

Defamation

Protecting your reputation

What is defamation?

A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant (Defamation Act 2013 section 1).

- A libel is a written or permanent allegation, for example in a newspaper article, TV or radio broadcast, email or website posting
- A slander is a spoken allegation.

What do you need to prove to bring a claim?

In order to bring a claim, you need to prove that:

- That the words complained of are defamatory of you; and
- That they have been published to someone other than you; and
- That you are either named or otherwise identifiable from the words.



Funding

The Police Federation may be able to help you if you think you have been defamed.

The Federation Fund Rules state:

“Federation funds held by the Joint Central Committee may on such terms and conditions as may be specified by that Committee in the circumstances of a particular case, be used to defray legal charges incurred by a member or former member of the Federation arising out of any step taken by him with the prior approval of that Committee (given for the purposes here of) in connection with an action for libel or slander which he has brought or contemplates bringing in respect of a statement or alleged statement which appears to the Committee –

1. To relate to his conduct as a member of a police force, or
2. To disparage him in the office of constable or otherwise to cast doubt upon his fitness to be a member of a police force.

In all cases where support is given to a member it will only be approved by the Joint Central Committee and action shall normally be taken through the solicitors to the Police Federation.”

Please note that the authority of the Deputy General Secretary to the Joint Central Committee is needed before any work on a defamation case is undertaken at the expense of the Federation.

Where a claim has sufficiently good merits and prospects of success Slater & Gordon will be able to act for you under a Conditional Fee Agreement (also known as a 'no win no fee' agreement).

Burden of proof

You are presumed to be of good character; so it is for the person who made the allegations to prove they are true or that they satisfy one of the other defences.

What defences are available to a claim in defamation?

- The words complained of are incapable of bearing a defamatory meaning
- You cannot be identified from the words complained of
- The allegations are true
- The words complained of are “honest opinion”, in other words a statement of opinion which indicates the basis of the opinion and which an honest person could have held on the basis of any fact which existed at the time the statement was made or any thing asserted to be a fact in a privileged statement published before the statement complained of.
- “Absolute privilege” – public policy protects defamatory allegations made in certain situations, for example, statements made in judicial proceedings; fair and accurate contemporaneous reports of such proceedings; statements made, and documents created, in the course of a police criminal investigation
- “Qualified privilege” – if a statement is made in accordance with a legal, social or moral duty to a person who has a corresponding interest in receiving it then it is protected by this defence, for example, a complaint about a police officer made to his or her senior officer
- Publication on a matter of public interest – broadly responsible journalism
- “Innocent dissemination” – in other words, the person was not the author, editor or publisher of the statement complained of, he took reasonable care in relation to its publication and he did not know that what he did caused the publication of a defamatory statement. This defence is relevant to, for instance, Internet Service Providers or online sellers

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- Operators of websites – this new defence in section 5 of the Defamation Act 2013 supplements the innocent dissemination defence and limits the circumstances in which an action for defamation can be brought against someone who is not the primary publisher of a defamatory statement.

Can these defences be defeated?

You can defeat the defences of honest opinion or qualified privilege if you can show malice on the part of the publisher. In relation to qualified privilege, this means the defendant did not believe the words complained of were true or he published the words recklessly without considering whether they were true or not, or he had some other dominant improper motive for publishing them. In relation to honest opinion, you will have to show the defendant did not genuinely hold the view he expressed, in other words, in making the defamatory comment he acted dishonestly.

What can you recover if you win your claim?

If you win your defamation claim you will be able to recover the following remedies.

Damages

Damages are principally intended to compensate the claimant for the harm done to his reputation by the publication

An injunction

The purpose of an injunction is to restrain the defendant from further publishing the allegations complained of in future. (NB: Obtaining an interim injunction in defamation is difficult – the Court is very reluctant to interfere in a matter which should be left to trial, and is unlikely to grant an injunction if it appears one of the defences outlined above will be advanced.)

Legal costs

The successful party usually gets an order that his costs should be paid by the unsuccessful party.

It is important to note that one cannot include a claim for an apology in defamation proceedings. An apology can only be obtained through negotiations as part of a settlement. One way in which a public apology can be made is by means of a statement read in open Court (which can then be reported with absolute privilege).

Alternatively, depending on where the libel appeared, one can try and negotiate the publication of an apology in a newspaper, or a letter of apology, or an apology posted on an internet web site. In rare cases, one might be able to secure an apology broadcast on TV or radio.

Guidance for Police Federation Officials

If you are approached by a member with a possible claim for defamation but are not clear if it warrants legal advice always feel free to give one of our defamation team a call to talk it through.

In all cases, act swiftly – time is always of the essence in defamation claims.

(NB: There is only a ONE YEAR limitation period for bringing a court action in defamation from the date of publication – and it is very difficult to get any extension of time from the Court.)

Try and obtain the following from the member to submit with the completed “Form C2 – Request for Advice” which you send to the Deputy General Secretary’s Office at Police Federation Headquarters:

- A copy of the publication complained of
- A brief letter or statement explaining the factual background
- If the publication does not name the member, then please supply an explanation as to why the member can be identified from the words complained of and also the names and contact details of witnesses who read the publication and who, without prompting, identified the member from it
- Details of the damage caused to the member by the publication
- Copies of any other essential documents

What if the media are still pursuing the story?

In some high profile cases, there can be considerable media interest. If so, it may be necessary to engage in some press relations (PR) or reputation management. Slater and Gordon is experienced in dealing with such situations so we can help either by advising or taking on responsibility for dealing with the media. The key points to follow are:-

- Make sure only one nominated individual deals with the media
- Decide at the outset whether communication with the media will be over the telephone, or in press conferences or whether it will be by way of prepared press statements. The danger with the first two is lack of control. Press statements are the safer option
- Ensure that all comments to the media are authorised and approved by the member
- Other than in very rare cases, do not respond to media enquiries with “no comment”; it is preferable to prepare a press release since the media will be ill-advised not to include it in any story they then publish
- If it is a large story, it may be worth engaging professional PR help; once again, Slater and Gordon can assist with this
- Finally, always make sure you have established whether you are speaking on or off the record. Assume that anything you say will be used so make sure you are fully briefed and fully prepared before any media comment or interview

If you need further assistance, in the first instance please contact your local Joint Branch Board.
W: www.slatergordon.co.uk/policelaw

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