

Dealing with unfair comments on websites

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Introduction

Health service providers are increasingly finding that people are using social and professional websites to comment about specific providers and staff members. NHS Choices is one such website, which allows members of the public to rate and review NHS services. Comments on NHS Choices and other similar websites can sometimes be inaccurate, unfair or inappropriate, which can potentially damage an organisation or staff member's reputation.

This guidance sets out how health service providers can take steps to have defamatory material removed from websites, including NHS Choices. It sets out how the law can be used to get comments modified or removed. For the avoidance of doubt, nothing in this guidance note should be relied upon as constituting legal advice. If you have a specific issue relating to the law of defamation, we would recommend that providers seek independent legal advice from a specialist defamation solicitor.

What is the legislative basis for requesting that a website comment be removed?

The [Defamation Act 2013](#) ("the Act") states that for a statement to be considered defamatory, it must have caused, or be likely to cause, serious harm to the reputation of the claimant. In the case of a practice, serious harm is considered if the statement has caused, or is likely to cause, the practice serious financial loss. A statement will only be defamatory if none of the various defences available under the Act are applicable. The most common defence relied upon are:

- Truth
- Honest opinion
- Publication on a matter of public interest
- Absolute privilege
- Innocent dissemination

The [Defamation \(Operators of Websites\) Regulations 2013](#) specify that people can ask operators of websites to remove adverse comments that they consider defamatory. The regulations provide legally binding defences for website operators, providing they follow the correct process for responding to requests. The [Electronic Commerce \(EC Directive\) Regulations 2002 \(SI 2002/2013\)](#) provide that, once a website operator is put on notice that it is hosting defamatory material, it should promptly take steps to remove the material or disable access to it. Failure to do this means that the operator assumes liability for its publication and is exposed to a claim for damages. In practice, a website operator will often be quick to remove potentially defamatory material from a site once informed of it, because this serves as a robust defence in the event of legal action.

The regulations and associated processes have been specifically designed and written for the public to be able to remove comments without needing to resort to solicitors or lawyers. It is possible for the whole process to be concluded within nine days.

What are the basic steps required to request that a website comment be removed?

If a comment is made on a website that you consider to be defamatory, the following process should be followed:

1. If you can identify the individual responsible for posting the comment, you must respond to them directly and request that they amend or remove the comment.
2. If you cannot identify the poster, then you must send a notice to the operator of the web site. This notice of complaint must include:
 - a. the name of the complainant and an e-mail address at which you can be contacted
 - b. where on the website the statement was posted (preferably URL links – make sure all URLs are included if it has been published in more than one place)
 - c. what the statement complained of says, and why you think it is defamatory
 - d. what meaning you attribute to the statement
 - e. the aspects of the statement which you believe are factually inaccurate or opinions not supported by fact
 - f. confirmation that you do not have sufficient information about the person who posted the statement to bring proceedings against that person
 - g. confirmation of whether you consent to your name and email address being provided to the poster.

Note: It is important that you ensure you include all the required information in the notice of complaint, as an operator may reject it if required information is missing.

3. Once the operator has received the notice of complaint, it has 48 hours to either:
 - a. remove the entry and advise you that it has been removed; or
 - b. contact the poster in writing, setting out the notice of complaint you made, and advise the poster that the offending statement may be removed from the website unless the operator receives a response from the poster by midnight at the end of the 5th day after the day on which the Notice of Complaint was sent.
4. If the **operator is unable to contact the poster directly**, because it does not have access to an email address or another means of private electronic messaging, then the operator must remove the offending statement. They must inform you that the statement has been removed. This process is also valid for anonymous postings. The operator must also remove the statement if the operator considers that the name and address provided by the poster are obviously false.
5. If the **poster fails to respond within the specified period**, the operator must remove the statement from the locations on the website specified in the Notice of Complaint within 48 hours of the end of that period.
6. If the **poster replies agreeing to removal of the statement**, the operator must remove the statement from the locations on the website specified in the Notice of Complaint within 48 hours of receiving the poster's response.
7. If the **poster replies within the specified period, but does not provide all the information requested**, the operator must remove the statement from the locations on the website specified in the Notice of Complaint within 48 hours of receiving the poster's response.

8. If the **poster does not wish the statement to be removed, provides the required contact details, and agrees to these being sent to you**, then the operator must contact you in writing within 48 hours of receiving the poster's response. This communication must inform you that:
 - a) the poster does not wish the statement to be removed
 - b) the statement has not been removed from the locations on the website specified in the Notice of Complaint, and
 - c) of the contact details given by the poster
9. In this situation, you must then engage with the poster directly. It is open to the operator to continue to assist you if it chooses to do so.
10. If the **poster does not wish the statement to be removed and provides the required contact details, but does not agree to these being sent to the complainant**, then the operator must contact you in writing within 48 hours of receiving the poster's response. This communication must inform you that:
 - a) the poster does not wish the statement to be removed
 - b) the statement has not been removed from the locations on the website specified in the Notice of Complaint, and
 - c) the poster has not consented to the release of the poster's contact details
11. In this situation, if you wish to take further action it may be possible to seek a court order requiring the operator to release the poster's contact details. An operator that 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.

Further information

The Ministry of Justice has published a very useful guidance document that sets the whole process out in more detail. See [Complaints about defamatory material posted on websites: Guidance on Section 5 of the Defamation Act 2013 and Regulations](#).

Schematic process for requesting removal of adverse comments from a website

Defamation (operators of websites) regulations 2013

