



## CURE THE NHS

campaigning for better NHS care

[www.curethenhs.co.uk](http://www.curethenhs.co.uk)

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*Precedent letter: response to threat from lawyers to close down NHS patient campaign internet site.*

When dealing with any allegation of defamation, it is useful to look at the defamation pre-action protocol:  
[http://www.justice.gov.uk/civil/procrules\\_fin/contents/protocols/prot\\_def.htm](http://www.justice.gov.uk/civil/procrules_fin/contents/protocols/prot_def.htm)

*Your postal address as well as email address*

*Date*

### **Without prejudice**

Dear Sirs

Thank you for your letter of (date).

First, we want to make it clear that we do not accept the objections that you have made, for a variety of reasons including but not limited to the following: (include/ modify/delete as appropriate)

1. The statements on the (name your organisation)'s site could be held to be substantially true if an objective analysis of the stated experiences of its contributors with (name of objecting organisation e.g. NHS Trust, e.g. NMC) were to be held by a court; and
2. On a balance of probabilities, we feel that we could show that the allegations on the site are more likely than not true; and
3. Any words used on the site found not to be true would nonetheless not impact on a finding of justification, as any words proved not to be true are unlikely to injure your client's reputation having regard to the imputations which would be found to be true; and
4. (Delete or include as applicable) Whether or not the words could be held to injure your client's reputation is a moot point, given that your client's reputation is already being held up to scrutiny. I am reliably informed that its reputation, the service that it delivers and allegations that it is failing to meet its regulatory remit will be subjected to close and public examination by (e.g. the Mid Staffs Public Inquiry in 2011;

- e.g. the Parliamentary Select Health Committee Inquiry into xx). This is the direct result of numerous people holding the view that (name objecting organisation) fails to meet its regulatory obligations, fails adequately to carry out its remit, fails to meet appropriate timescales, fails to investigate complaints properly, fails to offer an adequate service to complainants and fails to meet its self-stated obligation to safeguard the health and well being of the public; and
5. (Include, modify or delete as applicable:) You will doubtless be aware that (the Public Inquiry is chaired by an esteemed lawyer and that professional lawyers are involved in representing NHS campaign groups. Valid and objective questions about your client's professional integrity and the level of public confidence in its reputation are therefore already in the public domain; and
  6. We are frankly surprised that you nonetheless appear to be promulgating the view that your client's reputation is held in high public esteem, when there is every indication that it patently is not. It may be that your client has not fully instructed you as to the high level of public dissatisfaction with its services; and
  7. (Include, modify or delete as applicable) The fact that the Public Inquiry will be examining the numerous failures of (name objecting organisation) to satisfy the public underlines that the service offered by the (name objecting organisation) and other NHS regulatory bodies is already a matter of high public interest, and accordingly would most likely make many of the opinions expressed on the site about your client within the defence of "fair comment"; and
  8. The views expressed on the site do not arise from any malice but are based on direct experiences of what is reasonably perceived as your client's failure to deliver a proper service. Accordingly, the views are honestly held. Therefore any accusations by your client that the words used are exaggerated, obstinate or prejudiced are most unlikely to lead to its case succeeding; and
  9. Questions could also be raised as to why your client feels that it is appropriate to waste money in pursuing such a pointless legal action against sites such as (name your organisation's site) and whether such pointless waste of money and such attempted bullying properly fits with the obligations of its charitable/public (modify as appropriate) status; and
  10. (Include/modify/delete as appropriate) We see that your client's website refers to such titles as "Head of Legal Services" and "Head of Case Management", but despite the fact that the incumbent(s) have a duty to the public, we cannot find any name(s) on the site for the role holder(s), so

we are unable to check with the Law Society and Bar Council whether the incumbent(s) who is (are) responsible for spending public money in instructing your firm is/are actually legally qualified; and

11. (Include/modify/delete as appropriate) The use of the title "Head", of course, is frequently used in conjunction with a legal remit as a title by employees who are not professionally qualified as lawyers but who want to give the impression to an unsuspecting public that they are – despite Law Society guidance to the contrary. We now wish to make an FOIA request as whether anyone in (name objecting organisation) holding such titles is actually qualified as a lawyer.

(As appropriate) Nonetheless, pending the outcome of the Inquiry, we are willing to agree to take the references to the NMC off the (name of your organisation)'s site, provided that you are willing to write to the site host to say that your client's issues are now resolved and your client has no objection to the (name of your organisation) site being reinstated.

Our reasoning is that we do not see the point in getting embroiled in litigation with your client, when its reputation will in any event shortly be held up to intense public scrutiny by the Public Inquiry and the conclusions of the Inquiry about any failures found will be put into the public domain.

Partly of course that decision stems from the fact that we do not wish unnecessarily to burden pro bono organisations that assist NHS campaign groups with such a comparatively trivial matter as alleged defamation, unless it becomes absolutely necessary.

(Include/modify/delete as appropriate)

We are aware that your client's income stems from (give details) but it is accountable to the public. Hence it is valid to question whether instructing your high cost legal firm about this matter is a reasonable use of those subscriptions or in line with your client's (charitable/public) status.

Please note that should your firm feel that it has any further valid grounds for complaint about any of the content on the (name of your organisation) site, then we would expect your firm to write to me in the first instance rather than attempting to close the site down, and enclose a pre-action protocol.

An email and postal address for such correspondence are included above.

We're sure that in considering that request, you will be mindful of the comments by high profile lawyers such as Mark Stephens about corporate bullying, freedom of speech and attempted censorship of internet sites.

(Include/modify/delete as appropriate) Your client's own website states (what? E.g. the NMC one states "*We respect and value everyone for their contribution....We take responsibility for our actions and are open and transparent...we consult and encourage feedback*".) It is not appropriate for your client then to try to silence any feedback that is not complimentary, that may cause it embarrassment and/or that questions its performance or that of individual employees whose role includes having direct contact with the public.

That is particularly so where service users do not feel that has met (name of objecting organisation)'s declared remit of (what is on the site? E.g. on the NMC site it is "*(acting) in the best interests of people who use or need the services of nurses.....we show consideration and understanding.*")

(Include/modify/delete as appropriate) Lastly, with regard to your purported Data Protection Act points: your client's employee email addresses are in the public domain. The email addresses given are not the employees' private email addresses, but their NMC ones. The (name objecting organisation) is neither a private individual nor a private corporate organisation. It is an organisation with a public regulatory role and with accountability to the public. The (name objecting organisation) employees holding these email addresses are specifically employed to deal with complaints from the public. We therefore cannot understand your request that these email addresses should be removed from the site or your allegation that publishing them breaches the Data Protection Act. Having looked at Schedule 2 of the Act, we do not see that it justifies the point that you are making. You will also be aware of the ICO's views on the importance of the public interest exceptions. Kindly therefore justify this request by setting out your legal reasoning, so that we may seek legal advice as to whether your views are legally justified, with regard to avoiding any such matter arising again in the future.

Thanking you.  
Yours etc