification in fact
Compiles all the evidence at the start and sticks with the matter until it is resolved.	Changes the basis of the complaint as the investigation proceeds
Sets out the complaint in a concise and logical fashion	Evidence is irrelevant, incoherent, incomprehensible and scandalous <sup>3</sup>
Reasonable communication	Almost everything others say is misconstrued.
The manner in which the complaint is pursued is amicable	The complainant's behaviour is unacceptable - threatening, deceitful, abusive or offensive <sup>4</sup>
The complainant appreciates the efforts of staff who are trying to address the issue	Makes unjustified complaints about staff who have helped with the initial complaint and asks for them to be replaced or punished
Raised at the earliest moment	Raised at the last possible moment, allowing the situation to escalate before it is addressed
Seeks fair compensation	Aims for an unreasonably high compensation payment <sup>5</sup> or another disproportionate remedy
Allows enough time for the process	Makes excessive demands with lengthy phone calls, emails or letters every few days, expecting an immediate response.
The complainant lets the matter drop at the appropriate stage <sup>6</sup>	Complaints are started but remain unresolved or dormant. The person refuses to accept a reasonable resolution and bombards the defendant with additional or repeat complaints that have already been determined <sup>7</sup> .
The complainant pays costs and follows guidance given in previous decisions	Rejects all advice and direction given previously and instead launches a new complaint.

## Indirect harassment

A vexatious complaint might be part of a campaign of indirect harassment, whereby the complainant seeks to recruit a third party who is in a position of authority to take action on their behalf against the complainant's intended target. As an example, person A might make vexatious reports about person B to the police, social services or his employer to invoke an investigation. The vexatious nature of the complaint may not be immediately obvious because the person does not appear to gain from his actions.

Indirect harassment is a form of abuse by proxy<sup>8</sup> and involves a perpetrator who "knows or ought to know" that his actions amount to harassment<sup>9</sup>. By making a vexatious complaint to an authority figure, the person is rewarded with attention, while manipulating the authority figure to exert control over others and so divert negative attention away from themselves. Multiple different authorities may be contacted to magnify the effect, and each may be unaware of the involvement of others in the campaign<sup>10</sup>. Moreover, the victim of this indirect harassment has little choice but to cooperate with the authority's investigation. Despite the human rights principle that people should know the nature of any accusations made against them<sup>11</sup>, investigators may use privacy rules to deny the victim information about both the identity of the abuser and the details of the allegations. In a recent case, Judge Hayden described how the police and other agencies had become diverted by a series of spurious allegations against family members (including kidnap, planning an honour killing, racial and physical abuse) and had failed to recognise the underlying abusive relationship<sup>12</sup>.

## The rise of vexatious behaviour

Vexatious behaviour is rare and so in general, organisational procedures should be built on the assumption that most people will be constructive, reasonable and proportionate in their conduct. However, it may be useful to prepare for those few occasions when a person exhibiting vexatious behaviour does engage with the organisation, since their interventions can be hugely time-consuming and emotionally taxing.

Magna Carta, the civil rights movement and the European Convention of Human Rights all assert the right of citizens to a fair trial, and this has helpfully empowered citizens to bring legal actions when they suffer a civil or criminal wrong. In the UK, the substantial cuts to legal aid in 2013<sup>13</sup> resulted in a significant increase in the number of people representing themselves in court without the benefit of legal advice.

Beyond the law courts, the culture of deference has declined in the last century and more people have stood up for their rights. The right to freedom of speech has been established<sup>14</sup> and strengthened in political settings<sup>15</sup>. Managerialist approaches have dominated organisations and led to a proliferation of policies, including systems for responding to complaints and grievances. Trade unions represent employees in resolving disputes, advocates support people in health and social care services and issue-based campaigning groups have emerged to support those with a political or environmental agenda. Both Government and popular culture have responded by inviting people to engage in modern forms of democratic activity which have the potential to shape everything from debates in parliament to local planning decisions and priorities for health research.

The internet has enabled people who share an agenda to link up with one another and coordinate class actions or media campaigns. The relative anonymity of online contacts coupled with the widely held appetite to broadcast personal views via social platforms like Twitter and Facebook has stimulated cyberbullying and other online behaviour designed to harass.

Taken together, the increase in personal and group assertiveness and the rise of mechanisms through which these voices can be heard has resulted in a corresponding increase in vexatious activity<sup>16</sup>, strengthening the demand for proper processes to be in place to deal with these circumstances.

## Possible motivations

Around three quarters of people named as vexatious litigants are male and one list included a doctor and a member of the clergy<sup>17</sup>.

In one example, half of those appealing to an Ombudsman's office received a ruling in their favour<sup>18</sup>, so being persistent is sometimes driven by an entirely valid determination to seek justice. Indeed, where there is a toxic and abusive organisational culture, the person dubbed vexatious may be taking justified and ethical action to challenge something that others either do not see or choose to tolerate<sup>19</sup>. Some feel that an abuse has been perpetrated upon themselves, while others campaign on behalf of another person, sometimes sacrificing sleep, money and family relationships in their quest for a satisfactory resolution<sup>20</sup>. We do not know if people lose friends because their dispute becomes their only topic of conversation or whether they also become aggrieved with their onetime friends and launch actions against them alongside the original complaint<sup>21</sup>. Nor do we know how often the complainant is presenting a mixture of mischievous and ethical behaviour, such as Hilaire Belloc's character Matilda<sup>22</sup> who told lies and then was not believed when she told the truth.

Some of those who complain are wilfully attempting to manipulate others, such as customers who use complaint as a stratagem to avoid payment or to win a settlement from organisations that are reluctant to contest the matter.

In addition to these manipulative approaches, some people lose perspective and become obsessive, paranoid and habitually querulous<sup>23</sup>, and one commentator has suggested that 'almost all' persistently vexatious persons are mentally ill<sup>24</sup>; another has observed that few seek help or cooperate with those who offer it; while those critical of psychiatry assert that there has been little clinical interest and few treatments developed<sup>25</sup>. Persistent delusional beliefs and personality disorder have been suggested as possible causes of vexatious behaviour, and anxiety and depression is suggested as a consequence of the fruitless struggle that some complainants endure, but there have been no serious attempts to identify cause and effect or assess whether there is any consistent link between mental illness and vexatious behaviour. There appears to be a link between narcissistic traits and litigious behaviour<sup>26</sup>.

The difficulties of bringing a lawsuit may combine with repeated disappointments to generate or exacerbate distress. It is notable that, in 2004, the court ruled that despite the fact that Paul Benton was mentally ill, he should still be declared a vexatious litigant<sup>27</sup> and this shows that mental illness is not a reason for failing to take action to curb this behaviour<sup>28</sup>.

As well as beginning complaints, the complainant may have a significant investment in keeping them going. As Skilling (2017) observes, *'They have much to lose if the process ends: their purpose in life, face, hope of solving their problems, their investment to date, the joy of knowing you are right, the joy of being important, the joy of struggle, the joy of power over others.'*<sup>29</sup>

Despite all these assertions, there is actually very little evidence to hand that would justify any kind of stereotype being formed of a 'typical' person who exhibits vexatious behaviour. Treating each person as unique and tailoring the response accordingly is likely to be more successful than making

assumptions. Where the term 'vexatious' is used, it should describe specific behaviours rather than stereotype the individual. Indeed, in one mental health service, a senior nurse who interviews people who complain has repeatedly recruited the complainant on to a team of champions, so that people who were previously merely critical are now applying their energy to finding solutions in partnership with the organisation.

## Procedural and legal systems

In the UK, a lawyer's paramount responsibility is to act in the interests of justice and their duty to the client is subordinate to this<sup>30</sup>. This is set out in the Bar Standards Board Handbook<sup>31</sup> which confirms that the lawyer must not abuse their role and must take reasonable steps to avoid wasting the court's time. Similarly, the rules of the Chartered Institute of Legal Executives require members to 'take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's time'<sup>32</sup>. This shows that the legal system expects its staff to refuse to support frivolous complaints and any lawyer who supported vexatious litigants would risk censure as vexatious themselves and could be sanctioned or disbarred.

The principle that lawyers have a primary responsibility to uphold justice and any obligation towards their client comes second may be useful beyond the legal system. For example, a publicly funded service may conclude that its primary goal is to promote the health of the population and access to justice or to minimise poverty and exclusion; and that this duty overrides any claim by individual citizens. While the legal profession has been explicit about its hierarchy of obligations, other public services have not been so clear. Making such a decision and making it known may help in circumstances where a vexatious complainant was absorbing substantial resources<sup>33</sup> and thereby denying support to other citizens.

There is a further issue that arises in respect of the underpinning responsibilities and obligations of an organisation which is brought to the fore by vexatious complaints. This concerns matters of support and representation. In the legal system, once the primary duty to uphold justice is acknowledged, the matter is then seen as an adversarial search for truth by the manifest competition between two opposing viewpoints. Each is normally provided with a champion, and so both sides feel supported. This same approach is taken in industrial relations, whereby the employee is supported by their manager and the complainant by their trade union representative, with an independent arbiter judging the respective strength of the two viewpoints. However, this arrangement is not universally applied, and, as a result, some 'respondents' or 'defendants' can feel unsupported and even overwhelmed by the relentless pursuits of the complainant. Where the complaint consists of an allegation of discrimination, abuse or sexual misconduct, the organisation may be so eager to show a vigorous commitment to rooting out such misconduct that they assume that the allegation is true, lay the burden of proof upon the defendant and treat them as guilty until proved innocent. In a curious mirroring of this process, the complainant may perhaps feel similarly unsupported, which may add fuel to their activities.

The law concerning the behaviour of vexatious complainants tends to be confined to citizens who represent themselves, who are known in the UK as 'litigants in person'<sup>34</sup>. This is because other citizens are represented by a member of the legal profession and controls already exist to regulate the lawyers. This means that the overall containment of vexatious conduct is achieved through the twin structures of actions designed to regulate the behaviour of the person themselves and those that regulate the behaviour of those who might support or advocate on behalf of the individual.

In the UK and some US states, such as Florida, litigants who have been deemed vexatious must seek permission from the court before filing any further suits and could be deemed to be in contempt of court if they do so without such permission. This brings together three factors – a process by which people are labelled as vexatious, a triage process by which a new complaint can be briefly assessed and refused if it entirely lacks merit<sup>35</sup>, and a sanction for people who flout the process. In England, similar processes apply to people bringing family<sup>36</sup>, civil, criminal, employment actions<sup>37</sup>. In California, making a law and publishing a procedure on it has sparked a new round of challenges as litigants have queried the grounds for each decision.

In the UK, the mechanism for preventing a vexatious person from filing new complaints is called a civil restraint order. Such an order can be applied not just to litigants in person, but also to those lay individuals (sometimes known as McKenzie friends) who help litigants in court but who are not themselves parties to the proceedings. This shows that the court is determined to restrict egregious activity and will sanction not only the vexatious person but also anyone who stands with them.

Since vexatious litigants pursue multiple complaints<sup>38</sup> and then commonly refuse to pay the costs arising from their legal actions, some jurisdictions in the USA have insisted that the plaintiff furnishes the court with a security bond prior to starting an action. In a similar attempt to press the individual to shoulder some of the costs of their actions, the General Data Protection Regulations allows the Data Controller to charge a reasonable fee for repetitive, manifestly unfounded or excessive requests for data<sup>39</sup>.

Independent advocacy organisations can support people to pursue a complaint, such as those providing statutory advocacy under the Local Authority Social Services and National Health Service Complaints Regulations 2009. In one example, the advocate continued to support the person after a good win and as they moved from a legitimate complaint into a place where the advocate believed they would have done well to let the matter drop. The person is entitled to make an unwise decision and follow it through if they have mental capacity<sup>40</sup> and the role of the advocate is to support people to carry out their wishes, but this discussion about vexatious complainants explores where such obligations end.

Most organisations have a mechanism for escalating complaints and it is valuable to understand how this works, including access to legal advice. Beyond the internal processes of the organisation itself there may be access to an Ombudsman or the Courts.

An organisation may have to restrict the complainant's access to its premises or staff, in accordance with its own procedures for protecting their staff from harassment and harm. This could be by limiting the medium, frequency and duration of contact with staff, confining contact to an appointed member of staff, arranging for a witness to be present, setting the location and refusing to register any further complaints about the same matter. This could be for a limited time period with a review and the person should be told about the arrangements<sup>41</sup>.

There has been legislation on the British statute book since 1896<sup>42</sup> that attempts to allow each citizen their day in court, while blocking those who think that they are entitled to two. Significantly, there are three types of Civil Restraint Orders<sup>43</sup>, varying in reach and duration, with even the most severe usually having a time limit and only permitting renewal in some circumstances. Even when such a restraint order is in force, it does not entirely deny the person access to the court, but only places an additional hurdle before them by requiring that a judge give permission for the person to pursue an action.

In a landmark case in California, a judge publicly chose not to deploy the powers available to him to curb the activities of a vexatious litigant, as he simply could not face the barrage of appeals and complaints that would ensue<sup>44</sup>. This shows how everyone connected with vexatious persons can be pushed into choosing a quiet life rather than doing the right thing.

In a rather more commendable judgement in 2006, Phillip Morris Ltd v Attorney General for the State of Victoria, the Court of Appeal granted leave to the plaintiff to pursue an action after he had been previously listed as vexatious and the particular application had been refused on eight previous occasions. This shows that valid complaints that deserve attention may arise from a person previously labelled as vexatious. Before leaving the legal field, it is important to note that mechanisms employed by the courts to manage vexatious conduct may not be utilised by other fields, such as employment, as discussed below.

## Learning from employment

Some employees are persistently incompetent or repeatedly behave in an unacceptable manner. To manage this, decent employers have the following mechanisms in place: a robust job description, code of conduct and performance requirements; delegation of authority; induction, training, appraisal and supervision; and capability and disciplinary procedures. If these things are weak or absent, the incompetent employee can be stigmatised because the employer or co-workers grumble about the unacceptable behaviour rather than addressing it properly. In some cases, the matter remains unresolved for years, the employee is considered vexatious by both the employer and their co-workers, but the situation falls short of the more severe kind of vexatious behaviour that is the focus of this paper.

In one example from research<sup>45</sup>, a member of the community was recruited as a co-researcher and then abused their position. The research team were using participatory methodologies and had no structures in place to support the decision to exercise authority, address this behaviour and ultimately expel the malefactor from the team.

There may be lessons to learn from the specific situation where an employee makes vexatious complaints to their employer. In *Woodhouse v West North West Homes Leeds Limited* [2013], Judge Hand QC ruled that no matter how ill-founded discrimination grievances or claims may be, provided they have been made by the employee in good faith, an employer who dismisses an employee for raising such grievances risks exposure to a victimisation claim. However, the judge recognised that it might be possible to separate the complainant's conduct from the complaint itself. Therefore it may be possible to dismiss an employee for a reason not related to the bringing of a discrimination claim, but for the way in which that claim was pursued, including unreasonable allegations designed to harass the employer into settlement.

This case shows how organisations and individuals that have suffered substantial harm from the vexatious behaviour of another person may be tempted to mete out punishment to that person by unreasonably denying them resources or support. Such an action would not be acceptable, while acting to contain any unacceptable behaviour would be.

## Data protection and keeping a list of vexatious persons

Some complainants absorb hundreds of hours of staff time in the organisations to whom they complain, diverting valuable resources away from others. Informal networks are sometimes used to alert staff to the behaviour of these individuals, as it is easier to address the issue by starting early.

There is always the possibility that a vexatious complaint will be followed by a legitimate complaint, and so complaints must not be dismissed simply because the previous one was found to be without merit.

The Care Act 2014 makes it clear that practices in respect of confidential information about individual data subjects must not be changed to uphold the reputation or interests of the organisation<sup>46</sup>. This means that it is unacceptable to disclose personal information in an attempt to reduce the pressure of work on the organisation or to restore its public reputation.

GDPR regulations routinely give the data subject the right to see any information kept about them, refuse permission for it to be shared and require it to be deleted, which might be seen to prohibit the use of a 'banned list'. However, consent is only one of six available reasons for lawfully holding and processing data. Another reason specifically relates to criminal offence data, allowing, for example, the HM Courts Service to maintain and publish a list of vexatious litigants<sup>47</sup>, and Councils may keep a list of violent persons<sup>48</sup>. Two other reasons are relevant to our discussion, known as public task and legitimate interests<sup>49</sup>.

Holding information about vexatious persons can be covered under the 'legitimate interests' provision as long as it is operated rigorously, fairly, proportionately, and for a limited time period. It should only be applied in clearly defined circumstances and after due warning as part of a proper process which includes the right of appeal and regular review, and it should be time limited.

Several commentators have recommended that the organisation should offer a Single Point of Contact in order to enable the person to remain in touch. However, it is possible for this arrangement to be abused by a staff member who has committed a misdeed and triggered an entirely legitimate complaint, and who then labels the complainant as vexatious and takes control of the Single Point of Contact in order to suppress criticism of their own practice. Safeguards can be set in place to avoid such a situation by ensuring:

- (i) clarity about how the complaint originated, who deemed it to be vexatious, who is designated as the Single Point of Contact and what actions are taken
- (ii) the appointment, reporting lines and management of the Single Point of Contact are entirely independent of the other people involved
- (iii) a team of staff independently scrutinise and record these decisions. This also means that if the matter ends up in court or tribunal, the Single Point of Contact is not scapegoated.
- (iv) the person is informed of the action that has been taken, unless there is clear evidence that this course of action would be risky.

The whole process should be evaluated through a Data Protection Impact Assessment, which should include consideration of whether there are overriding legitimate interests for retaining information about the complainant, the complaint, the vexatious behaviour and the outcome, as such conduct may recur.

## Advice for organisations on responding to vexatious behaviour

The following arrangements may assist an organisation to prepare for and respond well to vexatious complainants.

1. Agree on a shared definition of what constitutes vexatious behaviour and how to manage it. Consider whether indirect harassment is included in your definition and management arrangements. If so, discuss this with the victim and signpost them towards agencies for support and advice.

2. Establish sanctions that limit the impact of vexatious activity so that your organisation is not diverted from its main purpose. These may involve restricting access or, in exceptional circumstances, denying access to the service or taking legal action against the person<sup>50</sup>.
3. Decide how you will keep a record of the activities of vexatious persons.
4. Where new complaints arise from a known vexatious person, settle on a triage system that will enable you to briefly review the merits of a new complaint and progress to a full evaluation if the details warrant it. This means that the person is not entirely denied the right to complain, but merely restricted to issues that have a reasonable chance of success.
5. Create rehabilitation pathways so that the person deemed vexatious and their complaint may be restored to an ordinary status, and so that genuine issues are given attention.
6. Decide whether to publish a description of your approach.
7. Address both the workload and the emotional implications of these processes on the employees who deal with them on behalf of your organisation.
8. Seek professional advice to ensure that your plans are lawful.

## Advice for individuals on how to survive a vexatious complaint

**Review policies.** Ensure that role and task descriptions, appraisal, competency and disciplinary procedures are in place and effective so that the people you engage with are clear about what is expected of them, your obligations are clear, and there are mechanisms in place to draw your relationship with the person to a close.

**Read thoroughly.** Unless there is a triage arrangement in place, there is no way of avoiding reading and evaluating each piece of correspondence. However, multiple complaints about the same matter can be dealt with as a single item, as long as a clear assessment has found that new complaints do not address new issues.

**Seek advice.** A senior staff member may take responsibility for all communications with the person, and it is important to follow any advice that is given, to ensure that a consistent approach is taken<sup>51</sup>.

**Keep listening.** Try to meet the person informally, listen to their story and establish some rapport. It may take a very long time, as sometimes the person wants to include everything and finds it difficult to differentiate between important themes and smaller details.

**Write and speak carefully.** Some complainants find additional grounds for complaint in every spoken sentence and every email or letter, so crafting something that says exactly what you mean and no more is a key skill.

**Avoid the therapist's role.** It can be tempting to make comment on patterns of behaviour and some people ask for advice on how to manage their future relationships. Any feedback at all is likely to be viewed as criticism, fuel the person's sense of being wronged and lead them to aggressively defend themselves against this new threat.

**Notify people of their rights.** This might mean explaining how to appeal against a decision or refer the matter to independent mediation or judgement. It might mean telling the person that they have exhausted the process or that any future correspondence will be dealt with by a single individual, or even that they will receive no further responses. Care is needed to ensure that accurate information

is given regarding the remit of Ombudsman or other resolution services, and that the correct laws and regulations are invoked<sup>52</sup>.

**Attend to other stakeholders.** Sometimes the person is running multiple complaints about different staff or neighbouring organisations. Sharing personally identifying information has the potential to be a breach of confidentiality, which may trigger a further complaint.

**Arrange protection.** Whilst the risk of assault is low, it makes sense to stay safe by assessing risk and preparing your mitigations and responses. Attend to the safety elements of your lone worker policy and bear in mind that it is not necessary to meet a complainant's unreasonable demands, or to answer every single point made in the complainant's unreasonable letter.

**Look after yourself.** It is emotionally taxing to be the target of vexatious behaviour, especially where the person is misconstruing people's motives.

## What is the status of this paper?

Most of the documents we read are finished pieces of work, carefully crafted and edited in private before being shared with anyone else. This is a different kind of paper – it was shared online [here](#) from the first day, when the initial handful of ideas were incomplete, poorly phrased and tactless. The work has been edited many times, and on each occasion a revised version has replaced the earlier material online. This process is still under way, and so this paper may still be lacking crucial concepts, evidence, structure and grammar<sup>53</sup>. As readers continue to provide feedback<sup>54</sup>, further insights will be used to update it, so please contact [peter.bates@ndti.org.uk](mailto:peter.bates@ndti.org.uk) with your contributions<sup>55</sup>.

It is one of a suite of documents that try to open up debate about how in practical terms to empower disabled people and share decision-making in health and social care services – in research, implementation and evaluation.

This way of writing is risky, as it opens opportunities to those who may misunderstand, mistake the stopping points on the journey for the destination, and misuse or distort the material. This way of writing requires courage, as an early version can damage the reputation of the author or any of its contributors. At least, it can harm those who insist on showing only their 'best side' to the camera, who want others to believe that their insights appear fully formed, complete and beautiful in their simplicity. It can harm those who are gagged by their employer or the workplace culture, silenced lest they say something in a discussion that is not the agreed party line. It can harm those who want to profit from their writing, either financially or by having their material accepted by academic journals.

In contrast, this way of writing can engage people who are not invited to a meeting or asked for their view until the power holders have agreed on the 'right message'. It can draw in unexpected perspectives, stimulate debate and crowdsource wisdom. It can provide free, leading edge resources.

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<sup>1</sup> For a study on staff experiences of stalking and harassment, see Clarke M, Yanson I, Saleem Y, Edworthy R & Khalifa N (2016) Staff Experience of Harassment and Stalking Behavior by Patients, *International Journal of Forensic Mental Health*, 15:3, 247-255, DOI: 10.1080/14999013.2016.1166465.

<sup>2</sup> Some of this material is drawn from Stauber A (2009) Litigious Paranoia: Confronting And Controlling Abusive Litigation In The United States, The United Kingdom, And Australia *International Review of Business Research Papers* Vol.5 No. 1 January 2009 Pp.11- 27.

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<sup>3</sup> Lester et al (2004) found written communications were more likely to use excessive and unusual forms of emphasis in written submissions, such as multiple capitals, bolding and underlining. They made copious marginal notes and used colour highlighting excessively. See Lester G, Wilson B, Griffin L, Mullen PE (2004) Unusually Persistent Complainants. *British Journal of Psychiatry*, 184; 352-356.

<sup>4</sup> Lester et al (op cit) found that more than half of the people they studied had made threats of violence towards complaints handlers.

<sup>5</sup> In *Pearson v. Chung* 2005, Pearson sued a dry-cleaning business for \$67 million for allegedly losing a pair of his trousers. See *Pearson v. Chung* - Wikipedia. See [https://en.wikipedia.org/wiki/Pearson\\_v.\\_Chung](https://en.wikipedia.org/wiki/Pearson_v._Chung).

<sup>6</sup> In the Philippines, article 287 of the Revised Penal Code criminalises 'unjust vexation' which it defines as "any person who commits a course of conduct directed at a specific person that causes substantial emotional distress in such a person and serves no legitimate purpose." This is notable as it includes the element of sustained behaviour, or 'a course of conduct' rather than a single annoying act.

<sup>7</sup> In *KL Communications Ltd v Wenfei Fu* IPEC 22/04/2015 Judge Warren determined that a persistent course of conduct means more than two such actions (cited [here](#)), while the than [UK Government Legal Department](#) indicates that six might be the appropriate number, but flexibility is needed.

<sup>8</sup> Some commentators suggest that people diagnosed with personality disorder or narcissism may exhibit this behaviour - see <https://outofthefog.website/top-100-trait-blog/2015/11/4/proxy-recruitment>

<sup>9</sup> The Protection from Harassment Act 1997, section 1 – see [Protection from Harassment Act 1997 \(legislation.gov.uk\)](#)

<sup>10</sup> In one example, allegations were made to social services, police, Office of the Public Guardian, as well as professionals in law and finance, all designed to target the same victim. In each case, the allegation was investigated and dismissed but no action was taken against the person who made all these allegations. (personal correspondence, February 2021).

<sup>11</sup> Strictly, article 6 of the European Convention on Human Rights insists that people have a right to know the nature and cause of any accusation of a criminal offence that is made against them. Vexatious allegations may fall short of accusations of criminal behaviour, but we might hope that investigators would balance the accuser's right to privacy with the defendant's right to know.

<sup>12</sup> See *F v M* [2021] EWFC 4 15 January 2021 paragraphs 110-112 at <https://www.bailii.org/ew/cases/EWFC/HCI/2021/4.html>

<sup>13</sup> This was one consequence of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

<sup>14</sup> Article 10 of the European Declaration on Human Rights protects the right to freedom of expression. In *Handyside v. the United Kingdom* (7 December 1976, § 49) this was deemed to apply "not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population." However, this right is curtailed when the comments in question amount to hate speech and negate the fundamental values of the Convention. See European Court of Human Rights (Factsheet September 2020) *Hate Speech* Downloaded from [https://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf) 8 Dec 2020.

<sup>15</sup> The right to freedom of speech of politicians is given 'enhanced protection', sometimes referred to within the framework of parliamentary privilege. See *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin).

<sup>16</sup> For example, the [HM Courts Service](#) lists only 40 people who were banned from starting court cases without permission during the decade of the 1980s, contrasting with the 127 people who are currently banned via an [extended civil restraint order](#) (that usually lasts two years) at 14 November 2018.

<sup>17</sup> The two lists provided by the HM Courts Service were reviewed on 14 November 2018 and given names used to guess gender. Despite the fact that they cover quite different groups of litigants over different time periods, the percentage of men was consistent.

<sup>18</sup> The Local Government and Social Care Ombudsman received over 16,500 complaints and enquiries in 2016-2017 and upheld 54% of them, leaving 46% of cases in which the previous decision was overturned and the

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finding was in favour of the complainant. See <https://www.lgo.org.uk/information-centre/news/2017/aug/ombudsman-releases-complaints-statistics-for-all-local-authorities>

<sup>19</sup> For example, some have suggested that bullying is so common in the NHS that most employees tolerate it without complaint, and so the rare employee who rightly blows the whistle might be deemed vexatious and even become the subject of a Non-Disclosure Agreement, sometimes called a gagging order. See <https://www.theguardian.com/society/2019/feb/24/bullying-sexual-harassment-nhs-hospitals> and <https://www.telegraph.co.uk/news/2019/02/24/nhs-uses-gagging-orders-silence-staff-raise-bullying-harassment/>.

<sup>20</sup> In more than half the cases studied by Skilling et al, the complainants described suffering adverse financial, social, occupational, relationship or health consequences which they themselves attributed to their engagement in the complaints process. See Skilling G, Ofstegaard M, Brodie S, Thomson L. (2012) *Unusually Persistent Complainants Against the Police in Scotland*, Police Complaints Commissioner for Scotland. Indeed, the idea that some employees who rightly blow the whistle by complaining about the malpractice of their employer are then subject to a ‘retaliation complaint’ about their conduct, which sometimes results in their dismissal. This was the reason that legislation was introduced to protect whistle-blowers.

<sup>21</sup> On occasions, vexatious complaints trigger multiple investigations involving third parties. The third-party witnesses who are repeatedly interviewed and required to submit data can find the experience time consuming and distressing. They can feel accused of wrong-doing and worry that their reputation is tarnished.

<sup>22</sup> Belloc M (1870-1953) [\*Matilda who told lies and was burned to death\*](#).

<sup>23</sup> Kraepelin defined Querulous Paranoia in 1904 and [ICD-10](#) includes Paranoia Querulans in section F22.8 as a persistent delusional disorder.

<sup>24</sup> Taggart, M and Klosser, J (2005) Controlling Persistently Vexatious Litigants, in Groves, M. (Ed.), *Law and Government in Australia*, pp. 272-300.

<sup>25</sup> See [https://www.unboundmedicine.com/medline/research/litigious\\_paranoia](https://www.unboundmedicine.com/medline/research/litigious_paranoia)

<sup>26</sup> CEOs with narcissistic personalities are more likely to become embroiled in lawsuits, less willing to take advice from experts and less sensitive to objective assessments. See O'Reilly CA, Doerr B & Chatman JA (2018) “See You in Court”: How CEO narcissism increases firms’ vulnerability to lawsuits *Leadership Quarterly*, 29(3). DOI: 10.1016/j.leaqua.2017.08.001. Available at <https://cloudfront.escholarship.org/dist/prd/content/qt2r78k3nm/qt2r78k3nm.pdf>. See also <http://www.fishermediation.com/identifying-and-managing-narcissistic-personality-clients/>

<sup>27</sup> Attorney General v Benton (2004) EWHC 1952 (Admin).

<sup>28</sup> Experts may be available, such as B Mahendra who in 2008 was practicing as both a barrister and a Consultant Psychiatrist – see <https://www.newlawjournal.co.uk/content/law-unto-themselves>.

<sup>29</sup> See Skilling G (2017) *Querulous Complainants* Edinburgh: Scottish Public Services Ombudsman [https://www.spsso.org.uk/sites/spsso/files/communications\\_material/Thematic\\_Reports/Querulous%20Complainants%20WEB.pdf](https://www.spsso.org.uk/sites/spsso/files/communications_material/Thematic_Reports/Querulous%20Complainants%20WEB.pdf).

<sup>30</sup> See the Legal Services Act 2007 s1(3).

<sup>31</sup> See [https://www.barstandardsboard.org.uk/media/1933294/bsb\\_handbook\\_version\\_3.3.pdf](https://www.barstandardsboard.org.uk/media/1933294/bsb_handbook_version_3.3.pdf) paragraph rC3.

<sup>32</sup> See <https://www.cilex.org.uk/pdf/IPS%20RoA%20conduct%20rules%20Feb%2012%20-%20Duplicate.pdf> paragraph 22 (a) (ii).

<sup>33</sup> It has been estimated that querulous complainants comprise 1–5% of all complainants but that they consume 15–30% of complaints handling resources. Mullen P.E., Lester G. (2006) Vexatious Litigants and Unusually Persistent Complainants and Petitioners: From Querulous Paranoia to Querulous Behaviour, *Behavioural Sciences and the Law*, 24; 333-349

<sup>34</sup> See [https://www.bizresearchpapers.com/attachments\\_2009\\_01\\_14/2.Alvin.pdf](https://www.bizresearchpapers.com/attachments_2009_01_14/2.Alvin.pdf). See also <https://www.lawsociety.org.uk/news/documents/litigants-in-person-guidelines-for-lawyers-june-2015/>.

<sup>35</sup> In England, the Supreme Court of Judicature (Amendment) Act, 1959 denied the right of appeal to those who had been refused permission to bring an action.

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<sup>36</sup> A so-called ‘barring order’ can be made by the Family Court under section 91(14) of the Children Act 1989 to prevent aggrieved parents repeatedly filing new actions without leave of the court. See <https://www.stowefamilylaw.co.uk/blog/2015/04/24/when-litigants-in-person-are-a-nuisance/>

<sup>37</sup> See the Prosecution of Offences Act, 1985 and the Employment Tribunals Act, Section 33, 1996.

<sup>38</sup> As an example, Mrs Popa sent 25 letters and emails on the same theme and this was deemed to be persistent, thus strengthening the decision to define her actions as vexatious. See *PricewaterhouseCoopers LLP v Popa* [2016].

<sup>39</sup> See <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/>.

<sup>40</sup> <https://www.legislation.gov.uk/ukpga/2005/9/section/1>

<sup>41</sup> See <https://www.lgo.org.uk/information-centre/reports/advice-and-guidance/guidance-notes/guidance-on-managing-unreasonable-complainant-behaviour>. Legislation in the USA imposes controls on the actions of people deemed vexatious for a fixed time period, but the time limit is optional in UK law and orders can remain in force indefinitely, although most run for a period of two years.

<sup>42</sup> The UK uses Civil Restraint Orders to regulate vexatious litigants under the [Supreme Court Act 1981, s 42](#).

<sup>43</sup> These are available under the Civil Procedure Rules 1998 – see [http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03/pd\\_part03c](http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03/pd_part03c).

<sup>44</sup> See [http://www-bcf.usc.edu/~usclrev/html\\_articles/072105/072105.htm](http://www-bcf.usc.edu/~usclrev/html_articles/072105/072105.htm).

<sup>45</sup> Kral MJ ‘Case 4.3: Suicide and well-being: A participatory study with Inuit in Arctic Canada’ *in* Banks S & Brydon-Miller M (2019) *Ethics in Participatory Research for Health and Social Well-Being: Cases and Commentaries* Abingdon: Routledge.

<sup>46</sup> The Government’s guidance on the Care Act 2014, paragraph 14.190 – see <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#safeguarding-1>.

<sup>47</sup> See <https://www.gov.uk/guidance/vexatious-litigants> or <https://www.gov.uk/guidance/extended-civil-restraint-orders-in-force>.

<sup>48</sup> See, for example, <https://www.theguardian.com/uk/2009/jun/24/slough-jane-clift-libel-damages>.

<sup>49</sup> See guidance from the Information Commissioner’s Office at <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/public-task/> and <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legitimate-interests/>.

<sup>50</sup> These options are discussed in detailed on pages 98-106 of the New South Wales Ombudsman (2<sup>nd</sup> edition 2012) *Managing unreasonable complainant conduct – A manual for frontline staff, supervisors and senior managers*. Available at [https://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0022/35617/GL\\_Unreasonable-Complainant-Conduct-Manual-2012\\_LR.pdf](https://www.ombudsman.gov.au/_data/assets/pdf_file/0022/35617/GL_Unreasonable-Complainant-Conduct-Manual-2012_LR.pdf)

<sup>51</sup> Skilling G (2017) *op cit*.

<sup>52</sup> See, for example, *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin).

<sup>53</sup> As a result, the author assumes no responsibility or liability for any errors or omissions in the content of this paper. The information contained is provided on an “as is” basis with no guarantees of completeness, accuracy, usefulness or timeliness.

<sup>54</sup> Contributions and challenges to this discussion have been offered by the following people, who bear no responsibility for the contents of this paper: Ian Paul and others who have opted to remain anonymous, given their connection with these matters.

<sup>55</sup> Undated or early versions should be replaced with the most recent, available [here](#).