

SCHEDULE

Regulation 3

Actions to be taken by operator in response to notice of complaint in order to maintain section 5(2) defence

Removal of statements from website

1.—(1) This paragraph applies where a provision of this Schedule provides that an operator must remove a statement from the locations on the website specified in a notice of complaint within a specified period.

(2) The operator is to be taken to have removed the statement concerned from a particular location within that period if, before that period has elapsed, another person has removed the statement from that location.

Response to notice of complaint: initial steps

2.—(1) Unless paragraph 3 or 9 applies, the operator must, within 48 hours of receiving a notice of complaint, send the poster—

- (a) a copy of the notice of complaint, altered to conceal the complainant's name and address if the operator has received confirmation that the complainant does not consent to the operator providing this information to the poster;
- (b) notification in writing that the statement complained of may be removed from the locations on the website which were specified in the notice of complaint unless—
 - (i) the operator receives a response in writing from the poster by midnight at the end of the date specified in the notification as the deadline for responding (which must be the 5th day after the day on which the notification is sent); and
 - (ii) that response complies with sub-paragraph (2); and
- (c) notification in writing that the information mentioned in sub-paragraph (2)(b)(i) or (ii) will not be released to the complainant unless—
 - (i) the poster consents; or
 - (ii) the operator is ordered to do so by a court.

(2) To comply with this sub-paragraph the response must—

- (a) inform the operator whether or not the poster wishes the statement to be removed from the locations on the website which were specified in the notice of complaint; and
- (b) where the poster does not wish the statement to be removed from those locations—
 - (i) provide the poster's full name;
 - (ii) provide the postal address at which the poster resides or carries on business; and
 - (iii) inform the operator whether the poster consents to the operator providing the complainant with the details mentioned in paragraphs (i) or (ii).

3.—(1) Where the operator has no means of contacting the poster paragraph 2 does not apply and the operator must, within 48 hours of receiving a notice of complaint, remove the statement from the locations on the website which were specified in the notice of complaint.

(2) The operator is not to be taken as having a means of contacting the poster unless the means available to the operator include private electronic communication (for example electronic mail or other means of private electronic messaging).

4.—(1) Unless paragraph 9 applies, the operator must, within 48 hours of receiving a notice of complaint, send the complainant an acknowledgement in writing of the notice.

(2) The acknowledgement must—

- (a) where paragraph 2 applies, state that the operator has acted in accordance with that paragraph;
- (b) where paragraph 3 applies, inform the complainant that the statement has been removed from the locations on the website which were specified in the notice of complaint.

Response to notice of complaint: poster fails to respond

5.—(1) This paragraph applies where the operator acts in accordance with paragraph 2 in respect of a notice of complaint and the poster fails to respond within the period specified in paragraph 2(1)(b)(i).

(2) Where this paragraph applies the operator must, within 48 hours of the end of that period—

- (a) remove the statement from the locations on the website which were specified in the notice of complaint; and
- (b) send the complainant notice in writing that the statement has been removed from those locations on the website.

Response to notice of complaint: response does not include all required information

6.—(1) This paragraph applies where—

- (a) the operator acts in accordance with paragraph 2 in respect of a notice of complaint;
- (b) the poster responds to the operator within the period specified in paragraph 2(1)(b)(i); and
- (c) the response does not comply with paragraph 2(2).

(2) Where this paragraph applies the operator must, within 48 hours of receiving the response—

- (a) remove the statement from the locations on the website which were specified in the notice of complaint; and
- (b) send the complainant notice in writing that the statement has been removed from those locations on the website.

(3) For the purpose of this paragraph a response does not include the information mentioned in paragraph 2(2)(b) if a reasonable website operator would consider the name or postal address provided under paragraph 2(2)(b)(i) or (ii) to be obviously false.

Response to notice of complaint: poster wishes statement to be removed from website locations

7.—(1) This paragraph applies where—

- (a) the operator acts in accordance with paragraph 2 in respect of a notice of complaint;
- (b) the poster responds to the operator within the period specified in paragraph 2(1)(b)(i); and
- (c) the poster wishes the statement to be removed from the locations on the website specified in the notice of complaint.

(2) Where this paragraph applies the operator must, within 48 hours of receiving the response—

- (a) remove the statement from the locations on the website which were specified in the notice; and
- (b) send the complainant notice in writing that the statement has been removed from those locations.

Response to notice of complaint: poster does not wish statement to be removed from website locations

- 8.—(1) This paragraph applies where—
- (a) the operator acts in accordance with paragraph 2 in respect of a notice of complaint;
 - (b) the poster responds to the operator within the period specified in paragraph 2(1)(b)(i); and
 - (c) the poster does not wish the statement to be removed from the locations on the website specified in the notice of complaint.
- (2) Where this paragraph applies the operator must, within 48 hours of receiving the response—
- (a) inform the complainant in writing—
 - (i) that the poster does not wish the statement to be removed; and
 - (ii) that the statement has not been removed from the locations on the website specified in the notice of complaint; and
 - (b) where the poster—
 - (i) has consented to the operator providing the poster’s name or address to the complainant, provide that information to the complainant in writing; or
 - (ii) has not so consented, notify the complainant in writing of that fact.

Response to notice of complaint: persistent re-posting of same or substantially the same material

- 9.—(1) This paragraph applies where—
- (a) a notice of complaint from the same complainant has been received by the operator in relation to a relevant statement on two or more previous occasions;
 - (b) on each occasion the statement has been removed from the website in accordance with this Schedule;
 - (c) the operator receives a further notice of complaint in relation to the statement; and
 - (d) the complainant informs the operator at the same time as sending the notice of complaint that the complainant has sent a notice of complaint to the operator on two or more previous occasions in relation to the statement.
- (2) Where this paragraph applies paragraphs 2 to 8 do not apply and the operator must remove the statement from the locations on the website which were specified in the notice of complaint within 48 hours of receiving the notice of complaint.
- (3) A statement is a relevant statement for the purposes of this paragraph if—
- (a) the statement to which the notice of complaint relates conveys the same or substantially the same imputation as that to which each of the previous notices of complaint referred to in sub-paragraph (1)(a) relate;
 - (b) it was posted on the same website; and
 - (c) it was posted on that website by the same person.