

# Defamation Act 2013

## 1. Serious harm

- (1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.
- (2) For the purposes of this section, harm to the reputation of a body that trades for profit is not 'serious harm' unless it has caused or is likely to cause the body serious financial loss.

## 2. Truth

- (1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.
- (2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.
- (3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation.
- (4) The common law defence of justification is abolished and, accordingly, section 5 of the Defamation Act 1952 (justification) is repealed.

## 3. Honest opinion

- (1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.
- (2) The first condition is that the statement complained of was a statement of opinion.
- (3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.
- (4) The third condition is that an honest person could have held the opinion on the basis of—
  - (a) any fact which existed at the time the statement complained of was published;

This is a new requirement aimed at ensuring that only the most serious cases are brought (see *Lachaux v Independent Print Ltd* [2017]). Note: it does not change who can sue.

This ensures that the harm to the reputation of a company (or similar) is not serious harm unless it has caused, or is likely to cause, serious financial loss.

What matters is whether the defamation of the defendant can be shown to be true, not whether the statement can be shown to be true in some other sense or for some other purpose.

The defence does not apply to statements of fact. See *Joseph v Spiller* [2010] for discussion of the difficulty sometimes of distinguishing between statements of fact and statements of opinion.

Honesty was a requirement of the common law defence. However, unlike the common law, there is no need to prove the absence of malice.

This section replaces the common law defence of justification (see s 2(4)). It is intended to broadly reflect—while clarifying certain elements of—the common law. See *Depp II v News Group Newspapers Ltd* [2020].

The defendant does not have to prove that every word was true—all that he needs to establish is the 'sting' of the claim.

As in the common law, the defence doesn't fail just because the defendant cannot establish the truth of every statement.

This section replaces the common law defence of fair comment (see s 3(8)).

However, unlike the common law defence there is no need for the statement to be on a matter of public opinion.

It must be clear, either generally or specifically, what formed the basis of the opinion (this is the test laid down by Lord Phillips in *Joseph v Spiller*).





(b) anything asserted to be a fact in a privileged statement published before the statement complained of.

(5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.

(6) Subsection (5) does not apply in a case where the statement complained of was published by the defendant but made by another person (“the author”); and in such a case the defence is defeated if the claimant shows that the defendant knew or ought to have known that the author did not hold the opinion.

This section allows the defence, in certain circumstances, to cover the statements of others.

(7) For the purposes of subsection (4)(b) a statement is a “privileged statement” if the person responsible for its publication would have one or more of the following defences if an action for defamation were brought in respect of it—

- (a) a defence under section 4 (publication on matter of public interest);
- (b) a defence under section 6 (peer-reviewed statement in scientific or academic journal);
- (c) a defence under section 14 of the Defamation Act 1996 (reports of court proceedings protected by absolute privilege);
- (d) a defence under section 15 of that Act (other reports protected by qualified privilege).

By abolishing the commonlaw defence, and repealing s 6 of the 1952 Act, the 2013 Act prevents defendants from arguing the common law defence alongside (or even instead of) the statutory defence.

(8) The common law defence of fair comment is abolished and, accordingly, section 6 of the Defamation Act 1952 (fair comment) is repealed.

Note the different ways 'public interest' is used in this section.

#### 4. Publication on matter of public interest

(1) It is a defence to an action for defamation for the defendant to show that—

- (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
- (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.

This defence replaces the so-called *Reynolds* [2001] defence.

(2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.

See *Economou v de Freitas* [2018].

(3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party, the court must in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.

This section is intended to capture the common law doctrine of 'reportage'.

This directly reflects the Supreme Court decision in *Flood v Times Newspapers* [2012].

(4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.



In cases where website operators do not 'edit' the content of the website they will also be protected under s 10 so long as they are not the 'author, editor or publisher' of the statement and it is 'reasonably practicable' for the claimant to pursue the author, editor or publisher of the statement.

This section may extend the scope of the defence in relation to websites that allow users to post comments using a pseudonym.

This section offers protection to website moderators.

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(5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.

(6) The common law defence known as the *Reynolds* defence is abolished.

## 5. Operators of websites

(1) This section applies where an action for defamation is brought against the operator of a website in respect of a statement posted on the website.

(2) It is a defence for the operator to show that it was not the operator who posted the statement on the website.

(3) The defence is defeated if the claimant shows that—

(a) it was not possible for the claimant to identify the person who posted the statement,

(b) the claimant gave the operator a notice of complaint in relation to the statement, and

(c) the operator failed to respond to the notice of complaint in accordance with any provision contained in regulations.

(4) For the purposes of subsection (3)(a), it is possible for a claimant to "identify" a person

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(12) The defence under this section is not defeated by reason only of the fact that the operator of the website moderates the statements posted on it by others.

## 6. Peer-reviewed statement in scientific or academic journal etc

(1) The publication of a statement in a scientific or academic journal (whether published in electronic form or otherwise) is privileged if the following conditions are met.

(2) The first condition is that the statement relates to a scientific or academic matter.

(3) The second condition is that before the statement was published in the journal an independent review of the statement's scientific or academic merit was carried out by—

(a) the editor of the journal, and

(b) one or more persons with expertise in the scientific or academic matter concerned.

(4) Where the publication of a statement in a scientific or academic journal is privileged by virtue of subsection (1), the publication in the same journal of any assessment of the statement's scientific or academic merit is also privileged if—

(a) the assessment was written by one or more of the persons who carried out the independent review of the statement; and

This section extends the protection offered to operators of websites.

This section is introduced as a direct result of the case of *British Chiropractic Association v Singh* [2010].

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(b) the assessment was written in the course of that review.

(5) Where the publication of a statement or assessment is privileged by virtue of this section, the publication of a fair and accurate copy of, extract from or summary of the statement or assessment is also privileged.

(6) A publication is not privileged by virtue of this section if it is shown to be made with malice.

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## 7. Reports etc protected by privilege

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## 8. Single publication rule

(1) This section applies if a person—

- (a) publishes a statement to the public ('the first publication'), and
- (b) subsequently publishes (whether or not to the public) that statement or a statement which is substantially the same.

(2) In subsection (1) "publication to the public" includes publication to a section of the public.

(3) For the purposes of section 4A of the Limitation Act 1980 (time limit for actions for defamation etc) any cause of action against the person for defamation in respect of the subsequent publication is to be treated as having accrued on the date of the first publication.

(4) This section does not apply in relation to the subsequent publication if the manner of that publication is materially different from the manner of the first publication.

(5) In determining whether the manner of a subsequent publication is materially different from the manner of the first publication, the matters to which the court may have regard include (amongst other matters)—

- (a) the level of prominence that a statement is given;
- (b) the extent of the subsequent publication.

(6) Where this section applies—

(a) it does not affect the court's discretion under section 32A of the Limitation Act 1980 (discretionary exclusion of time limit for actions for defamation etc), and

(b) the reference in subsection (1)(a) of that section to the operation of section 4A of that Act is a reference to the operation of section 4A together with this section.

## 9. Action against a person not domiciled in the UK or a Member State etc

(1) This section applies to an action for defamation against a person who is not domiciled—



This section introduces a single publication rule—reversing the common law rule established in *Duke of Brunswick v Harmer* [1849].

One clear application of the rule is in relation to newspaper archives.

This section amends some of the provisions in the Defamation Act 1996 relating to absolute and qualified privilege.

In order for this rule to apply, the statement must be published by the same person and in substantially the same way. It does not apply when the defamatory material published is substantially different to the original, or is published in a different manner (e.g. if it is moved from an obscure part of a website to the front page) or by someone else (see ss 8(4) and 8(5)).

This section was introduced in order to address the problem of so-called 'libel tourism'.

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- (a) in the United Kingdom;
- (b) in another Member State; or
- (c) in a state which is for the time being a contracting party to the Lugano Convention.

(2) A court does not have jurisdiction to hear and determine an action to which this section applies unless the court is satisfied that, of all the places in which the statement complained of has been published, England and Wales is clearly the most appropriate place in which to bring an action in respect of the statement.

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### 10. Action against a person who was not the author, editor etc

(1) A court does not have jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of unless the court is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher.

(2) In this section “author”, “editor” and “publisher” have the same meaning as in section 1 of the Defamation Act 1996.

### 11. Trial to be without a jury unless the court orders otherwise

(1) In section 69(1) of the Senior Courts Act 1981 (certain actions in the Queen’s Bench Division to be tried with a jury unless the trial requires prolonged examination of documents etc) in paragraph (b) omit “libel, slander,”.

(2) In section 66(3) of the County Courts Act 1984 (certain actions in the county court to be tried with a jury unless the trial requires prolonged examination of documents etc) in paragraph (b) omit “libel, slander,”.

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### 14. Special damage

(1) The Slander of Women Act 1891 is repealed.

(2) The publication of a statement that conveys the imputation that a person has a contagious or infectious disease does not give rise to a cause of action for slander unless the publication causes the person special damage.

### 15. Meaning of “publish” and “statement”

In this Act—

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This section offers additional protection to so-called ‘secondary publishers’.

This section abolishes the (unusual) presumption in favour of a jury trial in defamation cases. It leaves the courts with a residual discretion to order a jury trial, but gives no guidance on when it might be appropriate to so order.

This section abolishes two dated and discriminatory provisions which set out exceptions to the need to prove special damage in cases of slander.



“publish” and “publication”, in relation to a statement, have the meaning they have for the purposes of the law of defamation generally;

“statement” means words, pictures, visual images, gestures or any other method of signifying meaning.

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