

How to recognise and deal with vexatious and malicious grievances

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Introduction

1. The presumption should be that a complaint is made in good faith. If the manager becomes aware that the complaint is made with vexatious or malicious intent they may make a decision and recommendations for further action on this basis.

2. Every complaint must be considered on its merits and, even if someone has made a vexatious or malicious complaint in the past, it must not be assumed that any other complaint they make will also be vexatious or malicious.

3. Managers should consider any known temporary or permanent outside factors, such as personal or health issues that may have affected the employee and which the employee is prepared to share. Managers should remind the employee about available support such as the Employee Assistance Programme (EAP).

Identifying vexatious and malicious complaints

What is a vexatious complaint?

4. A vexatious complaint is one that is pursued, regardless of its merits, solely to harass, annoy or subdue somebody; something that is unreasonable, without foundation, frivolous, repetitive, burdensome or unwarranted.

5. In identifying vexatious complaints, managers must be careful to:

- distinguish between employees who are raising genuine concerns; and
- recognise where people are simply being difficult.

6. This can be achieved by recognising that complainants may often be aggrieved, frustrated or have other reasons for their behaviour; the focus must be on careful consideration of the merits of the case rather than the attitude of the complainant.

However, a complaint may be regarded as vexatious where the employee:

Persists in pursuing a complaint which has already been investigated by another or the same manager and provides no new or material information.

Seeks to prolong contact by continually changing the substance of a complaint or by continually raising further concerns or questions whilst the complaint is being addressed.

Fails to clearly identify the substance of a complaint, or the precise issues which may need to be investigated despite reasonable efforts by the manager to assist them.

Complains solely about trivial matters to an extent which is out of proportion to their significance.

Makes excessive contact with the manager or seeks to impose unreasonable demands or expectations on resources, such as responses being provided more urgently than is reasonable or necessary.

What is a malicious complaint?

7. A malicious complaint is one that is made with the intention of causing harm, for example:

- deliberately seeking to defame a colleague or manager and raising a complaint with this intent;
- through lying about an issue or incident in the knowledge that this will cause harm;
- through knowingly basing a complaint on rumour and gossip with the intention of causing harm.

8. A malicious complaint is defined as:

- one that the investigation has shown to be without foundation;
- one where the investigation evidence demonstrates that the complainant knowingly lied to the Investigation Manager; and
- here there is sufficient evidence to demonstrate this at a disciplinary hearing on the basis of the balance of probabilities.

Handling vexatious and malicious complaints

9. Vexatious and malicious complaints can be very difficult to identify. Largely, this must be a matter of professional judgement for the manager. However, once identified, such complaints should be tackled as soon as possible.

10. The Grievance Policy should be followed but managers may conclude as part of their investigation or decision that the complaint is vexatious and or malicious. Managers may also seek to limit the scope of the complaint to what is reasonable and relevant to the complaint itself.

11. The mere fact that an employee has brought a number of complaints in the past is not of itself sufficient grounds for refusing to consider a complaint if it raises new matters.

12. Managers should not treat anyone less favourably or subject them to a detriment because they have brought a complaint. This applies even where they are suspected to be vexatious, malicious or otherwise.

13. Each case must be considered on its merits, be evidence based and investigated, as appropriate. Any mitigating factors must be taken into account (for example, stress, and physical and mental illness, or certain behaviours which may be outward symptoms of underlying workplace problems such as bullying, harassment or discrimination) as these may have a significant bearing on the case.

14. Following investigation, and before reaching a decision that a complaint is vexatious or malicious, managers should seek advice from Employment Relations. They may also find it helpful to speak to their countersigning manager.

15. Vexatious or malicious use of the grievance procedure will not be tolerated. If there is evidence that an employee is making vexatious or malicious use of the grievance procedure, the matter will be investigated under the disciplinary procedure.

Last amended on 24/09/2014