



Defamation Act 1996

1996 CHAPTER 31

Offer to make amends

2 Offer to make amends

- (1) A person who has published a statement alleged to be defamatory of another may offer to make amends under this section.
- (2) The offer may be in relation to the statement generally or in relation to a specific defamatory meaning which the person making the offer accepts that the statement conveys (“a qualified offer”).
- (3) An offer to make amends—
 - (a) must be in writing,
 - (b) must be expressed to be an offer to make amends under section 2 of the Defamation Act 1996, and
 - (c) must state whether it is a qualified offer and, if so, set out the defamatory meaning in relation to which it is made.
- (4) An offer to make amends under this section is an offer—
 - (a) to make a suitable correction of the statement complained of and a sufficient apology to the aggrieved party,
 - (b) to publish the correction and apology in a manner that is reasonable and practicable in the circumstances, and
 - (c) to pay to the aggrieved party such compensation (if any), and such costs, as may be agreed or determined to be payable.

The fact that the offer is accompanied by an offer to take specific steps does not affect the fact that an offer to make amends under this section is an offer to do all the things mentioned in paragraphs (a) to (c).

- (5) An offer to make amends under this section may not be made by a person after serving a defence in defamation proceedings brought against him by the aggrieved party in respect of the publication in question.

- (6) An offer to make amends under this section may be withdrawn before it is accepted; and a renewal of an offer which has been withdrawn shall be treated as a new offer.

3 Accepting an offer to make amends

- (1) If an offer to make amends under section 2 is accepted by the aggrieved party, the following provisions apply.
- (2) The party accepting the offer may not bring or continue defamation proceedings in respect of the publication concerned against the person making the offer, but he is entitled to enforce the offer to make amends, as follows.
- (3) If the parties agree on the steps to be taken in fulfilment of the offer, the aggrieved party may apply to the court for an order that the other party fulfil his offer by taking the steps agreed.
- (4) If the parties do not agree on the steps to be taken by way of correction, apology and publication, the party who made the offer may take such steps as he thinks appropriate, and may in particular—
- (a) make the correction and apology by a statement in open court in terms approved by the court, and
 - (b) give an undertaking to the court as to the manner of their publication.
- (5) If the parties do not agree on the amount to be paid by way of compensation, it shall be determined by the court on the same principles as damages in defamation proceedings.

The court shall take account of any steps taken in fulfilment of the offer and (so far as not agreed between the parties) of the suitability of the correction, the sufficiency of the apology and whether the manner of their publication was reasonable in the circumstances, and may reduce or increase the amount of compensation accordingly.

- (6) If the parties do not agree on the amount to be paid by way of costs, it shall be determined by the court on the same principles as costs awarded in court proceedings.
- (7) The acceptance of an offer by one person to make amends does not affect any cause of action against another person in respect of the same publication, subject as follows.
- (8) In England and Wales or Northern Ireland, for the purposes of the Civil Liability (Contribution) Act 1978—
- (a) the amount of compensation paid under the offer shall be treated as paid in bona fide settlement or compromise of the claim; and
 - (b) where another person is liable in respect of the same damage (whether jointly or otherwise), the person whose offer to make amends was accepted is not required to pay by virtue of any contribution under section 1 of that Act a greater amount than the amount of the compensation payable in pursuance of the offer.
- (9) In Scotland—
- (a) subsection (2) of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (right of one joint wrongdoer as respects another to recover contribution towards damages) applies in relation to compensation paid under an offer to make amends as it applies in relation to damages in an action to which that section applies; and

- (b) where another person is liable in respect of the same damage (whether jointly or otherwise), the person whose offer to make amends was accepted is not required to pay by virtue of any contribution under section 3(2) of that Act a greater amount than the amount of compensation payable in pursuance of the offer.

(10) Proceedings under this section shall be heard and determined without a jury.

4 Failure to accept offer to make amends

- (1) If an offer to make amends under section 2, duly made and not withdrawn, is not accepted by the aggrieved party, the following provisions apply.
- (2) The fact that the offer was made is a defence (subject to subsection (3)) to defamation proceedings in respect of the publication in question by that party against the person making the offer.

A qualified offer is only a defence in respect of the meaning to which the offer related.

- (3) There is no such defence if the person by whom the offer was made knew or had reason to believe that the statement complained of—
 - (a) referred to the aggrieved party or was likely to be understood as referring to him, and
 - (b) was both false and defamatory of that party;but it shall be presumed until the contrary is shown that he did not know and had no reason to believe that was the case.
- (4) The person who made the offer need not rely on it by way of defence, but if he does he may not rely on any other defence.

If the offer was a qualified offer, this applies only in respect of the meaning to which the offer related.

- (5) The offer may be relied on in mitigation of damages whether or not it was relied on as a defence.