

PANNONE

DEFAMATION, LIBEL AND SLANDER

What is defamation?

Defamation is the publication of a statement by one person about another that damages his reputation. The statement must lower his reputation in the opinion of right thinking members of society.

There is no single definition but defamatory material can be, for example, where someone's character is discredited or where the statement causes the person to be shunned by others or exposed to hatred. It is not enough to show that there has been a mere insult.

Defamatory statements are usually in written or spoken words (and include material on the internet) but pictures, photographs, gestures and other acts can also be defamatory.

A company can bring defamatory proceedings as well as individuals but cannot claim damages for distress or hurt feelings in the same way as an individual. A company will be defamed where the statement damages its business or reputation.

The defamation is libel where it is in a permanent form, for example, a book or film. It is slander where it is not in permanent form, usually speech. If you are claiming for libel, you do not need to show that you have suffered any loss as damage is presumed. To claim for slander, you must show that you have suffered financial loss unless the words fall into certain categories of accusation against the claimant, for example, that he/she has committed a crime or has a contagious disease.

For defamation to be proven, you must also show that the material complained of has been published (or communicated) to a third party and that you can be identified as the individual from the statement.

If you succeed in a claim for defamation, the remedy available is usually damages (compensation) rather than an injunction (a court order banning certain acts or instructing a party to carry out certain acts). The court will not grant an injunction to restrain a threatened defamation except in rare circumstances. You cannot force the publisher of a statement to make an apology or publish a correction. If this is your goal, consider making a complaint to the Press Complaints Commission: see page 2.

Time limits

A claim must be brought within a year of the date of publication of the material. If the court considers it equitable (just), however, it can allow proceedings to continue in some circumstances where the time limit has already expired. For example, where you did not know about the defamatory statement until it had been published for more than one year.

Defences

There are a number of defences to a claim for defamation:

- Unintentional defamation. It is usually the case that where someone repeats a defamatory statement, they are liable for defamation together with the original publisher. The defence of unintentional defamation applies where a person (not including authors, editors or commercial publishers) took reasonable care in relation to the publication of the material and did not know and had no reason to believe that what they did caused or contributed to the publication of the defamatory statement. This is intended to cover printers, online service providers and live broadcasters. A further modification to the repetition rule is the defence of reportage. This is where a journalist effectively repeats what has been said, including any defamatory statements, but on an entirely neutral basis without adopting the belief in the truth of the

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defamatory statement or embellishing it in anyway. Reportage is a form of qualified privilege: see below.

- Justification – where the defamatory statement made was essentially true. Truth is a complete defence even if the statement was made maliciously. Care needs to be taken in relying on this defence as an unsuccessful defence based on this principle can increase the level of damages awarded as the harm to the claimant will have increased. In addition, the defendant must prove that the allegation is more likely than not to be true; sufficient evidence is needed from witnesses and / or documents to support the statement.
- Fair comment – where the statement made was fair comment on a matter of public interest and not a statement of fact. Generally, this means a matter which will affect people at large or which they may be concerned about or interested in. There must be an honest belief that the facts on which the comment was based are true and the comments must be fair. If the publication was made maliciously, the defence will fail.
- Absolute privilege – where a statement was made in Parliament or court proceedings or where a report of those proceedings is made. This is a complete defence whether or not the publication was made maliciously or was untrue.
- Qualified privilege – where a statement was made on a privileged occasion and was not made maliciously. This includes statements made where there is a legal obligation to give information, for example, the giving of a statement to police and fair and accurate reporting of public meetings or enquiries. This privilege can be rebutted by showing malice.

Offer of amends

A publisher can make an offer of amends. This will include publishing a correction and an apology and paying compensation to the person defamed, together with his costs.

The claimant does not have to accept an offer of amends. If he does not accept, the publisher can use it as a defence unless it is shown that the publisher knew (or had reason to believe) that the statement referred to the claimant or was likely to be understood as referring to him and was false as well as defamatory.

Hearing

Unlike most claims in the civil courts, a jury will determine whether a defamation claim has been proven once a judge has decided that the relevant material could have a meaning that is damaging to the claimant's reputation.

The jury will determine what the words or material mean in their natural and ordinary sense and whether that meaning is defamatory.

The jury will also usually decide the amount of any damages awarded.

Press Complaints Commission

The Press Complaints Commission cannot award damages. Instead, complaints can be resolved by the publication of a correction, apology, letter from the complainant or further articles.

A complaint can be made as an alternative to legal proceedings or at the conclusion of proceedings.

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A malicious falsehood is a false statement made maliciously that is calculated to injure the property or business of another. It is similar in nature to a claim for defamation but has a number of disadvantages compared to defamation.

A complaint can be submitted to the Commission at any time but if proceedings have commenced or are impending, it will be put on hold until the end of the proceedings.

A complaint will be upheld where the Code of Practice subscribed to by the press has been breached.

Malicious falsehood

A malicious falsehood is a false statement made maliciously that is calculated to injure the property or business of another. It is similar in nature to a claim for defamation but has a number of disadvantages compared to defamation. For example, a claimant must prove malice, that the statement is false and that actual or likely financial loss has been suffered.

The advantage to a potential claimant is that malicious falsehood can apply to any statement whereas for a claim to succeed in defamation, the statement must be defamatory in nature.

A claim for malicious falsehood is usually made instead of a claim for defamation rather than as an alternative claim.

Should you have any questions please contact your usual Pannone contact or: Louise Brace, Senior Associate, Dispute Resolution, tel 0161 909 1578 or email: louise.brace@pannone.co.uk.