

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law defence of justification is abolished and, accordingly, section 5 of the Defamation Act 1952 (justification) is repealed.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.



This is a new requirement aimed at ensuring that only the most serious cases are brought (see *Cooke v MGN Ltd* [2014]). Note: it does nothing to change who can sue. See also *Monroe v Hopkins* [2017].

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.

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.

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)).

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.

→

- (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.

→

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

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*).

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

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



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.



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

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

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

This section extends the protection offered to operators of websites.

This defence replaces—though is said to broadly mirror—the so-called *Reynolds* defence (see s 4(6)).

However, 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.

→

- (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.

→

This section offers protection to website moderators.

→

(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. Reports etc protected by privilege

...

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.

→

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

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

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

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 is introduced as a direct result of the case of *British Chiropractic Association v Singh*.

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

→

(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—

- (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.

...

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.

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

→

Special duty problems: omissions and acts of third parties annotated problem question

Margaret, who is 75, is in the supermarket on a busy Saturday afternoon when she feels pains in her chest. It transpires she is having a heart attack and she collapses to the floor. Although the supermarket is crowded, no one comes to help her.

Brian, the store manager, puts a call out over the PA system asking if there is a doctor present, but otherwise offers no assistance. Hearing the announcement, Karen, a nurse, comes forward and tries to help Margaret, but fails to put her in the recovery position. Margaret later dies.

Meanwhile, some youths see Margaret's car, which was left unlocked and with the key still in the ignition in the supermarket car park as she did not want to spend time looking for a parking space. The youths drive off in the car, failing to stop at a pedestrian crossing, hitting Jill and her daughter Heather who were crossing the road. Both are injured, Heather seriously. One of the youths, Luke, who was not wearing a seat belt, suffers a serious head injury.

Advise the parties.

The alleged negligence (whether K fell below the standard of care expected) would have to be established. Failing to do something is an omission (which is why it is first important to establish whether K owed M a duty of care in respect of omissions).

So who would actually be taking this action, and what for? See **Chapter 21**.

Therefore, J and H have been harmed by the actions of the youths, who become the third party in relation to a claim against M. The question is whether M should be held to owe J and H a duty of care in respect of the actions taken by third parties as a result of her own negligence (leaving the car unlocked). Compare *Home Office v Dorset Yacht* and *Topp v London Country Bus*.

Does this mean that even if L can establish a claim against M he should be found contributorily negligent? See **Chapter 10**.

Here, L is another potential claimant. However, the question here is whether M should owe him a duty of care, even though he, as the third party, was (at least in part) responsible in some way for his own injuries. See also **Chapter 9** on causation points (quite tricky here), including whether he may have broken the chain of causation in his own claim.

This is definitely assumption of responsibility by K—is a duty then owed? If so, what is the *content* of the duty? Working out how far the duty extends allows you to consider whether or not there is a *breach*.

This indicates negligence on M's part. Can she be sued even though she is dead? (See **Chapter 21**.) Who would sue her and what for? Would this also make her contributorily negligent (see **Chapter 10**) in relation to her own claims, should any succeed?

At the outset it is important to note what claims will be made, by whom, for what and against whom. Here, we have M v B (and the supermarket vicariously?), M v K, J & H v M, L v M.

The central question here is whether these are all 'callous bystanders' (Lord Nicholls, *Stovin v Wise*) or whether anyone owed M a *duty* to come to her aid.

Does the action B has taken mean that he has 'assumed responsibility' for M in any way? See *Barrett v MOD*. If he has, he will owe her a duty of care. If he has not, there is no duty and M's claim against him will end here.