

Defamation Act 2013

2013 CHAPTER 26

Defences

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law defence of justification is abolished and, accordingly, section 5 of the Defamation Act 1952 (justification) is repealed.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;
 - (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.
- (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).
- (8) The common law defence of fair comment is abolished and, accordingly, section 6 of the Defamation Act 1952 (fair comment) is repealed.

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.
- (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.
- (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.
- (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.
- (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 only if the claimant has sufficient information to bring proceedings against the person.
- (5) Regulations may—
 - (a) make provision as to the action required to be taken by an operator of a website in response to a notice of complaint (which may in particular include action relating to the identity or contact details of the person who posted the statement and action relating to its removal);
 - (b) make provision specifying a time limit for the taking of any such action;
 - (c) make provision conferring on the court a discretion to treat action taken after the expiry of a time limit as having been taken before the expiry;
 - (d) make any other provision for the purposes of this section.
- (6) Subject to any provision made by virtue of subsection (7), a notice of complaint is a notice which—
 - (a) specifies the complainant’s name,
 - (b) sets out the statement concerned and explains why it is defamatory of the complainant,
 - (c) specifies where on the website the statement was posted, and
 - (d) contains such other information as may be specified in regulations.
- (7) Regulations may make provision about the circumstances in which a notice which is not a notice of complaint is to be treated as a notice of complaint for the purposes of this section or any provision made under it.
- (8) Regulations under this section—
 - (a) may make different provision for different circumstances;
 - (b) are to be made by statutory instrument.
- (9) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (10) In this section “regulations” means regulations made by the Secretary of State.
- (11) The defence under this section is defeated if the claimant shows that the operator of the website has acted with malice in relation to the posting of the statement concerned.

- (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
 - (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.
- (7) Nothing in this section is to be construed—
- (a) as protecting the publication of matter the publication of which is prohibited by law;
 - (b) as limiting any privilege subsisting apart from this section.
- (8) The reference in subsection (3)(a) to “the editor of the journal” is to be read, in the case of a journal with more than one editor, as a reference to the editor or editors who were responsible for deciding to publish the statement concerned.

7 Reports etc protected by privilege

- (1) For subsection (3) of section 14 of the Defamation Act 1996 (reports of court proceedings absolutely privileged) substitute—

“(3) This section applies to—

- (a) any court in the United Kingdom;
- (b) any court established under the law of a country or territory outside the United Kingdom;
- (c) any international court or tribunal established by the Security Council of the United Nations or by an international agreement;

and in paragraphs (a) and (b) “court” includes any tribunal or body exercising the judicial power of the State.”

- (2) In subsection (3) of section 15 of that Act (qualified privilege) for “public concern” substitute “public interest”.
- (3) Schedule 1 to that Act (qualified privilege) is amended as follows.
- (4) For paragraphs 9 and 10 substitute—
- “9 (1) A fair and accurate copy of, extract from or summary of a notice or other matter issued for the information of the public by or on behalf of—
- (a) a legislature or government anywhere in the world;
 - (b) an authority anywhere in the world performing governmental functions;
 - (c) an international organisation or international conference.
- (2) In this paragraph “governmental functions” includes police functions.
- 10 A fair and accurate copy of, extract from or summary of a document made available by a court anywhere in the world, or by a judge or officer of such a court.”
- (5) After paragraph 11 insert—
- “11A A fair and accurate report of proceedings at a press conference held anywhere in the world for the discussion of a matter of public interest.”
- (6) In paragraph 12 (report of proceedings at public meetings)—
- (a) in sub-paragraph (1) for “in a member State” substitute “anywhere in the world”;
 - (b) in sub-paragraph (2) for “public concern” substitute “public interest”.
- (7) In paragraph 13 (report of proceedings at meetings of public company)—
- (a) in sub-paragraph (1), for “UK public company” substitute “listed company”;
 - (b) for sub-paragraphs (2) to (5) substitute—
- “(2) A fair and accurate copy of, extract from or summary of any document circulated to members of a listed company—
- (a) by or with the authority of the board of directors of the company,
 - (b) by the auditors of the company, or
 - (c) by any member of the company in pursuance of a right conferred by any statutory provision.
- (3) A fair and accurate copy of, extract from or summary of any document circulated to members of a listed company which relates to the appointment, resignation, retirement or dismissal of directors of the company or its auditors.
- (4) In this paragraph “listed company” has the same meaning as in Part 12 of the Corporation Tax Act 2009 (see section 1005 of that Act).”
- (8) In paragraph 14 (report of finding or decision of certain kinds of associations) in the words before paragraph (a), for “in the United Kingdom or another member State” substitute “anywhere in the world”.
- (9) After paragraph 14 insert—

Status: This is the original version (as it was originally enacted).

“14A A fair and accurate—

- (a) report of proceedings of a scientific or academic conference held anywhere in the world, or
- (b) copy of, extract from or summary of matter published by such a conference.”

(10) For paragraph 15 (report of statements etc by a person designated by the Lord Chancellor for the purposes of the paragraph) substitute—

“15 (1) A fair and accurate report or summary of, copy of or extract from, any adjudication, report, statement or notice issued by a body, officer or other person designated for the purposes of this paragraph by order of the Lord Chancellor.

(2) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(11) For paragraphs 16 and 17 (general provision) substitute—

“16 In this Schedule—

“court” includes—

- (a) any tribunal or body established under the law of any country or territory exercising the judicial power of the State;
- (b) any international tribunal established by the Security Council of the United Nations or by an international agreement;
- (c) any international tribunal deciding matters in dispute between States;

“international conference” means a conference attended by representatives of two or more governments;

“international organisation” means an organisation of which two or more governments are members, and includes any committee or other subordinate body of such an organisation;

“legislature” includes a local legislature; and

“member State” includes any European dependent territory of a member State.”